



ASSESSMENT REPORT – SECTION 96 MODIFICATION

Environmental Planning & Assessment Act 1979

SUMMARY

Application details

DA No:	DA/496/2016/B
Assessment Officer:	Bertha Gunawan
Property:	1 Post Office Street (also known as 794 Pennant Hills Road) CARLINGFORD NSW 2118 (Lot 1 DP 135802)
Proposal:	Section 96(2) modification to an approved construction of a nine storey residential flat building containing 53 units with ground floor retail. The proposed modifications include changes to the balconies on L4-6 which increases the gross floor area, conversion of 2 units into dual key units, minor external and internal changes and corrections to errors in plans.
Date of receipt:	22 December 2016
Applicant:	LATERAL ESTATE PTY LTD
Owner:	Best Village Pty Ltd
Submissions received:	Two
Property owned by a Council employee or Councillor:	The site is not known to be owned by a Council employee or Councillor
Political donations/gifts disclosed:	None disclosed on the application form
Issues:	None
Recommendation:	Approval

Legislative requirements

Zoning:	B2 Local Centre THLEP 2012
Permissible under:	The Hills LEP 2012
Relevant legislation/policies:	SEPP 65 and Apartment Design Guide, BASIX SEPP, The Hills DCP 2012, Section 94A Contributions Plan
Variations:	Floor Space Ratio
Integrated development:	No
Crown development:	No

The site

Site Area:	2,128m ²
Easements/rights of way:	Yes – across the mid-block of the land, connecting to an existing Council's easement
Heritage item:	No
In the vicinity of a heritage item:	No
Heritage conservation area:	No
Site History:	Yes
29 June 2016	DA/496/2016 was approved by the Sydney West Joint Regional Planning Panel (JRPP) for the demolition of existing structures and construction of a nine storey residential flat building containing 53 units with ground floor retail.
5 June 2017	A Section 96(1A) modification to DA/496/2016 was approved under delegated authority for the deletion of a car parking level and reconfiguration of the remaining basement levels.

DA history

22 December 2016	The current modification application was lodged with Council
------------------	--

12 – 27 January 2017	Notification period
16 January 2017	Comments from Council's Urban Designer were received
31 March 2017	Letter sent to applicant requesting additional information including justification to the proposed enclosure of balconies that results in additional gross floor area on the site.
20 April 2017	Additional information received
2 June 2017	Comments from Council's Building Surveyor were received.
30 June 2017	Comments from Council's Traffic Investigations Engineer were received.
5 July 2017	The current application sent to the Sydney West Central Planning Panel for briefing

SECTION 96 ASSESSMENT

SITE & SURROUNDS

The subject site is located the western side of Pennant Hills Road and is legally described as Lot 1 in DP 135802. It is commonly referred to as 790-794 Pennant Hills Road, Carlingford. The site is also known as 1 Post Office Street, Carlingford. The development site is rectangular in shape and is approximately 2,128m² in area with a frontage of 41m to Post Office Street to the south, and 53m frontage to Pennant Hills Road to the east. An easement across the land connects to an existing Council easement.

The site previously accommodated a 'big box' liquor store. The site is currently under construction for a nine-storey residential flat building containing 53 units with ground floor retail.

Immediately adjoining the site to the north is a three (3) storey residential development. Further north along Pennant Hills Road are a range of other residential developments ranging from two (2) to four (4) storeys high. To the east, on the opposite side of Pennant Hills Road, are older, smaller commercial properties.

To the south on the opposite side of Post Office Street, is an existing Bunnings Warehouse development with an open at grade car park accessed from Post Office Street. To the south-east and diagonal to the site is the Carlingford Village. To the west of the site is characterized by older style single storey dwelling houses.

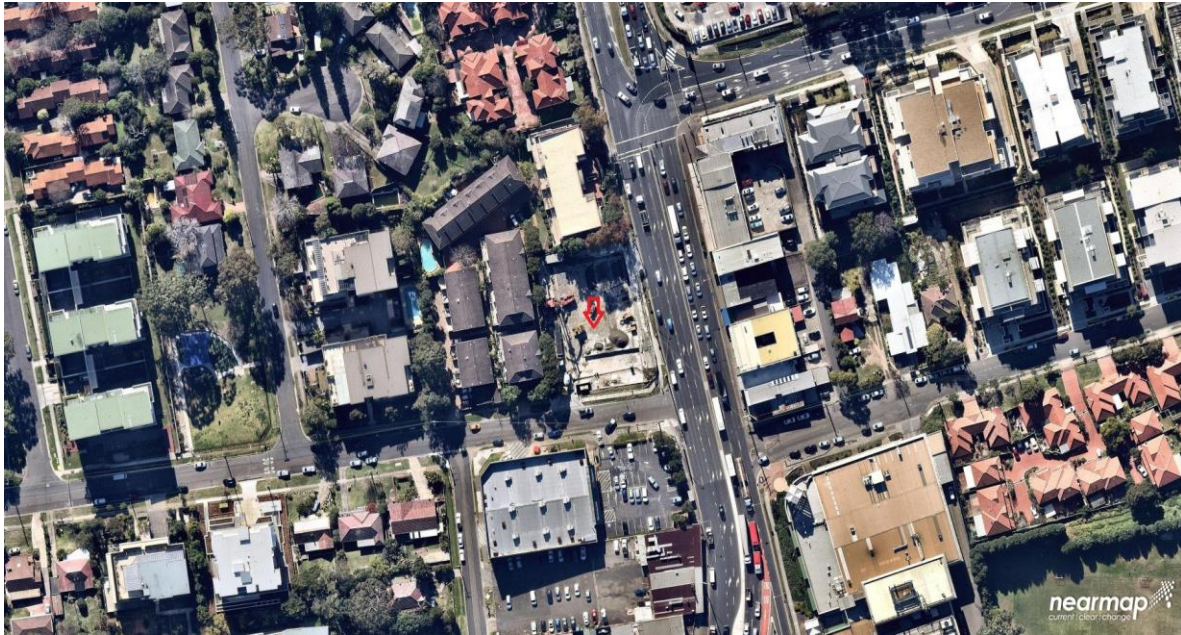


Figure 1. Aerial view of locality showing adjoining development

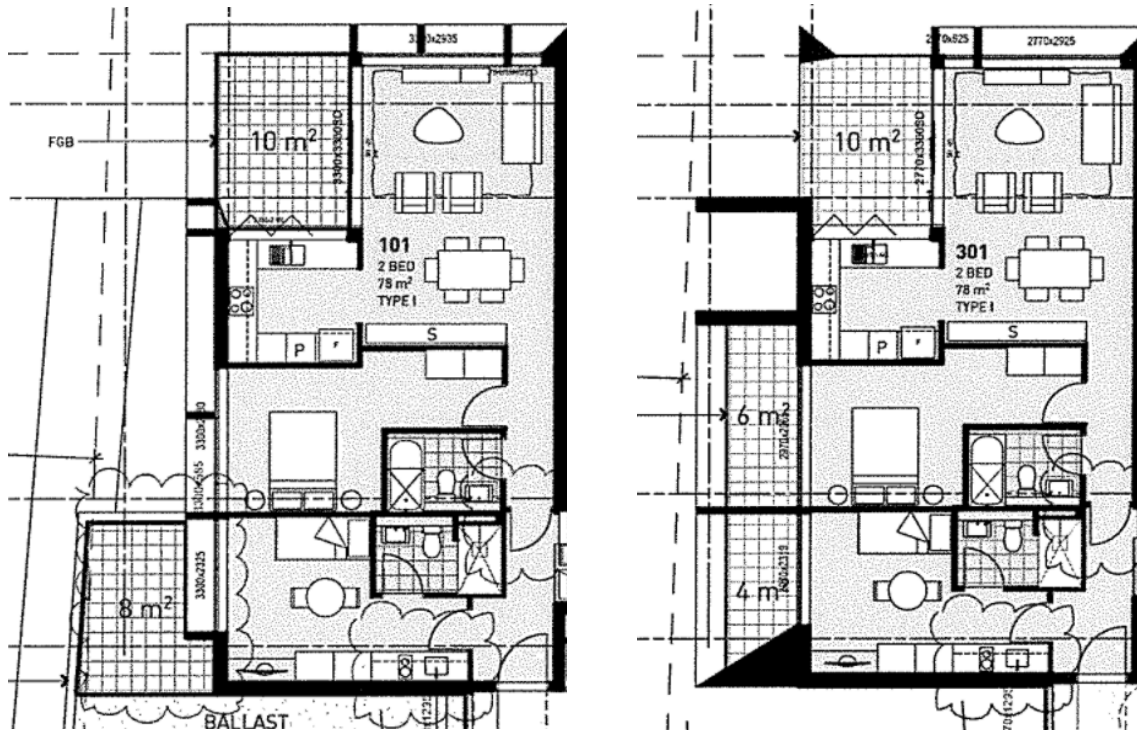
THE PROPOSAL

Consent is sought to modify the approved residential flat building with ground floor retail, as follows:

- 1. Correction to architectural errors in the floor and architectural plans, to notate that the balconies of Units 106, 206, 306 and 406 are loggias/winter gardens,**

It should be noted that the gross floor areas that resulted from these loggias/winter gardens was assessed under the initial DA.

- 2. Conversion of Units 101 and 301 as dual key apartments (each unit will comprise a studio and a one-bedroom containment),**



3. Conversion of balconies into loggias/winter gardens on Levels 4 – 6 for Units: 406, 407, 408, 504, 505, 506, 605 and 606 (which are facing Pennant Hills Road), and
Additional GFA = 76m².



Approved elevation from Pennant Hills Road



Proposed elevation from Pennant Hills Road

4. Additional balcony to Unit 101 = 8m² and associated relocation of a bedroom window at Unit 108 to face Post Office Street.



The works *have not* been completed.

PERMISSIBILITY

The Hills Local Environmental Plan 2012

The proposed use is defined as a “mixed use development” under the LEP 2012.

The proposal satisfies the above definition and is permissible under the B2 Local Centre zoning applying to the land.

REFERRALS

<i>Internal</i>	
Building Surveyor	No concern was raised subject to standard BCA conditions
Traffic	No concern was raised.
Urban Design	<p>The following comments have been provided by Council’s Urban Designer:</p> <p><i>The use of wintergardens is generally supported to mitigate noise issues or preserve internal amenity. It is noted that additional FSR will result. An assessment against the ADG is left to the planner’s jurisdiction.</i></p> <p>Note. Refer to the Hills LEP 2012 section of the report.</p>
<i>External Referrals</i>	N/A

PUBLIC CONSULTATION

In accordance with The Hills DCP 2012, owners and occupiers of surrounding properties were given notice of the application for a 15-day period between 12 and 27. In response two submissions were received, however the issues as raised are related to the originally approved building, as follows:

- **Out of character with the area and an eyesore to the landscape of Carlingford**
- **Overdevelopment and lack of infrastructure to support the intensity**
- **Overshadowing impacts**
- **Traffic congestion and parking problems**
- **Construction noise and air pollution**
- **Developers are destroying the area**

Comments: The scale of the development was considered by the Sydney West Joint Regional Planning Panel to be acceptable for the Carlingford Precinct.

The proposed modifications will not result in any additional overshadowing impact to the surrounding properties than what had been assessed under the original approval. The proposed loggias/winter gardens facing Pennant Hills Road are considered to provide additional privacy and also acoustic barriers for future occupants. The proposed clear glass material to the loggias/winter gardens does not detrimentally alter the approved building appearance and therefore is not perceived to create additional bulk and scale impacts.

The relevant noise and air pollution issues during construction are mitigated by the consent conditions already in place. Sydney West Joint Regional Planning Panel approved the development to provide a minimum of 73 parking spaces within the site, to ensure that congestion and parking problems are addressed. The proposed development will provide 74 spaces within the property.

Sydney West Central Joint Regional Planning Panel

The proposal was sent to SWCPP briefing on 5 July 2017. In response, the Panel provided the following comments:

The s96 application is acceptable. It is noted, however, that there are two dual key units and if treated in each case as two separate units, the smaller unit will be below the Apartment Design Guide minimum apartment size requirements. These would be acceptable if each dual key unit is only treated as one unit on one strata title lot.

The ADG requirement will be discussed further in the report. The applicant has confirmed in writing that the proposed dual key units will be maintained as a two-bedroom unit under the strata title and there will be no further subdivision of these units.

SECTION 96 MATTERS OF CONSIDERATION

Has the consent lapsed? No

Section 96(2) Modification

Other modifications

Substantially the same development

The proposed development to be modified is considered to be substantially the same development as that to which the original development consent relates being a nine storey residential flat building with basement parking and ground floor retail.

Notification & Submissions

The application has been notified in accordance with The Hills DCP 2012. All submissions received have been considered in the assessment of the application.

Threatened Species

The modification does not relate to development consent referred to in section 79B (3), or in respect of which a biobanking statement has been issued under Part 7A of the Threatened Species Conservation Act 1995.

Section 79C Assessment

The proposed modifications have been assessed in accordance with the matters for consideration under Section 79C of the EP&A Act, 1979.

STATE ENVIRONMENTAL PLANNING POLICY 65 - DESIGN QUALITY OF RESIDENTIAL FLAT DEVELOPMENT

SEPP 65 applies to the development as the building is more than 3 storeys in height and contains residential units.

Integral to SEPP 65 is the Apartment Design Guide (ADG), which sets benchmarks for the appearance, acceptable impacts and residential amenity of the development. The proposed modifications' compliance with the relevant ADG provisions is assessed below.

Apartment size and layout (this provision relates to the use of Units 101 and 301 as dual key apartments)	Studio 35m ²	19m ²	<p>NO (not supported) – The proposed variation is 46% (or 16m²), which is significant. The proposed modification in this instance will set a negative precedence.</p> <p>Given that the units are not serviced apartments and are located within a building containing residential units, the proposed amenity impacts are unacceptable for future long-term residents.</p> <p>The proposed studios of this size restrict functionality as it is noted that:</p> <ul style="list-style-type: none">- the kitchen bench and bathroom is separated only by a 1m wide corridor,- no wardrobe is provided, and- the minimum combined living/dining room width of 3.6m is not addressed (the
---	-------------------------	------------------	--

			<p>proposed widths are 3.2m x 3.4m).</p> <p>Based on the above reasons, the proposed dual key apartments are not satisfactory and cannot be supported. This part of the proposal is not consistent with the objectives of the ADG and will lead to poor amenity for future residents.</p>
	<p>1 bedroom 50m2</p> <p>2 bedroom 70m2</p>	<p>51.5m²</p> <p>N/A</p>	<p>YES</p>
	<p>3 bedroom 95m2</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.</p> <p>Kitchens should not be located as part of the main circulation space in larger apartments (such as hallway or entry)</p> <p>Habitable room depths are limited to a maximum of 2.5 x ceiling height. 2.5 x 2.7 = 6.75m</p> <p>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.</p> <p>Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding</p>	<p>N/A</p> <p>Addressed</p> <p>Addressed</p> <p>No change</p> <p>Complies</p> <p>No change</p>	<p>YES</p> <p>YES</p> <p>YES</p>

	wardrobe space).	No change	NO
	Bedrooms have a minimum dimension of 3m.		
	Living rooms or combined living/dining rooms have a minimum width of: - 3.6m for studio and 1 bedroom apartments. - 4m for 2 and 3 bedroom apartments.	No for studio apartment (3.2m x 3.4m)	
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Addressed	
Private open Space and balconies			
Note: Storage areas on balconies is additional to the minimum balcony size.			
Private open space and balconies	Studio = 4m ²	Minimum 4m ²	YES
	1 Bedroom = 8m ² X 2m	Minimum 10m ²	YES
	2 Bedroom = 10m ² X 2m	N/A	
	3 Bedroom = 12m ² X 2.4m	N/A	
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	N/A	

STATE ENVIRONMENTAL PLANNING POLICY – BASIX

A revised BASIX Certificate is not required to be submitted at this stage given the minor nature of changes to one window that is to unit 108, and that the loggias/winter gardens will maintain window openings and clear glass façade, therefore allowing for natural lighting and energy commitments as outlined in the approved BASIX certificate.

The Hills Local Environmental Plan 2012

The objectives of zone B2 Local Centre according to the LEP are as follows:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.

The proposed modifications which mainly focus on the alterations to the residential units within the approved building envelope are not contrary to the above objectives.

Floor Space Ratio

Additional gross floor area is proposed by the enclosure of balconies as loggias/winter gardens, therefore adding 76m² to the approved GFA of 4,648.3m² (or 2.18:1). This results in the overall FSR on the site being 2.22:1 (or 4,724.3m²).

The maximum allowable FSR for the site is 1.99:1. Under the most recent approval (under DA/496/2016/A), the FSR as approved is 2.18:1 (4,648.3m² or 9.8% variation). Essentially the loggias/winter gardens create additional 0.04:1 FSR for the site (or additional 1.8%) making up a total of 11.6% variation to the maximum allowable FSR.

The applicant has provided the following justification in response to the FSR variation, as follows:

- Does not increase the approved residential density;
- Does not alter traffic generation or parking demand;
- Does not alter the solar access impacts of the approved development;
- Maintains a bulk and scale of development that is consistent with the bulk and scale of the approved development; and
- The building remains consistent with the scale of development anticipated for the locality.

Under Section 4.4 of the LEP for floor space ratio, the objectives are as follows:

(a) to ensure development is compatible with the bulk, scale and character of existing and future surrounding development,

(b) to provide for a built form that is compatible with the role of town and major centres.

As noted in comparison between the approved and proposed elevation plans, the loggias/winter gardens will maintain a similar appearance to the street. In this instance, there is no perceived bulk and scale impacts and the proposed FSR variation is found to be satisfactory.

Development Control Plan 2011

Parking

As the proposed dual key units are to be maintained as two bedroom units, the parking requirement for the mixed use building does not change. A total of 74 car parking spaces as stated in condition no. 4 will remain to be provided within the site.

SECTION 94

An adjusted Section 94 development contribution is not payable as the number of bedroom units to be approved remains the same.

The original DA approval included a condition of consent which requires the payment of a financial contribution. This condition remains applicable under this application and does not require further amendment.

Conclusion

After consideration of the development against Section 79C of the Environmental Planning and Assessment Act 1979, and the relevant statutory and policy provisions, overall the proposal *is* suitable for the site and *is* in the public interest. However, the proposed conversion of 2 units into dual key units is not supported for the following reasons:

- The minimum studio size is significantly varied by 46%;
- The functionality and amenity impacts to the studios are unacceptable for future long-term residents, and
- The development sets negative precedence.

Therefore, it is recommended that the application be approved subject to the imposition of appropriate conditions.

Recommendation

Pursuant to Section 80(1) of the Environmental Planning and Assessment Act, 1979

- (a) **That** Sydney West Central Planning Panel as the consent authority grant development consent to DA/496/2016/B for a Section 96(2) modification to an approved construction of a nine storey residential flat building containing 53 units with ground floor retail, for a period of five (5) years within which physical commencement is to occur from the date on the original Notice of Determination (DA/496/2016), subject to the following conditions to be amended (shown in bold):

1. Development in Accordance with Submitted Plans (as amended)

The development being carried out in accordance with the approved plans and details submitted to Council, as amended in red, stamped and returned with this consent. No work (including excavation, land fill or earth reshaping) shall be

undertaken prior to the issue of the Construction Certificate, where a Construction Certificate is required

REFERENCED PLANS

DRAWING NO	DESCRIPTION	REVISION	DATE
15_062 DA-A-010	Site Plan	C	08/10/2015
15_062 DA-A-011	Demolition Plan	B	02/10/2015
15_062 DA-A-100	Level C3 Floor Plan	D	11/12/2015
15_062 DA-A-101	Level C2 Floor Plan	J	02/11/2016
15_062 DA-A-102	Level C1 Floor Plan	N	02/11/2016
15_062 DA-A-103	Level 0 (Ground) Floor Plan	L	17/11/2016
15_062 DA-A-104	Level 1 Floor Plan (excluding the second kitchen and second door in the hallway of Unit 101)	J	02/11/2016
15_062 DA-A-105	Level 2 Floor Plan	H	02/11/2016
15_062 DA-A-106	Level 3 Floor Plan	C	11/12/2016
15_062 DA-A-107	Level 4 Floor Plan	H	02/11/2016
15_062 DA-A-108	Level 5 Floor Plan	G	01/11/2016
15_062 DA-A-109	Level 6 Floor Plan	G	01/11/2016
15_062 DA-A-110	Level 7 Floor Plan	C	11/12/2015
15_062 DA-A-111	Level 8 Floor Plan	D	22/03/2016
15_062 DA-A-112	Roof Plan	C	11/12/2015
15_062 DA-A-200	West Elevation	D	11/05/2016
15_062 DA-A-201	North Elevation	D	02/11/2016
15_062 DA-A-202	Pennant Hills Road Elevation	C	02/11/2016
15_062 DA-A-203	Post Office Street Elevation	C	02/11/2016
15_062 DA-A-204	Sections	H	02/11/2016
15_062 DA-A-205	Sections	G	02/11/2016
15_062 DA-A-206	Sections	G	02/11/2016
15_062 DA-A-500	Entry Driveway Sections	A	16/03/2016
15_062 DA-A-503	Ramp Sections	A	11/05/2016
15322-LDA01	Landscape Site Plan	G	17/03/2016
15322-LDA02	Landscape Planting Plan	H	18/11/2016
15322-LDA03	Landscape Plan Roof	H	18/11/2016
15322-LDA04	Landscape Details	A	15/09/2015

2A. Dual Key Units

This consent does not include the approval of dual key units and amendments shall be reflected in the plans to be submitted for a Construction Certificate.