



SYDNEY CENTRAL CITY PLANNING PANEL COUNCIL ASSESSMENT REPORT

Panel Reference	2017SWC139
DA Number	DA/171/2014/A
LGA	City of Parramatta Council
Proposal	Section 4.55(2) Modification to approved mixed-use tower development including 2 additional residential levels, 2 additional basement levels, 59 additional basement car parking spaces, reconfiguration of podium including additional mezzanine level, revised residential apartment mix and revised stratum subdivision.
Street address	12-14 Phillip Street and 331A - 339 Church Street, Parramatta NSW 2150
Property Description	Lots 1 and 2 DP791693, Lot 3 DP825045 and Lot A DP333263
Applicant	PccDevco1 Pty Ltd
Owner	City of Parramatta Council and Roads and Maritime Services
Date of Lodgement	21 November 2017
Number of Submissions	14
Recommendation	Refusal
Regional Development Criteria (Schedule 4A of the EP&A Act)	Pursuant to Clause 21 of State Environmental Planning Policy (State and Regional Development) 2011, the proposal is a Section 4.55(2) modification to an application with a capital investment value of more than \$20 million.
List of all relevant s4.15 (1)(a) Matters	<ul style="list-style-type: none">• Environmental Planning and Assessment Act and Regulations• State Environmental Planning Policy No. 55 – Remediation of Land• State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development & Apartment Design Guide• State Environmental Planning Policy (Sydney Harbour Catchment) 2005• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004• State Environmental Planning Policy (State and Regional Development) 2011• State Environmental Planning Policy (Infrastructure) 2007• Parramatta Local Environmental Plan 2011• Parramatta Development Control Plan 2011
List all documents submitted with report	<ul style="list-style-type: none">• Attachment 1 – Draft Without Prejudice Conditions of Consent• Attachment 2 – Proposed Architectural Drawings• Attachment 3 – Approved Architectural Drawings
Report Prepared By	Claire Jones & Robert Power, Advisian (Independent Planners)
Date	30 August 2018

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? Yes

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations been summarised, in the Executive Summary of the assessment report? Yes

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard clause 4.6 of the LEP) has been received, has it been attached to the assessment report? N/A

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (s7.11EF)? No

Conditions

Have draft conditions been provided to the Applicant for comment? No

1. Executive summary

Advisian Pty Ltd (Advisian) has been engaged by the City of Parramatta (the Council) to provide an independent planning assessment of the Section 4.55(2) Modification DA No.171/2014/A (the Modification Application), to DA No.171/2014, including the preparation of this report.

This report considers a proposal to undertake various modifications to an approved mixed use development known as the “Lennox” at 12-14 Phillip Street and 331A - 339 Church Street, Parramatta. The proposed modifications include the provision of two additional residential levels, two additional basement levels, 59 additional basement residential car parking spaces, reconfiguration of podium including additional mezzanine level, revised residential apartment mix and revised stratum subdivision.

The site constraints include flooding, Aboriginal and European archaeology and acid sulfate soils. It is considered that sufficient evidence has been provided that these risks can be managed appropriately.

The likely impacts of the Modification Application as assessed under Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) are considered to be reasonable based on the high-density character of the area and the built forms envisaged by the controls. It has been demonstrated that the proposed increase in car parking would not compromise the efficient function of the local road network. However, the increase in parking would contribute to the gradual increase in traffic congestion within the Parramatta Central Business District (CBD).

Notwithstanding the above, an assessment of the Modification Application against the provisions of Section 4.55(2)(a) of the EP&A Act raises fundamental concerns, in relation to whether the Modification Application can be determined by the consent authority to be “...*substantially the same development as the development for which consent was originally granted*...”. The Applicant’s submission was reviewed and assessed against the relevant legislative and statutory planning provisions and was guided by the relevant Land and Environment Court judgements and Court of Appeal decision cited (refer to Section 6.4 of this report).

The key modifications that are considered to fundamentally change the form, scale and configuration of the approved development from a “quantitative” and “qualitative” assessment are:

- Increase in depth of excavation for the basement from RL -14.00 to RL -16.22 for the creation of two new basement levels.
- Increase of 59 residential parking spaces.
- Reconfiguration of Basement Levels B1 to B3 for conventional car parking and Levels B4 to B9 for mechanical car stacker parking facilities.
- Addition of two residential levels.
- Provision of 23 additional apartments.
- Creation of a mezzanine level (541m²) above Level 2 Conference Centre.

Whilst it is considered that the likely impacts of the development per Section 4.15(1)(b) of the EP&A Act are reasonable as noted above, it is concluded on planning grounds that the Modification Application cannot be seen as being “*essentially or materially or having the same essence*” (in *Vacik Pty Ltd v Penrith City Council [1992]*) in line with the approved development for the reasons provided in Section 6.4 of this report. Therefore, it is recommended to the consent authority that it ought not be satisfied that the Modification Application is “...*substantially the same development as the development for which consent was originally granted*...”.

This report recommends that the Panel refuse the Modification Application for the following reasons:

1. The Modification Application is not “*substantially the same development*” as it is quantitatively and qualitatively different from the development for which development consent was originally granted.
2. The rate of residential car parking proposed for each dwelling is not consistent with the rationale applied for the approved development as well as well-established planning policies to encourage greater use of public transport in business districts in the Sydney metropolitan area.
3. The subject Section 4.55(2) Modification Application will encourage greater use of private vehicles where the Aims of the LEP (Clause 1.2(d)), objective of the B4 Mixed Use zone and Clause 7.3 encourages greater use of public transport and the Council’s resolution of 10 April 2017 to adopt the Parramatta Central Business District (CBD) Strategic Transport Study as part of the Parramatta CBD Planning Proposal that recommends the reduction to maximum car parking rates to levels currently used by the City of Sydney CBD.
4. Relocation of substation to ground floor will reduce quality of the public domain.
5. The Modification Application services no beneficial planning purpose.
6. For the reasons above, the Modification Application is not in the public interest.

However, should the Panel decide to approve the Modification Application, recommended revised without prejudice conditions are attached.

2. Key Assessment issues

EP&A Act

- **Section 4.55(2)(a) Other modifications** – The consent authority is to be satisfied that the “...*development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified*...”. An assessment of the Modification Application has found that it is not considered to be “*substantially the same development*”. Refer to Sections 5.1 and 6.4 of this report for further details.

Parramatta Local Environmental Plan 2011 (the LEP)

- **Clause 4.3 Height of buildings** – Minor non-compliance of 1m (for high-rise lift over-run) to the maximum development standard of 150m considered acceptable on merit.
- **Clause 6.3 Flood planning** – The Modification Application has provided an amended flood protection scheme. The amended scheme is considered satisfactory by Council's Catchment and Development Engineer subject to an additional condition.
- **Clause 7.3 Car parking** – The rate used to calculate and so justify the additional residential car parking proposed for each dwelling is not consistent with the approved development at 0.91 spaces/apartment. The Applicant proposes a rate of car parking at the same ratio for the different apartment types. Refer to Sections 6.4 and 7.8 of this report for further details.

3. Site Description, Location and Context

3.1 Background

Approved Development

DA/171/2014 was approved by the then Sydney West Joint Regional Planning Panel on 15 April 2015 for the following development as described on the Notice of Determination:

"Demolition of all existing structures; excavation of seven level basement carpark; tree removal; construction of a 41 storey mixed use building comprised of 3 storey podium accommodating retail tenancies, a Council owned Discovery Centre and café, and Conference Centre and a 38 storey residential tower with 413 residential apartments; stratum subdivision; and Public Domain improvements."

The approved development was:

- Informed by Council's works brief, which arose out of an earlier ideas competition for this important gateway site to the Parramatta CBD. The Applicant and the Council entered into a Property Development Agreement to develop the site.
- Granted design excellence via an alternate process in accordance Clause 22B of the then *Parramatta City Centre Local Environmental Plan 2007* (City Centre LEP).
- Subject of a Planning Proposal to amend the planning controls for the site in the City Centre LEP.
- Subject of a Voluntary Planning Agreement (VPA) – based on an offer made to and accepted by the Council on 13 February 2015 for a number of tangible community benefits (including a monetary contribution) to be delivered in lieu and in excess of Section 94A payments.

The consent has not previously been modified. Site construction works for the approved development have commenced, including the demolition of the existing structures and removal of the car park tarmac for archaeological investigation work, sewer diversion, basement shoring, removal of contaminated material, excavation works and works on the lift core. The demolition works were undertaken in accordance with Complying Development Certificate 16-027. The construction works are proceeding in accordance with Construction Certificate No 1 – C16-023 issued in May 2017.

Modification Application

The Modification Application was lodged on 21 November 2017. Requests for additional information were submitted to the Applicant during the assessment stage and responses were provided by the Applicant to each request. The Modification Application originally included 3 additional residential levels and exceedances of the building height and floor space ratio development standards.

3.2 Site, Improvements & Constraints

The site is located at 12-14 Phillip Street and 331A-339 Church Street, within the local government area of the City of Parramatta Council. The site comprises four lots, namely the whole of Lots 1 and 2 DP791693, Lot 3 DP825045 and Lot A DP333263. Lots 1, 2 and Lot 3 are owned by the City of Parramatta Council whilst Lot A is owned by Roads and Maritime Services (RMS). Refer to Figure 1 for an aerial view.

The site is located on the immediate southern foreshore of Parramatta River within the northern section of the CBD. It is located approximately 800 metres north of Parramatta Railway Station.

It is bounded by Church Street and Oyster Lane to the east, Marsden Street to the west, the foreshore of Parramatta River to the north and Phillip Street to the south. An unnamed lane from Phillip Street provides the only vehicular access to the site. Oyster Lane is a pedestrian thoroughfare. Pedestrian access is gained from Marsden Street as well as across the RMS land between the northern boundary of the site and Parramatta River at the junction with Lennox Bridge and Church Street.

The site is irregular in shape and has a total site area of 6,281m². The site has frontages to Church Street of 42m, 14m to Phillip Street and 10m to Marsden Street. The site is cleared and excavated. It previously comprised an at-grade public car park and two-storey buildings.

The site has the following land affectations:

Aboriginal Sensitivity:	Moderate to high potential
European Archaeological Significance:	High archaeological significance
Acid Sulfate Soils:	Classes 1 and 4
Flooding:	Affected by 1 in 20 year, 1 in 100 year and Probable Maximum Flood levels
Heritage:	One item listed under the LEP, "Archaeological/terrestrial" located at 331A Church Street.
Easements:	Easement C415677 to Council for the wall of Lennox Bridge. Easement C418127 for party wall along common boundary between former Lots B and C 333263 (consolidated in 1992 as Lot 3 DP825045)



Figure 1 – Aerial view of site outlined in red (Source: JBA, 2017)

3.3 Nearby Development

Reference	Address	Development	Status
MP 10_0171	330 Church Street	55 storey building: retail, residential and serviced apartments	Approved and Complete
DA/1066/2016	2-10 Phillip Street	55-storey mixed use tower comprising 314 residential apartments, 260 hotel rooms with associated function/conference facilities, and 9 levels of basement parking; demolition of existing commercial building, part demolition and adaptive reuse of existing church hall buildings; and retention of church building.	Approved
RZ/14/2014	295 Church Street	Amendment of the Parramatta Local Environmental Plan 2011 to a maximum building height of 185m and a maximum FSR of 18:1 (~55 storey tower)	Under Assessment

4. The Proposal

Consent is sought to modify the approved development as follows:

- Revise Condition 1 'Approved Plans and Documentation' (and associated conditions where necessary) as follows:
 - Reconfiguration of Basement Levels B1 to B3 for conventional car parking and Levels B4 to B9 for mechanical car stacker parking facilities. A total of 442 parking spaces proposed (increase of 59 residential parking spaces).
 - Increase in depth of excavation for the basement from RL -14.00 to RL -16.22 for creation of two new basement levels.
 - Reconfiguration of podium – several design changes to provide grander entrance to residential lobby.
 - Reconfiguration of loading dock layout and increase in provision of loading dock vehicle spaces (refer below).
 - Provision of two additional B99 vehicles spaces on Basement B1 level.
 - Addition to the residential tower – addition of two residential levels to increase maximum building height to 151m (increase of 1m). The new levels are accommodated by compressing the approved floor to floor levels.
 - Provision of 23 additional apartments and change of apartment mix (refer below).
 - Increase in total gross floor area (GFA) – increase to 44,964m² (increase of 2,455m²).
 - Creation of a mezzanine level (541m²) above Level 2 Conference Centre.
 - Conversion of the Podium roof for residential storage.
 - Installation of two additional lifts to service tower.
 - Relocation of substation from Level 1 to Ground Level.
 - Several minor design changes to the exterior of the building.
 - Revised stratum subdivision – five stratum lots within the building and various Torrens Title freehold for the residue land.
- Revise Condition 37 'Basement Carpark' to refer to levels B1 to B3.
- Delete Condition 42 'On-site Detention' as an on-site detention system would not be workable at the site.
- Revise Condition 55 'Garbage Chute' to allow for the use of an eDiverter system.

Loading dock vehicle spaces would be revised as follows:

- Original: 2 x Medium Rigid Vehicle (MRV), 2 x Small Rigid Vehicle (SRV) and 2 x B99.
- Proposed: 2 x MRV, 4 x SRV and 1 x B99.

Overall the residential apartment mix would be revised as follows:

- Original: 413 apartments (20 x studio, 129 x 1-bed, 260 x 2-bed and 4 x 3-bed).
- Proposed: 436 apartments (23 x studio, 99 x 1-bed, 282 x 2-bed, 30 x 3-bed and 2 x 4 bed).

The approved Site Plan and proposed modified Site Plan are contained in Figures 2 and 3 respectively. Refer to the Architectural Drawings and the S96 Change Register for further details.

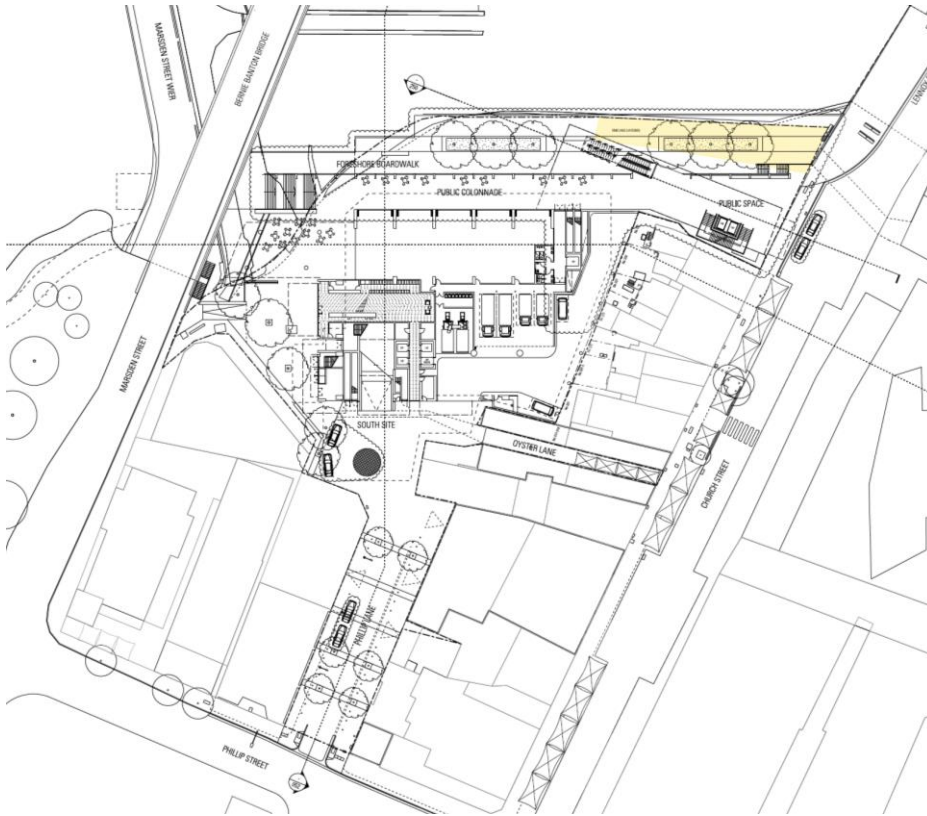


Figure 2 – Approved Site Plan (Source: JPW, 2015)

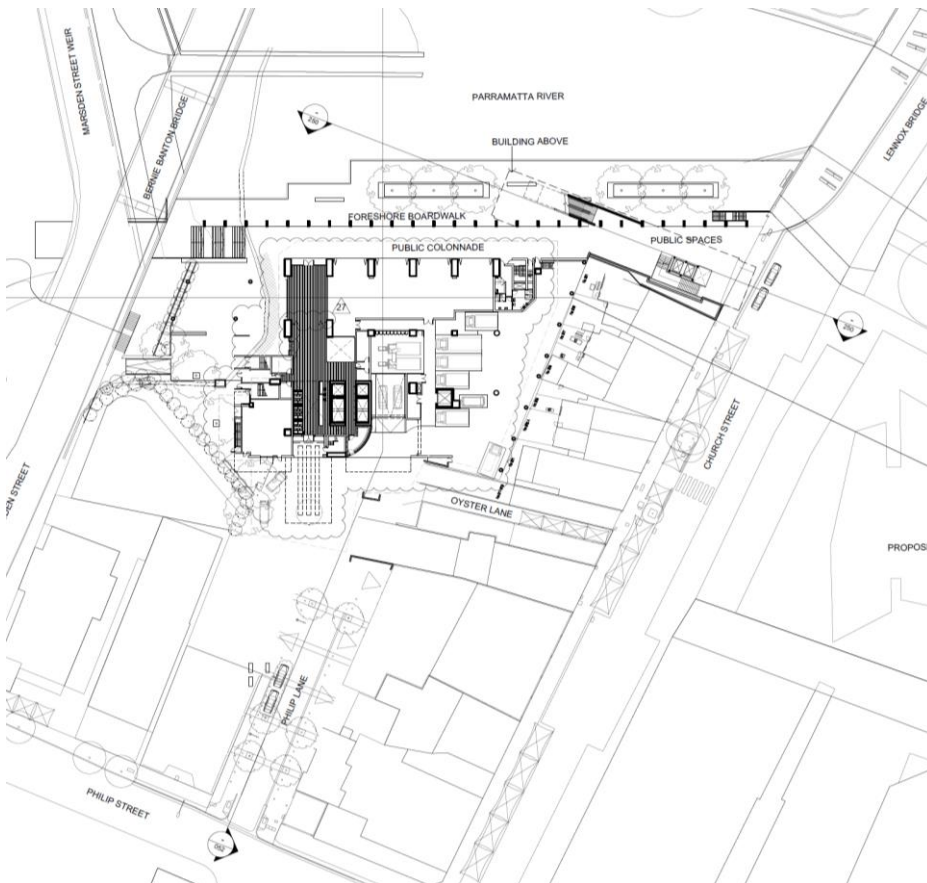


Figure 3 – Proposed Modified Site Plan (Source: Marchese Partners, 2018)

5. Referrals

The following referrals were undertaken during the assessment process:

5.1 Sydney Central City Planning Panel

Issues Raised	Comment
Briefing 4 July 2018	
Whether the development remains substantially the same as that originally approved	An assessment of the Modification Application has found that it is not considered to be “ <i>substantially the same development</i> ”. Refer to Section 6.4 of this report for further details.
Building height variation	Minor non-compliance of 1m (for high-rise lift over-run) to the maximum development standard of 150m is considered acceptable on merit.
Exceedance of Floor Space Ratio	The Applicant has revised the Modification Application and it complies with maximum development standard of 12:1.
Traffic congestion	The Applicant submitted a Traffic and Parking Review, prepared by The Transport Planning Partnership, dated 6 October 2017 to accompany the Modification Application. TTPP concluded: <i>“The review indicates that the revised proposed development would generate less traffic than that adopted in the traffic assessment for the approved development application. As such, the revised proposed development is not expected to create any traffic impacts worse than the approved scheme.”</i>
Sufficiency of the parking spaces	The Modification Application proposes 59 additional residential car parking spaces. The rate of residential car parking proposed for each dwelling is not consistent with the approved development at 0.91 spaces/apartment. Refer to Sections 6.4 and 7.8 of this report for further details.
Flood risk	The Modification Application has provided an amended flood protection scheme. The amended scheme is considered satisfactory by Council’s Catchment and Development Engineer subject to an additional condition and satisfies Clause 6.5 of the LEP.

5.2 External

Authority	Comment
Federal Department of Infrastructure and Regional Development (Airspace Operations)	Controlled activity approval with conditions granted.
NSW Department of Primary Industries – Fisheries	No objection.
NSW Department of Primary Industries – Water	No objection.
Sydney Water	No objection.
Heritage Council of NSW	Comments provided in relation to ongoing historical archaeological investigations related to the site and the adjoining Lennox Bridge that are separate to the proposal.
Roads and Maritime Services	Comments provided in relation to viability of a shared zone along Phillip Lane. Philip Lane will not operate as a shared zone under the requirements of the RMS Technical Direction, which is consistent with approved development.
Wind Consultant	Comments provided in relation to the Pedestrian Wind Environment Study. Applicant's responses assessed and considered acceptable.
Environmentally Sustainable Development Consultant	Comments provided in relation to the BASIX and NatHERS Certificates and Reports. Applicant's responses assessed and considered acceptable.

5.3 Internal

Authority	Comment
Catchment and Development Engineer	Acceptable subject to conditions.
Environmental Health (Waste)	Acceptable subject to conditions.
Traffic and Transport Engineer	Acceptable subject to conditions.
City Architect	Acceptable subject to conditions.
City Experience, Identify, Experience and Engagement	No objection.
Heritage	No objection.
Social Outcomes	Comments provided in relation to dwelling mix, safety considerations and affordable housing. Applicant's responses assessed and considered acceptable.

6. Environmental Planning and Assessment Act 1979

The relevant sections of the EP&A Act require consideration are addressed below:

6.1 Section 1.7: Application of Part 7 of Biodiversity Conservation Act 2016

The site is in an established urban area with low ecological significance. No threatened species, populations or ecological communities, or their habitats are impacted by the proposal.

6.2 Section 2.15: Function of Sydney District and Regional Planning Panels

The Sydney Central City Planning Panel is the consent authority for this application as the proposal has a Capital Investment Value of more than \$20 million (criteria at time the application was lodged).

6.3 Section 4.15: Evaluation

This section specifies the matters that a consent authority must consider when determining a development application, and these are addressed in the Table 1 below:

Provision	Comment
Section 4.15(1)(a)(i) – Environmental planning instruments	Refer to Section 7
Section 4.15(1)(a)(ii) – Draft environmental planning instruments	Refer to Section 7
Section 4.15(1)(a)(iii) – Development control plans	Refer to Section 8
Section 4.15(1)(a)(iiia) – Planning Agreement	Refer to Section 9
Section 4.15(1)(a)(iv) – The Regulations	Refer to Section 10
Section 4.15(1)(a)(v) – Coastal zone management plan	Not applicable.
Section 4.15(1)(b) – Likely impacts	Refer to Section 11
Section 4.15(1)(c) – Site suitability	Refer to Section 12
Section 4.15(1)(d) – Submissions	Refer to Section 13
Section 4.15(1)(e) – The public interest	Refer to Section 14

6.4 Section 4.55(2): Evaluation

The development consent has been taken up and is therefore valid. As such Section 4.55(2) 'Other Modifications' of the EP&A Act 1979 applies and the application can be modified subject to the following requirements:

Section 4.55(2)(a) – Substantially the same development

In accordance with the provisions of Section 4.55(2)(a):

“A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all),”

It is noted that the Land and Environment Court determined that a proposal can only be regarded as a modification if it involves *“alteration without radical transformation”* (*Sydney City Council v Ilence Pty Ltd [1984]*). This was later confirmed by Mason P, in the Court of Appeal decision *North Sydney Council v Michael Standley & Associates Pty Ltd (1998)* which notes that the power to modify a consent is a power *“to alter without radical transformation”* the consent.

In *Moto Projects (No 2) Pty Ltd v North Sydney Council (1999)*, at [56] Bignold J gave some additional guidance, stating that the comparison involves consideration of quantitative and qualitative elements of the development, considered in their proper contexts as follows:

“The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).”

In *Vacik Pty Ltd v Penrith City Council [1992]*, Stein J held that *“substantially”* meant *“essentially or materially or having the same essence”* and that:

“In assessing whether the consent as modified will be substantially the same development one needs to compare the before and after situations. A significant difference is one of sequencing. ... This has obvious implications for environmental impacts.”

In evaluating this matter, the Applicant was requested to submit qualitative and quantitative assessments of the Modification Application that addresses each component of the Modification Application as well as the Modification Application in its totality. The comparative “quantitative” and “qualitative” assessments were required to follow the Moto Judgement, as cited above. A summary of the Applicant’s submission is discussed below.

Quantitative Assessment

A quantitative assessment of the proposed modifications was presented by the Applicant in the below Figure 4, setting out a comparison between the original development consent and the proposed modifications. The Applicant contends that *“the key numeric features of the development are consistent, or involve only a minor modification”*.

Element	As Approved	As Proposed	Difference
Site area	6,281m ²	6,281m ²	-
Site area for the purposes of GFA (i.e. excluding RE1 Public Recreation zoned land and roadways)	3,747m ²	3,747m ²	-
Non-residential Gross Floor Area (GFA)	6,176m ²	6,180m ²	+4m ²
▪ Discovery Centre	2,540m ²	2,304m ²	-236m ²
▪ Conference Centre (incl mezzanine)	2665m ²	3,152m ²	+487m ²
▪ Retail	971m ²	724m ²	-247m ²
Residential GFA	36,333m ²	38,784m ²	+2,451m ²
Total GFA	42,509m ²	44,964m ²	+2,455m ²
FSR	11.34:1	12.0	+0.66
Maximum Building Height	150m (RL156.2)	151m (RL157) (lift overrun extends 1m above)	+1m
Maximum Storey Height	41 storeys	43 storeys	+2 storeys
Apartments/Suites	413	436	+23
Apartment Mix:			
▪ Studio	20 (4.8%)	23 (5.3%)	+3
▪ One bedroom	129 (31.2%)	99 (22.7%)	-30
▪ Two bedroom	260 (63.0%)	282 (64.7%)	+22
▪ Three bedroom	4 (<1%)	30 (6.8%)	+26
▪ Four bedroom	-	2 (0.5%)	+2
Car parking	383 spaces (including 5 spaces allocated to Council for the Discovery Centre and 3 car share spaces.	442 spaces (including 5 spaces allocated to Council for the Discovery Centre and 3 car share spaces.	+59 spaces
Deep Soil	218m ² (4% of site area)	218m ² (4% of site area)	-

Figure 4 – Quantitative assessment (Source: Ethos Urban, 2018)

Qualitative Assessment

The Applicant contends the following:

“A qualitative assessment of the proposed modifications demonstrates that the essential elements of the approved building design will not be significantly altered as a result of the application. In particular the:

- *building will appear substantially the same as that approved in that:*
 - *the height remains predominantly the same as that approved, with only a minor variation proposed at the plant level which will not be discernible from the public domain;*
 - *the building floorplates remain substantially the same as that approved with no additional building bulk proposed;*
 - *the same materials and finishes are proposed and as such the elevations appear substantially the same;*
- *additional two floors will not be discernible from the public domain;*
- *development maintains the same uses and remains a mixed use development;*
- *additional parking spaces provided on the site are consistent with the ratio of*

provision per apartment type, can be accommodated within the same building envelope and can be accommodated within the local street network without adverse impact;

- the proposed development maintains and improves upon BASIX commitments, complying with the higher targets that are now applicable;*
- quality of the overall development is consistent with the approved and internal amenity improved by way of more efficient and flexible apartment layouts; and*
- development will deliver the same public benefits as already approved including the provision of new public foreshore access to Parramatta River.*

Based on the above, it is considered that from a qualitative perspective, the development as proposed to be modified represents a continuation of the approved scheme.”

In summary, the Applicant considered that in relation to the matter of “totality” of the proposed modifications that:

“The proposed changes considered in their totality, and in the context of the scale of the overall development, are reflective of normal development processes, as well as a desire to achieve the best outcome for the site. For the above reasons, the consent authority may be satisfied that the modified proposal represents substantially the same development for which consent was originally granted. Further, the changes proposed maintain or improve amenity, functionality, aesthetics and will not cause any additional environmental impacts.”

Planning Comment

The Applicant’s submission has been reviewed and assessed against the relevant legislative and statutory planning provisions and has been guided by the Land and Environment Court judgements cited earlier in this section.

It is noted that the Applicant has proposed several modifications to the approved development as described in summary form in Section 4 of this report. The overall planning justification for the modifications as indicated by the Applicant to be “*reflective of normal development processes*”. It is acknowledged that design development processes can lead to an optimisation of a development for reasons such as improved amenity. However, the justification(s) for each modification is required to be well-founded and serve a beneficial planning purpose. The Applicant’s information in this regard has not been adequate.

The key modifications that are considered to fundamentally change the form, scale and configuration of the approved development from a “quantitative” and “qualitative” assessment are:

- Increase in depth of excavation for the basement from RL -14.00 to RL -16.22 for the creation of two new basement levels.
- Increase of 59 residential parking spaces.
- Reconfiguration of Basement Levels B1 to B3 for conventional car parking and Levels B4 to B9 for mechanical car stacker parking facilities.
- Addition of two residential levels.

- Provision of 23 additional apartments.
- Creation of a mezzanine level (541m²) above Level 2 Conference Centre.

In relation to excavation, an additional 2.2m is required in order to create two additional basement levels. This would serve two main purposes, being to provide a substantial increase of residential car parking and to reconfigure the car parking arrangements.

It is submitted that the rate of residential car parking proposed for each dwelling (see Figure 5 below) is not consistent with the approved development at 0.91 spaces/apartment as well as well-established planning policies to encourage greater use of public transport in business districts in the Sydney metropolitan area. The Applicant has contended that *“providing parking in the same ratio as per the different apartment types rather than on the overall total ratio approved is considered reasonable given the increase in two and three bedroom apartment types which typically have a higher parking provision rate than smaller apartment types”*. In relation to “Multi dwelling housing: 1, 2 and 3 bedrooms”, Clause 7.3 of the LEP provides *“that “A maximum of 1 parking space to be provided for every dwelling plus 1 parking space to be provided for every 5 dwellings for visitors”*. The LEP does not provide a higher parking provision for different bedroom types.

Apartment Type	Number of Approved Apartments	Number of Spaces Approved	Ratio of Provision per Apartment as Approved	Proposed Number of Apartments as Modified	Proposed number of spaces to be provided using same ratio	Ratio of Provision per Apartment as Proposed
studio	20	0	0	23	0	0
1 bed	94	46	0.49	99	48	0.49
1.5 bed	35	35	1	0	0	0
2 bed	210	210	1	206	206	1
2.5 bed	50	76	1.52	76	116	1.52
3 + bed	4	8	2	32	64	2
Visitor	0	0	0	0	0	0
Total	413	375	0.91	436	434	0.99

Figure 5 – Summary of approved versus proposed car parking rates (Source: Ethos Urban, 2018)

Further in relation to car parking, the proposed change from conventional car parking to part conventional and part car stacker parking facilities essentially changes the operation of the basement car parking facilities from that which was approved.

With regard to the overall increase of residential apartments by 23, it is understood that this would be achieved from the addition of two residential levels plus a reconfiguration of the apartment mix to each residential level of the tower. Whilst the change in the apartment mix is supported from a housing diversity and choice perspective, it represents and results in a not insignificant and quantitative increase to the approved development.

The introduction of a mezzanine level was not part of the original consent nor part of the original Modification Application as lodged. No plan for the mezzanine level has been provided. The justification for its inclusion cannot be supported as it materially changes the

configuration of the Level 2 Conference Centre and increases the overall gross floor area of this use by 487m².

Whilst it is considered that the likely impacts of the development per Section 4.15(1)(b) of the EP&A Act are reasonable (as discussed elsewhere in this report), it is concluded on planning grounds that the Modification Application cannot be seen as being “*essentially or materially or having the same essence*” (in *Vacik Pty Ltd v Penrith City Council [1992]*) in line with the approved development for the reasons provided above. Therefore, it is recommended to the consent authority that it ought not be satisfied that the Modification Application is “...*substantially the same development as the development for which consent was originally granted*...”.

Section 4.55(2)(b) – Consultation with public bodies

The approved development was nominated Integrated Development under the *Water Management Act 2000* and the *Fisheries Management Act 1994*. General Terms of Approval (GTA) were issued for the approved development. Consultation was undertaken with the NSW Department of Primary Industries – Fisheries and NSW Department of Primary Industries – Water as noted in Section 5.1. No amendments are required to the issued GTAs.

Section 4.55(2)(c) – Notification

Notification is addressed in Section 13. The proposal was notified in accordance with the requirements that applied to the original application. Issues raised are summarised at Section 13.

6.5 Section 4.55(3): Reasons for approval

Under Section 4.55(3) of the EP&A Act 1979 in determining an application for modification, in addition to relevant matters under section 4.15(1), the consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. The reasons for granting approval to the original development application as stated by the Sydney West Regional Planning Panel are assessed below:

Reason for Approval	Consistency
1. The proposed development will: i) Add to the supply and choice of housing within the Central West Metropolitan Subregion and the City of Parramatta in a location with ready access to metropolitan transport services and amenities of Parramatta CBD ii) Provide a facility demonstrating the significant historic and current role of Parramatta iii) Provide a conference facility consolidating the role of Parramatta as a major metropolitan business centre.	Consistent – provides additional housing and diversity in choice, retains Discovery Centre and Conference Centre.
2. The proposed development adequately satisfies the relevant State Environment Planning Policies including SEPP 65 Design Quality of Residential Flat Development and associated residential flat design code, SEPP (Infrastructure) 2007, SEPP	Consistent – assessment carried out confirms satisfied with

Reason for Approval	Consistency
55 Remediation of Land, Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, and meets the requirements of the Commonwealth Environment Protection and Biodiversity Conservation Act 1999, the Water Management Act 2000, the Fisheries Management Act 1994.	justification provided for non-compliances.
3. The proposal adequately satisfies the provisions and objectives of Parramatta LEP 2007 and Parramatta DCP 2011 and Parramatta DCP (City Centre) 2007 and proposal is also consistent with the Parramatta Council parking strategy.	Not consistent - the rate of residential car parking proposed for each dwelling is not consistent with the approved development at 0.91 spaces/apartment.
4. The proposal, subject to the conditions proposed makes adequate provision for parking and loading arrangements for adjoining premises both during construction and operation of the building	Consistent – revised parking and loading dock arrangements for adjoining premises are satisfactory.
5. The design of the proposed development will contribute to the presentation of Parramatta River integration with Parramatta Park and provide a landmark statement consistent with Parramatta's role of Sydney's second CBD in a location recognised as a traditional entry point to Parramatta.	Consistent – external design changes are appropriate to Parramatta River foreshore context.
6. The proposed development will not generate unacceptable adverse impacts on the natural or built environments including the function of adjoining and nearby commercial and retail premises with frontage to Church Street or the performance of the local road network. In this regard it is noted that the proposed parking provision is consistent with Council's strategy for the management of traffic within the CBD.	Not consistent – the Modification Application is not consistent with well-established planning policies to encourage greater use of public transport in business districts in the Sydney metropolitan area.
7. In consideration of conclusions 1 – 6 above the Panel considers the proposed development is a suitable use of the site and approval of the proposal is in the public interest.	Not consistent – the Modification Application is not considered <i>"substantially the same development"</i> and is therefore not in the public interest.

7. Environmental Planning Instruments

7.1 Overview

The instruments applicable to this Modification Application comprise:

- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Infrastructure) 2007
- SEPP (State and Regional Development) 2011
- SEPP (Sydney Harbour Catchment) 2005
- SEPP No. 55 (Remediation)
- SEPP No. 65 (Design Quality of Residential Apartment Development)
- Parramatta Local Environmental Plan 2011

Compliance with these instruments is addressed below.

7.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The Modification Application is accompanied by a BASIX certificate that lists sustainability commitments by the Applicant. The requirements outlined in the BASIX certificate have been satisfied in the design of the proposal.

7.3 State Environmental Planning Policy (Infrastructure) 2007

The proposal constitutes 'traffic generating development' as it includes more than 300 residential apartments. As such the proposal was referred to Roads and Maritime Services (RMS) per the requirements of the SEPP. Refer to Section 5.2.

7.4 State Environmental Planning Policy (State and Regional Development) 2011

The proposed development has a Capital Investment Value (CIV) of more than \$20 million, therefore, Part 4 of this SEPP (at the time of lodgement) provides that the Panel is the consent authority for this application.

7.5 Deemed SEPP Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The site is located within the hydrological catchment of Sydney Harbour and is subject to the provisions of the Deemed SEPP. Part 2 establishes the Planning Principles that must be considered and where possible achieved in the carrying out of development within the catchment. The Modification Application remains consistent with the Deemed SEPP.

7.6 State Environmental Planning Policy No. 55 – Remediation of Land

The provisions of SEPP 55 were considered previously in the assessment of the DA. No further assessment is required in relation to contamination.

7.7 State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development)

SEPP 65 aims to raise the design quality of residential flat development across the state through the application of a series of design principles. The residential component of

DA/171/2014 was assessed under the provisions of SEPP 65 and the Residential Flat Design Code (RFDC).

SEPP 65 (Amendment No. 3) was published on the NSW Legislation website on 19 June 2015 and commenced 4 weeks later on 17 July 2015. At the same time, the Apartment Design Guide came into effect, replacing the RFDC.

Design Quality Principles

The Modification Application is considered to be consistent with the design quality principles. The submitted Architectural Design Statement indicates that the Modification Application is generally consistent with the original Design Report prepared by JPW.

Apartment Design Guide

The relevant design criteria of the ADG to the Modification Application are considered within the following assessment table.

ADG Design Criteria	Comment	Complies
Communal and public open space	Less than 25% provided. Consistent with the approved development assessed against the RFDC, the non-compliance is considered acceptable.	No – satisfactory on merit
Deep soil zone	Less than 7% provided. Consistent with the approved development assessed against the RFDC, the non-compliance is considered acceptable.	No – satisfactory on merit
Visual privacy	The separation distance to the residential flat building at 101 Marsden Street is 5m, however the residential apartments for the approved development commence on level 8 about 25m above ground level, which is above the roof height of this adjoining residential flat building. There would not be any privacy impacts.	No – satisfactory on merit
Bicycle and car parking	Car parking is to be assessed having regard to the provisions of Clause 7.3 of the LEP and RMS Guide to Traffic Generating Developments (refer Section 7.8 of this report).	Yes
Solar access and daylight	Less than 70% of apartments living rooms and private open spaces receive a minimum of 2 hours direct sunlight between 9am and 3pm. When considering the hours 8am to 4pm, over 70% is achieved. Consistent with the approved development assessed against the RFDC, the non-compliance is considered acceptable.	No – satisfactory on merit

ADG Design Criteria	Comment	Complies
	Less than 15% of apartments are south-facing.	Yes
Natural ventilation	At least 60% of apartments are naturally cross Ventilated. Overall depth of a cross-over or cross-through apartment does not exceed 18m.	Yes
Ceiling heights	General ceiling heights are a minimum 2.7m in habitable rooms and 2.4m in non-habitable rooms. The Applicant has identified that there would be minor localised bulkheads in habitable rooms, however the ceiling height will be not less than 2.4m. Minor non-compliance is considered acceptable.	Partial – satisfactory on merit
Apartment size and layout	Majority of apartments comply with minimum internal area with exception of the 2-bed and 2 bath apartments (73m ²). Minor non-compliance is considered acceptable. Majority of the kitchens are not more than 8m from a window. With the remaining units having kitchens part of open plan living layout (except for the studio apartments), the amenities of the living and dining areas are improved by way of functionality and flexibility for furniture arrangement. Minor non-compliance is considered acceptable.	Partial – satisfactory on merit Partial – satisfactory on merit
Private open space and balconies	Minimum areas and depths provided.	Yes
Common circulation and spaces	Circulation and space areas provided.	Yes
Storage	Storage size volumes provided.	Yes

7.8 Parramatta Local Environmental Plan 2011

The approved development was assessed under the provisions of the repealed City Centre LEP.

The site is zoned part B4 Mixed Use, part RE1 Public Recreation and part W2 Recreational Waterways. The Modification Application remains a “*mixed use development*”. Further, the Modification Application is generally consistent with the zones objectives (with exception in relation to public transport – refer below).

The relevant provisions of the LEP have been considered in the assessment of the Modification Application and are contained within the following table.

Clause	Comment	Complies
Clause 4.3 Building height	Minor non-compliance of 1m (for high-rise lift over-run) to the maximum development standard of 150m is considered acceptable on merit.	No – satisfactory on merit
Clause 4.4 Floor space ratio	The Applicant has revised the Modification Application and it complies with maximum development standard of 12:1.	Yes
Clause 4.6 Exceptions to standard	Not applicable to modification applications	Not applicable
Clause 5.10 Heritage	The application was referred to Council's Heritage Advisor who raises no objection. No changes required to the existing conditions in relation to the management of Aboriginal objects and archaeological sites.	Yes
Clause 6.1 Acid sulphate soils	Consistent with the approved development.	Yes
Clause 6.2 Earthworks	Additional excavation of 2.2m is proposed for the creation of two new basement levels.	Yes
Clause 6.3 Flood Planning	The Modification Application has provided an amended flood protection scheme. The amended scheme is considered satisfactory by Council's Catchment and Development Engineer subject to an additional condition.	Yes
Clause 7.3 Car parking	<p>Whilst the Modification Application complies with the "maximum" development standard, it is not consistent with the rate of car parking provided for the approved development.</p> <p>It is considered that the subject Section 4.55(2) Modification Application will encourage greater use of private vehicles where the Aims of the LEP (Clause 1.2(d)), objective of the B4 Mixed Use zone and Clause 7.3 encourages greater use of public transport. Further, the Council's resolution of 10 April 2017 to adopt the Parramatta Central Business District (CBD) Strategic Transport Study as part of the Parramatta CBD Planning Proposal recommends the reduction to maximum car parking rates to levels</p>	Yes

Clause	Comment	Complies
	currently used by the City of Sydney CBD. Refer to related discussion in Section 6.4 of this report.	
Clause 7.6 Airspace operations	A controlled activity approval, for penetration of the prescribed airspace of Bankstown Airport, has been received by the Applicant from the Australian Department of Infrastructure, Regional Development and Cities. A condition is included requiring compliance with the requirements of the approval	Yes
Clause 7.10 Design Excellence- Parramatta City Centre	The approved development was the subject of the former Clause 22B of the City Centre LEP. The Modification Application continues to deliver a high standard of architectural design.	Yes

7.9 Draft Environmental Planning Instruments

There are no Draft Environmental Planning Instruments that have been the subject of public consultation that are relevant for consideration.

8. Development Control Plans

8.1 Parramatta Development Control Plan 2011

The approved development was assessed under the provisions of the repealed Parramatta Development Control Plan (DCP) (City Centre) 2007.

An assessment of the proposal against the key relevant controls in the Parramatta Development Control Plan 2011 as they relate to the Modification Application is provided below.

Development Control	Comment	Complies
3.4.5 Housing Diversity and Choice	Requirement: 1-bed (10%-20%) 2-bed (60%-75%) 3-bed (10%-20%) Proposed: 23 x studio apartments (5.3%) 99 x 1-bed apartments (22.7%) 282 x 2-bed apartments (64.7%) 30 x 3-bed apartments (6.8%) 2 x 4-bed apartments (0.5%)	No – satisfactory on merit

Development Control	Comment	Complies
	<p>While the dwelling mix is generally skewed towards 1-bed and 2-bed apartments, the Modification Application has provided for an increase in the percentage of 3-bed (<1% previous) and 4-bed (none previous) apartments. This provides greater housing choice and diversity and considering the CBD location is considered acceptable.</p> <p>Minimum of at least 10% of apartments that are adaptable is achieved.</p>	Yes
4.3.3.1 Wind Mitigation	A satisfactory wind assessment report has been provided and reviewed by Council's Wind Consultant.	Yes
4.3.3.1 Building Exteriors	<p>Building materials and finishes will be generally consistent to the approved development with some minor design changes proposed as shown on the Architectural Drawings.</p> <p>A satisfactory reflectivity report has been provided.</p>	Yes

9. Planning Agreements

The approved development is subject to a voluntary planning agreement (refer Condition 2). The VPA provides for contributions of works in kind of 3% of the development value in lieu of Section 7.12 contributions. A Preliminary Cost Plan was provided by the Applicant indicating the estimated revised construction cost is \$203,101,900. The proposal does not necessitate any changes to the VPA.

10. The Regulations

The proposed modifications would not impact on the relevant regulations, compliance with which is conditioned in the original consent.

11. The Likely Impacts of the Development

The likely impacts of the development have been considered in this report and it is considered that the impacts are consistent with those that are to be expected given the applicable planning framework. The impacts that arise are acceptable.

12. Site Suitability

The site was determined to be suitable for the proposed uses and buildings as part of the original consent. The proposed modifications will not affect the suitability of the site for the development.

13. Submissions

The Modification Application was notified for 36 days between 14 December 2017 and 18 January 2018. Fourteen (14) submissions were received.

Concerns raised from various owners of adjoining residential unit development at 101 Marsden Street, Parramatta in relation to:

- Construction noise, vibration and dust from longer construction program.
- Not compatible in relationship to adjoining buildings and public domain.
- Loss of views and visual and acoustic privacy.
- Overshadowing from increased building height.
- Increased traffic from additional car parking.
- Increased air, noise and waste pollution.
- Creation of an isolated site.

Response: The issues raised are noted. The Modification Application has been revised since notification, in particular with a reduction of the building height (from a previous increase of 9.4m to now a minor lift over-run of 1m above the maximum building height). It is considered that such a proposed reduction will minimise potential amenity impacts and assist to shorten the construction program.

The Modification Application proposes an additional 59 residential car parking spaces. From a traffic generation perspective, this has been found by the Applicant to not to create any traffic impacts worse than the approved scheme.

It is considered that the development at 101 Marsden Street is already developed to its full potential and is therefore not considered an isolated site.

Concerns raised in other submissions:

- Zoning of the Parramatta River foreshore.
- Increased building height.
- Heritage Centre location and configuration.
- Car stacking facility and increased traffic.
- Protection of view catchments

Response: The zoning is appropriate for the site. Refer to above responses in relation to building height and increased traffic. The Discovery Centre is retained under this Modification Application. There are no impacts to key view catchments.

14. Public Interest

The proposed modifications are contrary to the public interest as it has been concluded on planning grounds that the Modification Application cannot be seen as being “*essentially or materially or having the same essence*” (in *Vacik Pty Ltd v Penrith City Council [1992]*) in line with the approved development.

15. Disclosure of Political Donations and Gifts

No disclosures of any political donations or gifts have been declared by the applicant in respect to the Modification Application.

16. Developer Contributions

Refer to above discussion in Section 9 Planning Agreements.

17. Summary and Conclusion

The site constraints include flooding, Aboriginal and European archaeology and acid sulfate soils. It is considered that sufficient evidence has been provided that these risks can be managed appropriately.

The likely impacts of the Modification Application as assessed under Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) are considered to be reasonable based on the high-density character of the area and the built forms envisaged by the controls. It has been demonstrated that the proposed increase in car parking would not compromise the efficient function of the local road network. However, the increase in parking would contribute to the gradual increase in traffic congestion within the Parramatta Central CBD.

Notwithstanding the above, an assessment of the Modification Application against the provisions of Section 4.55(2)(a) of the EP&A Act raises fundamental concerns, in relation to whether the Modification Application can be determined by the consent authority to be “...*substantially the same development as the development for which consent was originally granted*...”. The Applicant’s submission was reviewed and assessed against the relevant legislative and statutory planning provisions and was guided by the relevant Land and Environment Court judgements and Court of Appeal decision cited (refer to Section 6.4 of this report).

The key modifications that are considered to fundamentally change the form, scale and configuration of the approved development from a “quantitative” and “qualitative” assessment are:

- Increase in depth of excavation for the basement from RL -14.00 to RL -16.22 for the creation of two new basement levels.
- Increase of 59 residential parking spaces.
- Reconfiguration of Basement Levels B1 to B3 for conventional car parking and Levels B4 to B9 for mechanical car stacker parking facilities.
- Addition of two residential levels.
- Provision of 23 additional apartments.
- Creation of a mezzanine level (541m²) above Level 2 Conference Centre.

Whilst it is considered that the likely impacts of the development per Section 4.15(1)(b) of the EP&A Act are reasonable as noted above, it is concluded on planning grounds that the Modification Application cannot be seen as being “*essentially or materially or having the same essence*” (in *Vacik Pty Ltd v Penrith City Council [1992]*) in line with the approved development for the reasons provided in Section 6.4 of this report. Therefore, it is recommended to the

consent authority that it ought not be satisfied that the Modification Application is “...*substantially the same development as the development for which consent was originally granted*...”.

This report recommends that the Panel refuse the Modification Application for the following reasons:

1. The Modification Application is not “*substantially the same development* ” as it is quantitatively and qualitatively different from the development for which development consent was originally granted.
2. The rate of residential car parking proposed for each dwelling is not consistent with the rationale applied for the approved development as well as well-established planning policies to encourage greater use of public transport in business districts in the Sydney metropolitan area.
3. The subject Section 4.55(2) Modification Application will encourage greater use of private vehicles where the Aims of the LEP (Clause 1.2(d)), objective of the B4 Mixed Use zone and Clause 7.3 encourages greater use of public transport and the Council’s resolution of 10 April 2017 to adopt the Parramatta Central Business District (CBD) Strategic Transport Study as part of the Parramatta CBD Planning Proposal that recommends the reduction to maximum car parking rates to levels currently used by the City of Sydney CBD.
4. Relocation of substation to ground floor will reduce quality of the public domain.
5. The Modification Application services no beneficial planning purpose.
6. For the reasons above, the Modification Application is not in the public interest.

However, should the Panel decide to approve the Modification Application, recommended revised without prejudice conditions are attached.

18. Recommendation

The application has been assessed relative to Sections 4.15 and 4.55(2) of the EP&A Act, taking into consideration all relevant State and local planning controls. On balance the modifications are considered to be not satisfactory and a refusal is therefore recommended.

That, pursuant to Section 4.55(2) of the EP&A Act, the Panel refuse consent to modify Development Consent No. DA/171/2014.