



SYDNEY CENTRAL CITY PLANNING PANEL COUNCIL ADDENDUM 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	Approval
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	11 September 2018

1. Introduction

A Section 4.55(2) Modification DA No.171/2014/A (the Modification Application) to DA No.171/2014 was lodged on 21 November 2017 by PccDevco1 Pty Ltd (the Applicant). Following requests for additional information, Advisian Pty (Advisian) prepared an Assessment Report and Draft Without Prejudice Revised Conditions, dated 30 August 2018.

The Assessment Report considered 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 Assessment Report and Draft Without Prejudice Revised Conditions were published on the Sydney City Central Planning Panel’s (SCCPP) website on 2 September 2018. The Assessment Report recommended refusal of the Modification Application.

EQ Projects on behalf of the Applicant, made a submission to the SCCPP dated 6 September 2018 in relation to the Assessment Report and Draft Without Prejudice Revised Conditions.

Advisian received a request from the SCCPP via the City of Parramatta Council (the Council) on 10 September 2018 to provide a written response to the submission from EQ Projects.

This Addendum Assessment Report provides a written response to the submission and an assessment of the issues raised in the submission and a revised recommendation to the SCCPP for its consideration in its determination of the Modification Application.

2. Legal Issues Raised by Applicant

EQ Projects obtained as part of its submission, two separate and independent legal opinions with regard to the “*basis and veracity*” of Advisian’s conclusion in its Assessment Report, dated 30 August 2018 that the Modification Application is not “*substantially the same development*”. They are from Minter Ellison and Andrew Pickles SC, respectively.

EQ Projects summarised the conclusions of the legal opinions as follows:

“In our opinion, the consent authority can be satisfied that the Modification Application is substantially the same. Although there are some quantitative differences between the Modification Application and the DA, when considered in the context of the development we consider it satisfies this statutory test” (John Whitehouse and Simon Ball, Minter Ellison)

“In my opinion, I am confident that the development now proposed meets the requisite jurisdictional test for substantially the same development as that originally approved and is lawfully capable of approval” (Andrew Pickles SC)

Advisian notes the legal opinions.

The submission was reviewed against the provisions of Section 4.55(2)(a) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and relevant Land and Environment Court judgements and Court of Appeal decision previously cited in Section 6.4 of the Assessment Report. The submission has informed the review of the following key modifications to the approved development were re-assessed on a “quantitative” and “qualitative” basis:

- 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.

As a result of the re-assessment, it is considered that the Modification Application can be characterised as being “*essentially or materially or having the same essence*” (in *Vacik Pty Ltd v Penrith City Council [1992]*) as the approved development. Therefore, it is recommended to the consent authority that it can be satisfied that the Modification Application is “...*substantially the same development as the development for which consent was originally granted...*”.

Refer to Section 3.1 in response to traffic issues raised in the legal opinions.

3. Planning and Policy Issues Raised by Applicant

3.1 Traffic

The development, as approved, proposes 413 apartments and 375 residential car parking spaces. The Modification proposes an additional 23 apartments, making a total of 436 apartments and an additional 59 residential car parking spaces, making a total of 434 residential car parking spaces. It is noted that there is no on-site visitor parking.

The change in apartment numbers is as a result of: (i) a reconfiguration of apartments between the approved residential levels; and (ii) two additional levels created as a result of an adjustment to the floor to floor heights. The latter adjustments, which facilitate the additional two levels, keep the development compliant with the applicable statutory Building Height (with exception of a 1m minor non-compliance for high-rise lift over-run) and Floor Space Ratio development standards.

The change in residential car parking numbers is as a result of the application of two different methods of calculating car parking rates which result in two different outcomes. The calculation of car parking spaces in the development as approved was on an overall total ratio which was 375 spaces. The calculation of car parking spaces as proposed in the Modification Application is based on apartment types as can be seen in Figure 1.

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 1 – Summary of approved versus proposed car parking rates
(Source: Ethos Urban, 14 August 2018)

Further, as a result of the reconfiguration and the creation of the two new levels, the mix of apartments has changed as per Figure 1 above. Of particular note is the deletion of the 1.5 and 2.5 bedroom options and the increase in the number of three bedroom option (from 4 to 30) and the introduction of a four bedroom option (2) which reflects an overall increase of 23 in the number of apartments.

The change in apartment options is important to the considerations regarding the number of car parking numbers. This is because it involves: (i) consideration of two different methods of calculation of car parking spaces in the development as approved and the development as modified; (b) consideration of Council's Car Parking Strategy (2011) in relation to off-street residential car parking; and (c) consideration of the Apartment Design Guide (ADG). Important to the consideration are the provisions of Clause 7.3 Car parking in *Parramatta Local Environmental Plan 2011* (the LEP) which provides:

“Multi dwelling housing: 1, 2 and 3 bedrooms 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”

It is to be noted that the definition of “Multi dwelling housing” as was referred to in the former Clause 22C has been amended since the repeal of the *Parramatta City Centre Local Environmental Plan 2007*. The present definition of this use does not apply to residential flat buildings, albeit the approved developed is defined as a “mixed use development”.

In the development as approved, the number of car parking spaces represented an apportionment of spaces to apartment on an overall rate.

The Applicant, in its modification Application, proposes to have the car parking spaces calculated on the basis of apartment type rather than on an overall rate. In its response of 14 August 2018, the Applicant supports its request as follows:

“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 larger parking provision rate than smaller apartment types. The modified development as proposed better complies with Council apartment mix control than the original proposal and continues to comply with Council’s parking strategy”.

Objective 3J-1 of the ADG requires:

“Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas

Design criteria

1. For development in the following locations:

- on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or
- on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre

the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less

The car parking needs for a development must be provided off street”

In reference to the above design criteria, the RMS Guide to Traffic Generating Developments (2002) specifies in Section 5.4.3 the following recommended minimum number of off-street resident parking spaces for Metropolitan Regional (CBD) Centres:

- “0.4 spaces per 1 bedroom unit.
- 0.7 spaces per 2 bedroom unit.
- 1.20 spaces per 3 bedroom unit.
- 1 space per 7 units (visitor parking).”

Applying the above RMS minimum rates to the proposed additional number of apartments (i.e. 23) as shown in Figure 2 below requires a minimum of 16 additional spaces.

Beds	Approved Units	Approved Rate	Approved Total	Proposed Units	Proposed Rate	Proposed Total	Difference Units	Min Rate RMS Guide to Traffic	Min Total RMS Guide to Traffic	Max Rate Parramatta LEP	Max Total Parramatta LEP
0	20	0	0	23	0	0	3	0.4	1.2	1	3
1	94	0.5	47	99	0.5	49.5	5	0.4	2	1	5
1.5	35	1	35	0	1	0	-35	0.4	-35	1	-35
2	210	1	210	206	1	206	-4	0.7	-4	1	-4
2.5	50	1.5	75	76	1.5	114	26	0.7	18.2	1	26
3	4	2	8	32	2	64	28	1.2	33.6	1	28
Sub-total	413		375	436		433.5	23		16		23
Total recommended (inc. original allocation)									391		398

Figure 2 – Recommended residential car parking allocation

The rationale for the application of the reduced onsite residential car parking provision follows the Council’s position in its Car Parking Strategy (2011) as referenced in the Assessment Report for the approved development. In turn, this position is further reinforced

from new research in the Council endorsed Parramatta CBD Strategic Traffic Study which has been discussed in a public forum on 10 April 2017. Further, it is considered that it is in the public interest (i.e. under EP&A Act, Section 4.15(1)(e)) to not apply the same rates used during the original assessment of 3 years ago and that the lower rates (i.e. RMS Guide to Traffic Generating Development and LEP) be applied to just the new apartments.

Having regard to the above, it is recommended that new **Condition No. 47A** be imposed to require the Applicant to provide a maximum of 399 car parking spaces onsite. This comprises a maximum of 391 resident owned car parking spaces.

3.2 Substation Relocation

The Modification Application proposes the relocation of the substation from the approved Level 1 location to a position on the Ground Level (replacing a small retail space). The submitted Statement of Environmental Effects (SEE), prepared by JBA and dated October 2017 makes two brief references to the substation on pages 7 and 14. No further details were provided in the SEE to support the proposed relocation.

EQ Projects contends in its cover letter to the submission that the matter of the substation relocation is “*both technical and qualitative*”.

In relation to the “*technical*” aspect, a letter from IGS, dated 7 September 2018 has been provided and summarised by EQ Projects in its cover letter. The technical reasons for relocating the substation are noted. However, in neither the EQ Projects letter or IGS letter is there any reference to or an attachment of written evidence of consultation undertaken with Endeavour Energy to support the relocation.

In relation to the “*qualitative*” aspect, EQ Projects discusses the approach and actions taken to review and modify the configuration of the development with regard to its riverside location. The proposed approach and actions are noted and supported where it provides an improved amenity outcome. However, EQ contends that the “*retail unit included in the DA..., is isolated from other activities and its ongoing viability would have been questionable*”. In relation to this statement, there was no supporting justification for the perceived commercial unviability of the approved retail unit.

Having regard to the above, it is recommended that new **Condition No. 58A** be revised to require the Applicant to submit written evidence of correspondence from Endeavour Energy requiring the substation to be at ground level prior to the issue of a Construction Certificate for Stage 3 works (i.e. Services, façade and fit-out).

4. 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 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. In respect to any increase in car parking, care is needed not to compromise the efficient function of the local road network. Therefore,

a condition, based on RMS Guide to Traffic Generating Developments (2002) is recommended to ensure that the provision of onsite residential parking supports Council's strategic objectives to reduce traffic congestion in the Parramatta CBD given the site's very close proximity to a high level of public transport services, both for the present and future. The services cover Light and Heavy rail, Bus, Ferry and Taxi services.

Assessment of the application against the relevant planning framework and consideration of matters by Council's technical departments has not identified any fundamental issues or concerns. The Modification Application is therefore satisfactory when evaluated against Sections 4.15 and 4.55(2) of the EP&A Act for the reasons set out above.

This report recommends that the Panel approve the Modification Application, subject to the recommended revised conditions.

Recommendation

That, pursuant to Section 4.55(2) of the *Environmental Planning and Assessment Act 1979*, the Sydney Central City Planning Panel grant consent to modify Consent reference DA/171/2014 as shown on the plans submitted with the Modification Application, subject to modified conditions of consent as outlined in **Attachment 1**.