

SYDNEY WESTERN CITY PLANNING PANEL

Reference No.	2018SSW012DA
Modification Application No.	15.2/2014
Local Government Area	Fairfield City Council
Proposed Modification	<ul style="list-style-type: none"> - Deletion of one (1) basement car park level, reducing from three (3) levels to two (2) levels; - Revision of four (4) entry foyers on ground floor and new substation kiosk located at the northern section of the site; - Deletion of communal open space on Level 6; - Addition of communal open space on rooftop of Building A (Level 7) with lift and stairwell access; - Addition of feature wall on western elevation to accommodate lift overrun and stairwell for new communal open space; - Amendments to façade treatment and schedule of finishes; and - Amendment to the future Section 88B Instrument relating to site, associated with the allocation of gross floor area (GFA) across site.
Original Development Approval (15.1/2014)	Demolition of the existing building, Torrens Title subdivision to create two (2) lots, construction and dedication of new roads, construction of a part six(6) and part eight (8) storey residential flat building comprising 106 residential dwellings over three (3) levels of basement car parking and associated landscaping.
Street Address	184-192 Restwell Road, Prairiewood
Applicant/Owner	Applicant – Frank Lesko Owner – Calabria Community Club Ltd.
Original Capital Investment Value	\$24,215,000
Number of Submissions	Eight (8)
Documents submitted with the report for panel consideration	Draft Conditions of consent
List of all relevant Section 4.15 (1)(a) matters	<ul style="list-style-type: none"> - <i>Environmental Planning and Assessment (EP&A) Act 1979;</i> - State Environmental Planning Policy (Infrastructure) (ISEPP) 2007;

	<ul style="list-style-type: none"> - State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65); - Fairfield Local Environmental Plan (FLEP) 2013; - Prairiewood Town Centre Southern Precinct Development Control Plan (PTCSP DCP) 2013; and - Fairfield Citywide Development Control Plan (FCDCP) 2013.
Recommendation	Approval subject to conditions
Report By	SJB Planning – Consultant town planners to Fairfield City Council
Date	1 February 2019

Summary of s4.55 matters Have all recommendations in relation to relevant s4.55 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 summarised in the Executive Summary of the assessment report?	Yes
Special Infrastructure Contributions Does the Modification require Special Infrastructure Contributions (s7.11)?	No
Conditions Have draft conditions been provided to the applicant for comment?	No

1. Executive Summary

The following report is an assessment of an application made under s4.55(2) of the *Environmental Planning and Assessment (EP&A) Act 1979* to amend the original development consent (15.1/2014) for construction of a part six (6), part eight (8) storey residential flat building at 184-192 Restwell Road, Prairiewood comprising of 106 apartments with basement car parking.

The application seeks approval for modifications to the approved development including deletion of one (1) of the basement car park levels, relocation of communal open space from Level 6 to the rooftop of Building A (Level 7), alterations to the building entrances and inclusion of services cupboards (resulting in an overall reduction of gross floor area (GFA)), changes to façade materials and finishes, and an amendment to a future Section 88B instrument for the site.

The modification was publicly exhibited during the notification period between 8 March 2018 until 29 March 2018. Eight (8) submissions were received during the notification period. The matters raised in the submissions are discussed in this report.

It is recommended that the proposed modification to the approved development be granted approval subject to conditions.

2. Development History

Council is in receipt of an s.4.55 (2) modification application seeking an amendment to DA.15.1/2004 which gave approval for:

"Subdivision to create two (2) lots, construction and dedication of public roads and construction of part six (6) and part eight (8) storey residential flat building, comprising 106 residential dwellings over three (3) levels of basement car parking and associated landscaping."

Approval for the development was granted on 28 January 2016 by the Sydney West Joint Regional Planning Panel (SWJRPP) (2014SYW042 DA).

3. Site Description and Locality

The subject site is known as Lot 1, Deposited Plan 1175636 and has a street address of 184-192 Restwell Road, Prairiewood. The location is shown in Figure 1.



Figure 1: Aerial photo of Lot 1, Deposited Plan 1175636 (SixMaps)

4. Description of Proposal

- Deletion of one (1) basement car park level, reducing from three (3) levels to two (2) levels;
- Revision of four (4) entry foyers on ground floor and new substation kiosk located at the northern section of the site;
- Deletion of communal open space on Level 6;
- Addition of communal open space on rooftop of Building A (Level 7) with lift and stairwell access;

- Addition of feature wall on western elevation to accommodate lift overrun and stairwell for new communal open space;
- Amendments to façade treatment and schedule of finishes; and
- Amendment to the future Section 88B Instrument relating to site, associated with the allocation of GFA across the site.

5. Background

The modification application was lodged on 24 January 2018. The modification was publicly exhibited during the notification period between 8 March 2018 and 29 March 2018. Eight (8) submissions were received during the notification period.

Land immediately to the west of the site at 178 Restwell Road is owned by Fairfield City Council (the Council). Consequently, the Council engaged SJB Planning to undertake an independent assessment of the application.

A briefing to the Sydney Western City Planning Panel (SSWPP) was undertaken on 28 May 2018.

A timeline of correspondence between the applicant and Council post lodgement is as follows:

- 6 June 2018 – Council requested additional information and amendments with regard to basement car parking, waste management, storage, equitable access, design merit, visual privacy, location of the substation, and the schedule of materials. Amended plans and additional reports were submitted 13 July 2018;
- 11 September 2018 – Council requested additional information and amendments with regard to basement car parking, waste management, and the allocation of GFA. Amended plans and additional reports were submitted 26 September 2018;
- 26 November 2018 – Council requested further amendments regarding the basement car parking;
- 29 November 2018 – A meeting was held between Council's Traffic Engineers and the applicant to resolve the requested amendments for the basement car parking; and
- 4 December 2018 – Revised architectural plans and additional information including a swept path analysis was submitted by the applicant to Council.

6. Applicable Planning Controls

- State Environmental Planning Policy (Infrastructure) (ISEPP) 2007;
- State Environmental Planning Policy (State and Regional Development) (SEPP SRD) 2011;
- State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development (SEPP 65);
- Fairfield Local Environmental Plan (FLEP) 2013;
- Prairiewood Town Centre Southern Precinct Development Control Plan (PTCSP DCP) 2013; and

- Fairfield Citywide Development Control Plan (FCDCP) 2013.

7. Referrals

State Environmental Planning Policy (Infrastructure) 2007

Clause 104 Traffic generating development

Clause 104 of ISEPP 2007 applies to the development.

Specifically, the site is located within 90m of the Liverpool to Parramatta Transitway, which is a classified road for the purposes of ISEPP 2007.

In accordance with the provisions of Clause 104 and Schedule 3 of ISEPP 2007, the S4.55(2) application was referred to the Roads and Maritime Services (RMS) for consideration.

In a letter dated 13 June 2018, RMS noted it had reviewed the application and that it had no objections to the proposed modifications.

8. Assessment

The following is an assessment of the application in accordance with Section 4.15(1) of the *EP&A Act 1979*.

Section 4.15(1)(a)(i) – any environmental planning instruments

State Environmental Planning Policy (State and Regional Development) (SEPP SRD) 2011

The DA (15.1/2014), was determined by the then SWJRPP. As the modification application is made under Section 4.55(2) of the *EP&A Act 1979*, the SWCPP is the determining authority.

State Environmental Planning Policy No 65– Design Quality of Residential Flat Development (SEPP 65) and the Apartment Design Guide (ADG)

The development is more than three (3) storeys, contains more than four (4) dwellings and consists of a residential flat building. Therefore, the provisions of SEPP 65 apply.

The following table outlines assessment of the s4.55(2) modification with the key relevant provisions.

Apartment Design Guide (ADG)	Comment
Communal Open Space	<p>The approved DA located communal open space (COS) on Level 6 on the southern edge of the building. The width of the space was between 4m and 6m and was located along the length of the building.</p> <p>The modification seeks to delete the approved COS on Level 6 and include a new COS area on the rooftop of Building A (Level 7). This space will include BBQ and seating facilities, planter boxes and</p>

Apartment Design Guide (ADG)	Comment
	<p>pergola cover for the southern corner of the area.</p> <p>The modified COS is supported, subject to some design changes to mitigate any potential amenity impact on adjacent apartments (B22 and B23) as discussed further below.</p> <p>The application includes a 1m wide planter box at the southern edge of the COS designed to buffer from adjacent apartments. The application also proposes a 1.8m privacy screen to mitigate noise and acoustic impacts.</p> <p>The proposed planter box on the southern edge of the COS will be within 1m of the balcony of apartment B23, within 3m of the living area, and 3.5m of a bedroom. It is located 1.5m from the balcony of apartment B22 and 3m from the living room.</p> <p>It is recommended that the width of the planter box be increased by additional 1.5m so as to increase the non-trafficable area to 2.5m in order to mitigate impact on apartments B22 and B23.</p> <p>As well, the BBQ area in the south east corner of the COS should be relocated to the north west corner, and an extra planter box and privacy screen be installed on the south east corner of the COS.</p>
Private Open Space	The removal of the communal open space from Level 6 will increase the size of private balconies on Level 6. No reduction in private open space will occur as a result of the modifications.
Accessibility	Council's Building Control Officer reviewed the modification and raised no objections subject to conditions.
Site Configuration: Landscape Design	Council's Natural Resource Officer reviewed the modification and raised no objections subject to conditions on watering systems for the new landscaped areas adjacent to the building entries
Storage	<p>Bicycle parking for each unit will be incorporated in designated storage areas within the basement levels.</p> <p>The proposal has demonstrated that each dwelling will be provided with the minimum required amount of storage. The storage space will be provided both in each apartment and within individual storage</p>

Apartment Design Guide (ADG)	Comment
	areas in the basements.

Table 1: ADG Compliance Table

The modification has demonstrated compliance with the objectives of SEPP 65 as well as complying with the relevant ADG provisions.

Fairfield Local Environmental Plan (FLEP) 2013

The development site is located within the B4 Mixed Use zone and the approved residential flat building is permissible in the zone. The development, as modified, will continue to be consistent with the objectives of the B4 Mixed Use zone as approved under DA/15.2/2014.

FLEP 2013	Complies
Zone B4 Mixed Use	Yes. The approved residential flat building is permissible in the B4 Mixed Use zone. No change to the approved use is proposed. The modification continues to be consistent with the objectives of the zone.
Clause 4.3 Height of Buildings	DA 15.1/2014 approved a residential flat building with a maximum height of building of 27.6m. No variation to the approved height has been sought as part of this modification. A modification to the western elevation is proposed with the inclusion of a feature wall to accommodate a lift overrun and stairwell to the proposed communal open space. The proposed modification has a maximum height of 24.4m and does not breach the 26m control for the site.
Clause 4.4 Floor Space Ratio	A FSR of 3.0:1 across the whole of Lot 1 DP 1175636 was approved under DA 15.1/2014. This takes into consideration the subject building and future development of the remainder of existing Lot 1. A condition imposed on DA 15.1/2014 placing limits GFA across Lot 1 (15.1/2014) and future Lot 2. The modification application proposes a reduction in GFA of approximately 191.01m ² for the subject residential flat building as modified. The modification proposes the transfer of GFA to the future Lot 2 of the 191.01m ² . A further discussion on this matter is included below.

Table 2: FLEP 2013 Compliance Table

Modification to approved Gross Floor Area (GFA)

The development consent for 15.1/2014 includes Condition 4 as follows:

"Proposed Lot 2 of the approved "Proposed Subdivision Plan" must be burdened through the creation of a "Restriction on Use of Land" that limits the gross floor area permitted to be developed on that lot to no more than 14,742m² or an amount that when added to the gross floor area approved for Lot 1 of the approved "Proposed Subdivision Plan" equates to a floor space ratio of no more than 3.0:1 over the combined site areas of Lot 1 and Lot 2.

The amount of gross floor area approved for Lot 1 is 10,415.1m², and the combined site areas of Lot 1 and Lot 2 equals 8,385.7m².

The restriction shall be applied to Lot 2 via a Section 88B Instrument. Written confirmation from Council approving the wording of the 88B Instrument is to be provided prior to the registration of the subdivision with the NSW Land and Property Information Division.

The 88B Instrument is to set out that the restriction relating to gross floor area on Lot 2 cannot be removed from the Title, modified or amended without Council consent.

Gross floor area and site area are to be calculated in accordance with the definitions within the Fairfield Local Environmental Plan 2013."

The modification proposes a reduction in GFA in the approved building of approximately 191.01m². The modification has reduced overall GFA of the building through:

- The deletion of four lobby areas on the ground floor level, and
- The inclusion of service cupboards on each floor.

These modifications to the residential flat building have resulted in a reduction in the GFA of the building. The application proposes this reduction in GFA be transferred to future Lot 2, resulting in a revised total of 10,224.09 m² (future Lot 1) and 14,933.01 m² (future Lot 2).

This transfer of GFA will maintain the approved FSR across the whole of existing Lot 1 DP 1175636 and continue to distribute the GFA to the two (2) future lots resulting from the approved subdivision. Given the minor change in GFA allocation (e.g. 191m²) it is considered the proposed reallocation is acceptable in this instance.

Section 4.15(1)(a)(ii) – Draft environmental planning instruments

There are no draft environmental planning instruments applicable to the proposed development.

Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

Prairiewood Town Centre Southern Precinct Development Control Plan (PTCSP DCP) 2013

The PTCSP DCP 2013 is the primary DCP applicable to development within the Prairiewood Town Centre Southern Precinct. An assessment against the key relevant provisions is outlined in the following Table. The modifications proposed continue to satisfy the objectives as approved under 15.1/2014. Applicable sections relevant to the modification are discussed below.

Section / Control	Comment
3.7.3 Communal Open Space	<p>It is recommended that the non-trafficable width of the planter box at the southern edge of the COS be increased by an additional 1.5m to mitigate impact on adjacent apartments.</p> <p>As well, the BBQ area in the south east corner of the COS should be relocated to the north west corner and an extra planter box and privacy screen be installed on the south east corner of the COS.</p> <p>Condition 9 of 15.1/2014 includes requirements for a detailed Communal Open Space Plan to be approved by Council prior to the issue of a Construction Certificate (CC). This condition remains in a modified form in order to capture the new communal open space requirements on the rooftop of Building A.</p>
3.8 Landscape	<p>The modified building entries are proposed to include landscaped gardens. These landscaped areas are undercover and south facing.</p> <p>Council's Natural Resource Officer has reviewed the modification. Comment is provided in the Internal Referral section of this report, supporting the design.</p> <p>Condition 14 of 15.1/2014 details requirements for a final landscape plan to be approved by Council prior to the issue of a CC. This condition remains, in a modified form, in order to capture the landscaping requirements of the new communal open space on the rooftop of Building A.</p>
3.9 Safety by Design	The new modified entries are considered acceptable regarding safety by design. Lighting for the landscaped areas and surrounding areas are to be identified within the requirements of Condition 14 mentioned above.
3.10 Accessibility and Parking	The modification continues to comply with the approved on-site parking rates. Council's Traffic Engineer reviewed the modification and raised issues concerning the placement of columns, lift access points and lane width. These issues were resolved through subsequent amendments by the applicant.
3.10.1 Universal Access	The modification continues to meet the requirements of equitable access.
3.10.2 Bicycle Parking	The applicant has incorporated bicycle storage within basement residential storage spaces. Confirmation of their compliance with Australian Standards is to be confirmed by the Principal Certifying Authority as per Condition 2(a).
3.12 Waste Collection	An amended Waste Management Plan (WMP) was

Section / Control	Comment
	submitted with the modification. Council's Waste Manager reviewed the modification and requested changes to the location, and capacity of waste storage rooms. Amended plans have addressed Council requirements.
3.19 Storage	Storage has been provided to every unit consistent with that required by the ADG guidelines.

Table 3: PTCSP DCP 2013 Compliance Table

Fairfield Citywide Development Control Plan (FCDCP) 2013

In addition to the PTCSP DCP 2013, the development has been considered against the relevant sections of the FCDCP 2013 that apply to the proposed development.

- Chapter 12 – Car Parking, Vehicle and Access Management.

The modification deletes one (1) basement level of car parking from three (3) to two (2) basement levels. DA 15.1/2014 lists the following car park rates for the site:

- 133 off-street car parking spaces for residents and visitors; and
- 12 off-street parking spaces for disabled persons.

The modification continues to comply with this Condition and does not propose to reduce the number of car parking spaces for the site.

(b) Internal Referrals

Referral	Council Comments	Comments in response
Traffic Engineer	Council Traffic Engineer requested changes to the proposed modifications for the basement area citing concerns with the lane width, location of columns, design of lift exit areas.	Council has confirmed that the amended plans and swept path diagrams submitted 4 December 2018 rectify the concerns, and subject to conditions, the proposed modifications are acceptable.
Catchment Planning	No changes to ground floor level or building footprint, no change to flooding	No further assessment required.
Place Manager	Adjoining Council Property <ul style="list-style-type: none"> - Catchment Flood Issues on Council Property - Impacts on Prairiewood Leisure Centre 	Location of building relative to open space and assets remains unchanged by the modification proposal. <p>The number of car parking spaces required by Council has not changed with the modification.</p>
Development Engineer	- Stormwater Drainage remains	Subject to conditions the proposed modification is acceptable.

Referral	Council Comments	Comments in response
	<p>unchanged</p> <ul style="list-style-type: none"> - Raised issues relating to internal driveway access, and disabled car park space 	
BCA Branch	<ul style="list-style-type: none"> - A need to consider equitable access to the building with the removal of ramps at south and western entrance points proposed. 	Assessment of the application has confirmed equitable access to the building.
Natural Resources Officer	<ul style="list-style-type: none"> - Location of new south-facing covered planter boxes area are suitable - Species list for new planter boxes are suitable - Watering system should be included within new planter boxes. 	Subject to conditions the proposed modification is acceptable.
Waste	<ul style="list-style-type: none"> - New waste storage areas contained in modified basement areas required amendments to meet minimum bin numbers. - Changes also requested to door width and location of mobile bin towing device 	Subject to compliance with Condition 19 of 15.1/2014 and the submission of a final Waste Management Plan, the proposed modification is acceptable.

Table 4: FCDCP 2013 Internal Referrals Response Table

(c) Public Notification and Submissions

The s4.55(2) modification was notified from 8 March 2018 to 29 March 2018 (i.e. 21 days) – satisfying the statutory notification requirements.

Council received eight (8) submissions. The submission summary and comments in response are listed below:

Submission Summary	Comments in response
<ul style="list-style-type: none"> - Concern with building height - Traffic impacts on area - Concern with original development consent process and transparency. 	<p>No proposed change to approved building height.</p> <p>Car parking rates are compliant with Council requirements. RMS raised no objections to the modification.</p>

	The DA assessment process was conducted in conformity with the Council and Panel adopted processes, including public notification and advertising of the DA and the public consideration and determination of the DA.
<ul style="list-style-type: none"> - Concern with building height - Traffic impacts on surrounding area 	See comments above.
<ul style="list-style-type: none"> - Access and space concerns of basement car park - Concern with bicycle parking spaces - Proposed changes to façade treatment and schedule of finishes 	<p>See comments above.</p> <p>Changes to materials and finishes have been reviewed and are acceptable.</p>
<ul style="list-style-type: none"> - Concern with reduction of open space - Size of sixth floor balconies - Impacts from noise and heat transference - Proposed changes to façade treatment and schedule of finishes 	<p>Apartments B20, B21, C20, D25 and D27 will have an increase of balcony space between 20-45m². The increased balcony spaces are significant but are not at the expense of communal open space which has been relocated to the rooftop of Building A.</p> <p>See comments above regarding materials and finishes.</p>
<ul style="list-style-type: none"> - Traffic impacts on area - Height of building - Visitor parking 	<p>The proposed modification to the basement car park maintains the required volume of car parking for residents and visitors.</p> <p>No proposed change to approved building height.</p>
<ul style="list-style-type: none"> - Concern that car parking is to be reduced onsite 	No decrease in resident off-street parking is proposed.
<ul style="list-style-type: none"> - Concern with number of units 	No change to approved number of dwellings is proposed.
<ul style="list-style-type: none"> - Concern with number of parking spaces 	See comments above.

Table 5: FCDCP 2013 Public Notification and Submissions Response Table

Is the proposed development as modified substantially the same as the approved development?

In determining if a DA is substantially the same as the approved development, the question is whether such changes result in it being able to be said that the modified development is essentially or materially or having the same essence as the approved development.

The critical elements of the proposed development such as the overall massing, height, the building's footprints, the location of pedestrian and vehicle ingress and egress points, car

parking rates, the provision of open space and the use of the buildings still being mixed use remain essentially or materially the same as the original development.

For the above reasons, it is considered that the proposed development is substantially the same as that which was originally approved.

Whether the application requires the concurrence of the relevant Minister, public authority or approval body and any comments submitted by these bodies?

The original development application constituted Integrated Development pursuant to the *EP&A Act 1979* as the development required approval pursuant to the *Water Management Act, 2000*. The modification application does not propose any changes to the General Terms of Approval issued by NSW Office of Water nor does it propose any works within the area of the site that is affected by the *Water Management Act 2000*.

Whether any submissions were made in respect of the proposed modification

As discussed earlier in the report eight (8) submissions were received. The issues raised in this submission have been assessed in this report.

Any relevant matters under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

The assessment included in this report includes the relevant matters under Section 4.15 of the *EP&A Act 1979*. This assessment has concluded that the application is satisfactory in respect of these matters.

In summary, the application satisfies the provisions of Section 4.55(2) of the *EP&A Act 1979*.

7. Conclusion

The s4.55(2) Modification Application has been assessed in accordance with the provisions of Section 4.15 of the *EP&A Act 1979*, which requires amongst other things an assessment against the provisions contained in ISEPP 2007, SEPP 65, FLEP 2013, PTCSP DCP 2013, and FCDCP 2013.

The proposed modification is permissible with consent in the B4 Mixed Use zone.

The proposed modification meets all relative design objectives of the ADG.

The modification does not raise any issues applicable to the FLEP 2013 that were previously approved as part of the original DA application.

Approval of the application is therefore recommended subject to conditions.

8. Recommendation

That modification application 15.2/2014 be approved subject to the recommended conditions of consent included.

9. Attachments

- Attachment A: Architectural Plans 1
- Attachment B: Architectural Plans 2
- Attachment C: Landscape Plan (Roof Plan)
- Attachment D: Landscape Plan (Ground Floor Plan)
- Attachment E: Waste Management Plan
- Attachment F: Internal Traffic Management Report
- Attachment G: Traffic Statement
- Attachment H: Statement of Environmental Effects
- Attachment I: SEPP 65 Design Verification Statement
- Attachment J: Submissions
- Attachment K: Original Development Consent
- Attachment L: Draft Conditions of Consent