

COUNCIL ASSESSMENT REPORT

Panel Reference	2018SWC072
DA Number	173/2017/JP/B
LGA	The Hills Shire Council
Proposed Development	Section 4.55(2) Modification to an Approved 5-storey Residential Flat Building Pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009
Street Address	Nos. 41-45 Yattendon Crescent, Baulkham Hills
Applicant/Owner	Mr M Mambraku /- Elora The Hills Pty Ltd
Date of DA lodgement	15 June 2018
Number of Submissions	One (1)
Recommendation	Approval
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	CIV Over \$5 Million – Private Infrastructure and Community Facilities - (Affordable Housing) Section 4.55(2) Modification
List of all relevant s4.15(1)(a) matters	• State Environmental Planning Policy (Affordable Rental Housing) 2009 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development • State Environmental Planning Policy (BASIX) 2004 • State Environmental Planning Policy No. 55 – Remediation of Land • The Hills Local Environment Plan 2012 • DCP 2012 Part B Section 5 – Residential Flat Buildings • DCP 2012 Part C Section 1 – Parking • DCP 2012 Part C Section 3 – Landscaping
List all documents submitted with this report for the Panel's consideration	• Plans and Relevant Reports/Documentation • Submission
Report prepared by	DEVELOPMENT ASSESSMENT COORDINATOR CLARO PATAG
Report date	18 OCTOBER 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 summarized, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
Clause 4.6 Exceptions to development standards If a written request for a contravention to a development standard (clause	Yes

4.6 of the LEP) has been received, has it been attached to the assessment report?	
Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S94EF)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	No
Conditions Have draft conditions been provided to the applicant for comment?	Yes

EXECUTIVE SUMMARY

The Section 4.55(2) application is to modify an approved 5-storey residential flat building lodged pursuant to the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009.

The subject application seeks to modify the finished floor levels to improve accessibility, ensure compliance with a 2.7m ceiling height and improve the amenity and functionality of the residential units. In addition, it also proposes to alter the building façade treatment to improve presentation to the street.

The application was notified to adjoining and surrounding properties including previous objectors. One submission was received during the notification period. The issues raised in the submission relate to traffic, on-street parking, impacts on air quality due to the location of the basement exhaust vent, noise, loss of privacy and impacts on any previous documentation and reports submitted with the original application due to the reduction in the number of affordable housing units. These issues have been assessed in the report and do not warrant refusal of the application.

Having regard to the relevant provisions of Section 4.15 and Section 4.55(2) of the Environmental Planning and Assessment Act, 1979, the proposed modification is considered satisfactory and will result in a development that is substantially the same as that previously approved.

The Section 4.55(2) modification application is recommended for approval.

BACKGROUND

On 15 December 2016, The NSW Joint Regional Planning Panel approved Development Application No. 173/2017/JP for demolition of existing structures and construction of 4-5 storey residential flat building containing 45 units.

On 19 July 2017, the original Development Consent was modified under Council staff delegation pursuant to then Section 96(1A) which reduced the number of affordable rental housing units from 21 dwellings (47% of the total gross floor area of the building) to 9 dwellings (20% of the GFA).

The subject Section 4.55(2) modification application was lodged on 15 June 2018. A letter was sent to the applicant on 10 July 2018 requesting additional information relating to car parking, access and waste management. A further letter was sent to the applicant on 20 July 2018 requesting the submission of an updated acoustic report.

On 30 July 2018, a further letter was sent to the applicant by email requesting additional information to address landscaping matters raised by Council's Landscape Assessment Officer.

Additional information in relation to car parking, access, waste management, acoustics and stormwater management was submitted by the applicant on 31 July 2018 in response to letters from Council staff dated 10 and 20 July 2018. Amended landscape plans were submitted by the applicant on 8 August 2018.

On 16 August 2018, a letter was sent to the applicant providing waste management comments as a result of review of the submitted additional information. Additional information was submitted by the applicant on 20 August 2018 in response.

Additional engineering information was requested from the applicant by email dated 24 August 2018.

A briefing report was provided to the Panel on 27 September 2018 advising status of the subject modification application.

DETAILS AND SUBMISSIONS

Owner:	Elora The Hills Pty Ltd
Zoning:	R4 High Density Residential
Area:	2,498m ²
Existing Development:	Detached dwellings and outbuildings
Section 94 Contribution	\$90,220.60 – imposed in the original consent
Exhibition:	Not required
Notice Adj Owners:	Yes, 14 days
Number Advised:	Sixty one (61)
Submissions Received:	One (1)

PROPOSAL

The Section 4.55(2) Application seeks to modify the Development Consent by altering the finished floor levels to improve accessibility, ensure compliance with a 2.7m ceiling height and improve the amenity and functionality of the apartments.

In addition, the building's external façade treatment is also proposed to be amended to improve its presentation to the street.

The proposed modifications include the following details:

Basement Level 2

- Regularise the basement wall construction with the external walls (in part) being relocated towards the southern and western boundaries beneath the building above.
- Raise the finished floor level from RL90.75 to RL 91.85 resulting in less excavation.
- Alter the basement layout resulting in an increase in the number of parking spaces from 30 to 33 spaces (including car wash) with additional storage areas being provided.
- Relocate the lift and fire stair to reflect position of revised building entry.

Basement Level 1

- Regularise the basement wall construction with the external walls (in part) being relocated towards the southern and western boundaries and beneath the building above.
- Raise the finished floor level from RL93.75 to RL 94.55 and alter the driveway grade to improve access into the basement.
- Alter the basement layout resulting in an increase in the number of parking spaces from 22 to 24 spaces, additional storage areas, amended garbage store and provision being made for plant and services that meet Council's requirements.
- Relocate the lift and fire stair to reflect position of revised building entry.

Ground Level

- Rationalise the finished floor levels to have a single level of RL98.65 instead of multiple levels which ranged from RL96.75 to RL99.0 and provide the required ramps and stairs within lobby area for access to apartments.
- Increase the floor to floor heights from 2950mm to 3050mm allowing for 2700mm high ceilings in living areas and step down to balconies (current design would have required hobs).
- Reduce the size of internal lobby area, relocate the lift and fire stair to reflect position of revised building entry and remove internal planter boxes.
- Rationalise the lobby area and the floor area removed to be reallocated to apartments resulting in increased apartment sizes and improved internal layouts.
- Alter the position and design of building entry to improve accessibility to the street and fire egress path from basement will be provided on western side with access path to building entry and accessible platform lift.
- Redesign balcony of apartment G10 to span full width with planter to obscure driveway below.
- Minor reconfiguration of some balconies, courtyards and external walls.
- The masonry walling/fencing along the street boundary is to be reconstructed to suit the footpath levels as required by Council.

Levels 1, 2 and 3

- Rationalise the finished floor levels to have a single level instead of varied levels which required ramps and stairs to be provided within lobby area so as to provide access to apartments.

Level	Approved Floor Levels	Proposed Floor Level
1	RL 101.25 to 102.0	RL 101.70
2	RL 104.25 to 105.0	RL 104.75
3	RL 107.25 to 108.0	RL 107.80

- Increase the floor to floor heights from 2950mm to 3050mm allowing for 2700mm high ceilings in living areas and step down to balconies (current design would have required hobs).
- Reduce the size of internal lobby area, relocate the lift and fire stair to reflect position of revised building entry and remove internal voids.
- Floor area removed from the reconfigured lobby area to be reallocated to apartments resulting in increased apartment sizes and improved internal layouts.
- Provision for a screened air-conditioning plant above building entry.
- Minor reconfiguration of balconies and external walls.

Level 4

- Rationalise the finished floor levels to have a single level of RL110.95 instead of multiple levels ranging from RL110.17 to RL111.0 which required ramps and stairs be provided within lobby area for access to apartments and common open space areas.
- As a result of the repositioning of the building entry the rooftop communal open space areas is to be combined into a single space with an area of 410m² with an enlarged covered area.
- Redesign Apartment 4.01 to incorporate a larger balcony.
- Provision for a screened air-conditioning plant above building entry.
- Minor reconfiguration of balconies and external walls.

Roof Level

- Amend the roof heights as a result of rationalisation of floor levels from RL 113.94 to RL 114.0 and RL 110.17 to RL 110.95, with the parapet heights being altered from RL 111.48 and RL 114.54 to 111.85 and 114.20.

- Alter the height of the lift overrun from RL 114.7 to RL 115.10.

The proposed modifications will result in an increase in the floor area of dwellings as a result of reducing the lobby areas.

Relevant conditions in the original Development Consent are to be amended as a result of this modification application to reflect the proposed changes.

ISSUES FOR CONSIDERATION

1. Section 4.55(2) of the Environmental Planning and Assessment Act, 1979

Under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979, Council may, in response to an application, modify a 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).

Comment:

The proposed development as modified would represent substantially the same development for which consent was originally granted as there is no change to the approved land use and the form and nature of the development remains as approved being five (5) levels of residential apartments above a basement carpark. The setbacks to the street and adjoining property boundaries remain unchanged and the orientation, footprint and building envelope generally remains as originally approved.

(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent.

Comment:

No concurrence from a public authority or approval body is required for this development.

(c) it has notified the application in accordance with:

(i) the regulations, if the regulations so require, or

(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

Comment:

The modification application has been notified in accordance with the regulations and Council's notification policy.

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Comment:

One submission has been received during the notification period and issues raised are addressed in Section 8 below.

The proposal is considered to be satisfactory having regard to the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979.

2. State Environmental Planning Policy (State and Regional Development) 2011

Item 5(b) under Schedule 7 - Regionally Significant Development of the State Environmental Planning Policy (State and Regional Development) 2011 provides the following referral requirements to a Joint Regional Planning Panel (now Sydney Central City Planning Panel):-

5 Private infrastructure and community facilities over \$5 million

Development that has a capital investment value of more than \$5 million for any of the following purposes:

(a) air transport facilities, electricity generating works, port facilities, rail infrastructure facilities, road infrastructure facilities, sewerage systems, telecommunications facilities, waste or resource management facilities, water supply systems, or wharf or boating facilities,

(b) affordable housing, child care centres, community facilities, correctional centres, educational establishments, group homes, health services facilities or places of public worship.

The proposed development is for an affordable housing with a capital investment value of more than \$5 million, hence the original Development Application was determined by the Joint Regional Planning Panel. For the purposes of determining this modification application the functions of a council as a consent authority are exercisable on behalf of the council by the local planning panel as provided under clauses 4.8(4)(a) and 4.8(5) of the Environmental Planning and Assessment Act, 1979.

Accordingly, the subject modification application is referred to the SCCPP for determination.

3. Compliance with SEPP (Affordable Rental Housing) 2009

The State Environmental Planning Policy (Affordable Rental Housing) 2009 provides for affordable rental housing to be developed on any residential zoned allotment on which residential flat buildings are permissible. The original Development Application was made under Part 2 Division 1 of the SEPP (In-fill Affordable Housing).

The original Development Application has been assessed against the relevant standards prescribed in the SEPP for in-fill affordable housing and considered satisfactory in the assessment of the original application. It should be noted that there were no variations proposed in the original Development Application to the relevant standards for in-fill developments in the SEPP. The proposed modification does not introduce any variation to the SEPP and therefore it is considered satisfactory in this regard.

4. Compliance with SEPP 65 – Design Quality of Residential Apartment Development

The proposed development as modified is subject to the provisions of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65), which aims to improve the design quality of residential flat buildings within the State. It is considered that the modifications to the proposed development as modified do not conflict with the design quality principles contained within SEPP 65 and relevant standards outlined in the Apartment Design Guide.

As required under clause 115(3) of the Environmental Planning and Assessment Regulation 2000, the subject modification application is accompanied by a design verification statement

from a qualified designer, Architect Jim Apostolou (Registration No. 7490) of Architecture and Building Works Pty Ltd verifying that:

- he directed the design of the proposed development (as modified); and
- the design quality principles set out in Schedule 1 of State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development are achieved for the residential apartment development, and
- the objectives in Parts 3 and 4 of the Apartment Design Guide have been achieved; and
- the modifications do not diminish or detract from the design quality or compromise the design intent of the development for which the development consent was granted.

The proposed modification application satisfies the relevant provisions of SEPP 65 and Environmental Planning and Assessment Regulation 2000 in this regard.

5. Compliance with SEPP 55 – Remediation of Land

Clause 7 (Contamination and remediation to be considered in determining development application) of SEPP 55 – Remediation of Land, states:

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
- (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

The likelihood of encountering contaminated soils on the subject site is low given the site has been historically used for residential purposes. Potential land contaminated activities, such as those listed in Table 1 and Appendix A of the Contaminated Land Planning Guidelines of SEPP 55, are unlikely to have been carried out on the site or adjoining properties. The site is not identified under the LEP as constituting contaminated land or land that must be subject to site audit statement and is not subject to legal notice for a matter listed under Section 59(2) of the Contaminated Land Management Act 1997. Given the above factors, no further investigation of land contamination is warranted in this case. The proposed modifications do not seek to alter the approved use of the site as originally approved by the regional planning panel. Accordingly, the proposal as modified does not pose any additional risk of harm to human health and the site is considered suitable for the intended use.

6. Compliance with The Hills Local Environmental Plan 2012

i). Permissibility

The subject site is zoned R4 High Density Residential under the Hills LEP 2012. The proposed residential flat building is permitted within the R4 High Density Residential zone under the Hills LEP 2012. The proposed development satisfies the following objectives of the R4 High Density Residential zone:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage high density residential development in locations that are close to population centres and public transport routes.*

The subject site has a total area of 2,498m² which does not meet the 4,000m² minimum lot size development standard for residential flat buildings under Clause 4.1A in LEP 2012. However, as the application is lodged pursuant to the provisions of the State Environmental Planning Policy (Affordable Rental Housing) 2009, the site area requirement of 450m² prescribed in the SEPP prevails. Clause 14 of the SEPP states that a consent authority must not refuse consent to development if the site area complies with the minimum site area requirement of 450m².

ii). Development Standards

LEP 2012 prescribes a minimum lot size of 4,000m² for residential flat building in R4 High Density Residential zone and a maximum height of 16m for the subject site. As the approved development was lodged pursuant to the State Environmental Planning Policy (Affordable Rental Housing) 2009, the minimum site area requirement for an in-fill development is 450m². The subject site has an area of 2,498m² which exceeds this requirement. This standard if satisfied cannot be used to refuse consent. The SEPP overrides the LEP standard in this regard.

The original Development Application sought a variation to the maximum building height of 16m by 616mm and was accompanied by a written request justifying the contravention of the building height standard lodged pursuant to clause 4.6 of The Hills LEP 2012. The non-compliance with the maximum allowed building height is primarily associated with the lift overrun. The written request from the applicant was considered satisfactory by the Panel as the applicant has adequately addressed the relevant contravention of the development standard and that there was sufficient environmental planning grounds to justify the contravention. It also satisfied the Panel that the approved development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for the development within the relevant zone. This decision by the Panel in supporting the previous written request by the applicant is consistent with the most recent decision in the Land and Environment Court in the case *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* where Preston CJ clarified the appropriate approach to the consideration of clause 4.6. The importance of this judgement is that the clause 4.6 submission does not require that developments that do not comply with the applicable development standard to have a neutral or better environmental planning outcome than a development that does not.

The proposed modification does not result in a further variation to the building height standard as the extent of the variation remains as originally approved except that the non-compliance is in a slightly different location. The modification includes the relocation of the lift to a higher point on the site but maintaining the maximum building height of the development at the approved height of 16.6m. The previous clause 4.6 justification provided in the original Development Application is still relevant and valid as the modified scheme adequately demonstrates that compliance with the development standard is unreasonable or unnecessary as there is sufficient environmental planning grounds to justify the contravention and the development as modified will be in the public interest because it remains consistent with the objectives of the development standard and the objectives for the development within the relevant zone.

7. Compliance with DCP 2012 Part B Section 5 – Residential Flat Building

Variations to the DCP's number of storeys, common open space, front and rear setbacks and unit mix were considered and supported in the original Development Application and are not proposed to be altered as a result of this modification application.

8. Issues Raised in Submissions

The subject modification application was notified to adjoining and surrounding properties including previous objectors. One (1) submission was received during the notification period. The issues raised in the submission are addressed in the table below:

ISSUE/OBJECTION	COMMENT	OUTCOME
The reduction in the number of affordable housing units requires a review of previous reports submitted with the original Development Application to confirm that the change will have no impact on the original conclusions in those reports.	Twenty one (21) or 47% of the 45 apartment units proposed and approved in the original Development Application were reduced to 20% or 9 dwellings via a modification application approved under delegated authority by Council staff on 19 July 2017. It was considered minor, being an amendment to a condition in the original development consent reducing the number of dwellings to be dedicated for purposes of affordable housing but not resulting in any other changes to the approved building and was still in keeping with the original approval. The previous modification was considered to be satisfactory having regard to the provisions of then Section 96(1A), now Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979. The reduction from 47% to 20% of gross floor area to be set aside for affordable rental housing was considered an appropriate outcome, which fulfils the aims and objectives of the SEPP and is in the public interest.	Issue addressed.
The development will have a negative impact on the local road network. The Traffic Report concludes the development is a low traffic generating use and will generate 45 AM trips per/hr	The number of units and number of cars remains the same as originally approved. The original traffic report submitted as part of the existing Development Consent is still relied upon and refers to 9 x AM trips (2 in; 7 out) and 7 x PM	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
and 45 PM trips per hour. This number represents a significant increase to the current peak trips and will result in congestion in the surrounding streets. The peak calculations do not take into account the impact on local traffic from the major traffic increase that will be generated by the development under construction at the corner of Windsor Road and Seven Hills Road. The reports should be revised to reflect this.	trips (6 in; 1 out) and not 45 x AM and PM trips per hour as quoted in the submission. The '45' figure quoted in the resident's submission was the total number of units which remains unaltered as a result of this modification application. The level of additional traffic to be generated by this development will have negligible impact on the nearby intersections and can be accommodated within the existing road network with minimal impact in terms of traffic flow efficiency and road safety considerations as concluded in the traffic report. Nevertheless, the proposed future road and intersection upgrades identified and sought by Council with respect to this precinct will help alleviate future traffic issues within the existing road network as a result of future development.	
Yattenden Crescent is unsuitable for traffic to be parked on both sides of the road. Most days the side of Yattenden where the development is to be constructed is generally filled with parked cars. When vehicles park on the opposite side only one car can fit through. With the increase in cars from both this development and the one at the end of Yattenden, it will mean parking on both sides will be used and this will create a number of serious risks. More parking spaces need to be included in the development to alleviate this problem.	The approved development was required under the SEPP to provide 42 off-street parking spaces and 52 spaces were proposed and approved in the original Development Application. The proposed modification provides 57 off-street parking spaces, which is 5 spaces more than the original scheme. The modification application should have a positive impact on on-street parking compared to the approved development.	Issue addressed. Condition 5 to be amended to reflect the number of off-street parking spaces as 57.
Due to the large scale nature of the development it will result in increased noise for the generally quiet area, both during and after construction. The acoustic report does not refer to location of machinery	Construction work is subject to Council's standard work hours as conditioned in the original Development Consent, i.e.: Monday to Saturday – 7am to 5pm. In addition, there are other conditions imposed in the original	Issue addressed.

ISSUE/OBJECTION	COMMENT	OUTCOME
or impact on neighbouring properties. The report should be revised to address these aspects.	consent requiring compliance with noise mitigation measures during construction such as noise from construction vehicles and rock breaking works including compliance with the acoustic report submitted with the original Development Application.	
The car park exhaust vent is located very close to the objector's property who is extremely concerned at the impact it will have on air quality. They are expecting a baby in October and the baby's bedroom is on the side of the property directly adjacent to the exhaust vent. It is requested that the vent be relocated away from their property.	There was no car park exhaust vent indicated on the original approved plans. The modification application now indicates a car park exhaust shaft on the north western corner of the building which the objector refers to. Such location of the car park exhaust shaft or vent will be subject to compliance with the Building Code of Australia. The applicant has advised in response to this concern that the location of this exhaust vent is within the BCA guidelines of 6m from a boundary. Council's Health and Environment Officer has reviewed this submission and conditions are recommended to mitigate this concern (refer Conditions 39A and 92).	Issue addressed. Conditions recommended – see Conditions 39A and 92.
There are multiple balconies positioned facing the objector's property which look directly into their backyard and bedrooms giving them minimal privacy. It is requested that if this design cannot be changed the balconies be provided with 2-metre frosted glass panels to protect their privacy.	The balcony orientations have not been altered from the original approved design. This issue was brought to the applicant's attention who indicated in their response that whilst the requested 2m frosted glass panels will not be provided, they will review the provision of additional screens to further minimise privacy issues.	Issue addressed. A condition is recommended to address the privacy concerns. See Condition 1.

SUBDIVISION ENGINEERING COMMENTS

No objection is raised to the proposed modification subject to modification of the relevant stormwater condition imposed in the original development consent.

TREE MANAGEMENT / LANDSCAPING COMMENTS

No objection is raised to the modification application subject to the relevant tree and landscaping conditions in the original development consent being modified to reflect the proposed changes and imposition of an additional condition in relation to tree protection.

HEALTH & ENVIRONMENTAL PROTECTION COMMENTS

No objection is raised to the modification application subject to conditions. It is recommended that Condition No. 18 in the original consent be removed as no recommendations have been made in the submitted updated acoustic report. An additional condition is recommended to be imposed in the modification which relates to the noise level from the car park exhaust system.

WASTE MANAGEMENT COMMENTS

No objection is raised to the modification application subject to the relevant waste management conditions being modified to reflect the proposed changes including a new condition in relation to waste educational signage

DISTRICT PLAN

The Central City District Plan contains 'Directions for Liveability' which include:

- Housing the City – Planning Priority C5 - Providing housing supply, choice and affordability with access to jobs, services and public transport; and
- A City of Great Places – Planning Priority C6 – Creating and renewing great places and local centres, and respecting the District's heritage.

The plan seeks to provide housing supply which is diverse and affordable and which meets the needs of residents and which bring people together. The plan seeks to provide housing in locations which are easily accessible by public transport to reduce commuting time. Housing should be located in places which are liveable, walkable and cycle friendly. Housing should also respond to the changing needs of residents and consider single person and aging households. Great places are defined as areas which have a unique combination of local people, built form and natural features which reflect shared community values and which attract residents, workers and visitors. Local centres act as a focal point for neighbourhoods and provide essential access to day to day goods and services.

Implementation and monitoring of the Plan and the potential indicators are as follows:

Direction 4: Housing the City: Providing ongoing housing supply and a range of housing types in the right locations will create more liveable neighbourhoods and support Greater Sydney's growing population. Housing affordability is also a challenge that can affect job and lifestyle choices.

Direction 5: A City of Great Places: The creation and renewal of great places for people, together with better local accessibility through walking and cycling, will achieve local liveability that attracts and retains residents and workers. Great places exhibit design excellence and start with a focus on open spaces and a people-friendly realm.

The proposed development meets the intent of the Plan as follows:

- The proposal will provide a range of units types which will assist in meeting housing demands;
- The site is within an accessible area serviced by existing public transport and is in close proximity to the Baulkham Hills Town Centre; and
- The proposed will result in an appropriate built form outcome which responds to the desired future modern character of the area;
-

The proposal is considered satisfactory in regard to the Central City District Plan.

CONCLUSION

The Section 4.55(2) modification application has been assessed against the provisions of Sections 4.15 and 4.55(2) of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy (Affordable Rental Housing) 2009 and The Hills Development Control Plan 2012 and is considered satisfactory.

One submission was received during the notification period and issues raised are addressed in the report and do not warrant refusal of the application.

The proposal is considered to be substantially the same as that previously approved by the previous Joint Regional Planning Panel. The Section 4.55(2) modification is supported and recommended for approval.

IMPACTS:

Financial

This matter has no direct financial impact upon Council's adopted budget or forward estimates.

The Hills Future - Community Strategic Plan

The social and environmental impacts have been identified and addressed in the report. The proposal satisfies the objectives of the LEP and DCP. It is considered satisfactory with regard to The Hills Future Community Strategic Plan.

RECOMMENDATION

The Section 4.55(2) Modification Application be approved subject to the following:

(A). That the following conditions under the heading “**GENERAL MATTERS**” be amended:

Condition 1 to be **amended** as follows:

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

The development being carried out in accordance with the approved plans and details submitted to Council, as amended in red, stamped and returned with this consent.

The amendments in red include: -

- *Install 1.8m high privacy screens to balconies on the West Elevation.*

REFERENCED PLANS AND DOCUMENTS

DRAWING NO.	DESCRIPTION	REVISION	DATE PRINTED
A-010-001	Site Plan	A	13/06/2018
A-100-001	Basement Level 2	C	20/08/2018
A-100-002	Basement Level 1	C	20/08/2018
A-100-003	Ground Level	B	20/07/2018
A-100-004	Level 1	A	13/06/2018
A-100-005	Level 2	A	13/06/2018
A-100-006	Level 3	A	13/06/2018
A-100-007	Level 4	A	13/06/2018
A-100-008	Roof Plan	A	13/06/2018
A-120-001	South Elevation	A	13/06/2018
A-120-002	North Elevation	A	13/06/2018
A-120-003	East Elevation	A	13/06/2018
A-120-004	West Elevation	A	13/06/2018
A-130-004	Section A-A	A	13/06/2018
A-130-002	Section B-B	A	13/06/2018

ISO248DA1	Sheet 1 of 3 – Landscape Plan	Rev	03/08/2018
ISO248DA2	Sheet 2 of 3 – Landscape Plan	Rev	03/08/2018
ISO248DA3	Sheet 3 of 3 – Landscape Plan	Rev	03/08/2018
A-0001	Photomontage	-	June 2018
A-0002	Material Sample	-	June 2018

No work (including excavation, land fill or earth reshaping) shall be undertaken prior to the issue of the Construction Certificate, where a Construction Certificate is required.”

Condition 5 to be **amended** as follows:

“5. Provision of Parking Spaces

The development is required to be provided with 57 off-street car parking spaces. These car parking spaces shall be available for off street parking at all times.”

Condition 6 to be **amended** as follows:

“6. Tree Removal

Approval is granted for the removal of eight (8) trees, as numbered 1, 2, 4, 5, 6, 7, 8 and 9 in the Arborist Report prepared by Stuart Pittendrigh dated July 2016.

All other trees are to remain and are to be protected during all works.”

Condition 18 to be **deleted**.

Condition 26 to be **amended** as follows:

“26. Construction of Garbage Room

The garbage room must be designed and constructed in accordance with the following requirements. Minimum storage facility is required for 5 x 1100 litre garbage bins and 8 x 660 litre recycling bins.

- 1. The layout of the room must ensure that each bin is easily accessible and manoeuvrable in and out of the room with minimal or no manual handling of other bins.*
- 2. The walls of the room must be constructed of brickwork.*
- 3. The floor of the room must be constructed of concrete with a smooth non-slip finish, graded and drained to sewer.*
- 4. The room must have a waste servicing door, with a minimum clear floor width of 1.5m. The door must be located to the end of the garbage room to allow the most direct access to the bins by collection contractors. Acceptable waste servicing doors are single or double swinging doors and roller doors.*
- 5. The room must have a suitable resident access door, which allows wheelchair access for adaptable sites. Suitable resident access doors are single or double swinging doors.*
- 6. All doors of the room, when fully opened, must be flush with the **outside wall** and must not block or obstruct the service bay or footway. All doors must be able to be fixed in position when fully opened.*
- 7. The room must be adequately ventilated (mechanically). Ventilated room should not be connected to the same ventilation system supplying air to the units.*
- 8. The room must be provided with a hose tap (hot and cold mixer), connected to a water supply, to facilitate bin washing. If the tap is located inside the room, it is not to conflict with the space designated for the placement of bins.*
- 9. The room must be provided with an internal automatic sensor light.*
- 10. The maximum grade acceptable for moving bins for collection purposes is 5%. Under no circumstance are these grades to be exceeded. They are to allow safe manoeuvring and servicing of the full bins by waste collection operators.*

11. The room must have appropriate signage (refer to condition: Provision of Signage for Waste Storage Areas), mounted in a visible location on an internal wall and is to be maintained by the Owners Corporation.
12. Finishes and colours of the room are to complement the design of the development.

Bin Measurements (mm)

660L: 850 (d) 1370 (w) 1250 (h) **1100L:** 1245 (d) 1370 (w) 1470 (h)”

Condition 27 to be **amended** as follows:

“27. Property Numbering for Integrated Housing, Multi Unit Housing, Commercial Developments and Industrial Developments

The responsibility for property numbering is vested solely in Council.

The approved property address is: - 41 Yattenden Crescent Baulkham Hills

Approved unit numbering is as per plans submitted marked as Drawing Number A-100-003 to A-100-007 dated 13/6/18. Unit numbering is as follows:

Level

<i>Ground</i>	<i>G01 –G10</i>
<i>First</i>	<i>101-110</i>
<i>Second</i>	<i>201-210</i>
<i>Third</i>	<i>301-310</i>
<i>Fourth</i>	<i>401-405</i>

These numbers, unless otherwise approved by Council in writing, are to be displayed clearly on all door entrances.

Clear and accurate external directional signage is to be erected on site at driveway entry points and on buildings. Unit numbering signage is also required on stairway access doors and lift/lobby entry doors. It is essential that all numbering signage throughout the complex is clear to assist emergency service providers locate a destination with ease and speed.”

Condition 29 to be **amended** as follows:

“29. Construction of Bulky Goods Room

The bulky goods room must be designed and constructed in accordance with the following requirements. The minimum floor area required is 4 cubic metres. 8 cubic metres is preferred.

1. *The walls of the room must be constructed of brickwork.*
2. *The floor of the room must be constructed of concrete with a smooth non-slip finish.*
3. *The room must have an access door, with a minimum clear floor width of 1.5m. Acceptable access doors are single or double swinging doors.*
4. *All doors of the room, when fully opened, must be flush with the **outside wall** and must not block or obstruct the service bay or footway. All doors must be able to be fixed in position when fully opened.*
5. *The room must be provided with an internal automatic sensor light.*
6. *The room must have appropriate signage (refer to condition: Provision of Signage for Waste Storage Areas) mounted in a visible location on an internal wall and is to be maintained by the Owners Corporation.*
7. *Finishes and colours of the room are to complement the design of the development.”*

(B). That the following conditions under the heading **“PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE”** be amended / added:

Condition 32 to be **amended** as follows:

"32. Onsite Stormwater Detention & Water Sensitive Urban Design Elements

Combined Onsite Stormwater Detention (OSD) system and Water Sensitive Urban Design Elements are required to be provided with the development.

The detailed design must be substantially in accordance with the Stormwater Concept Plans prepared by Loka Consulting Engineers Page Job Number 18NL084 Revision B Dated 26/07/2018.

i) Onsite Stormwater Detention System

The OSD must be in accordance with Council's adopted policy for the Upper Parramatta River catchment area, the Upper Parramatta River Catchment Trust OSD Handbook.

The above mentioned stormwater concept plans prepared by Loka Consulting Engineers is for development application purposes only and is not to be used for construction. The detailed design must reflect the approved concept plan and the following necessary changes:

- a) The OSD system must provide a total storage volume of 116.2m³.
- b) A minimum of 85% of the site area is required to drain to the OSD system.
- c) All grated surface inlet pits are required to have a minimum size of 450mm x 450mm.
- d) No filter media from the garden beds is to enter the OSD system through the grates located within the garden beds. The garden beds are to be designed in such a way to ensure that no filter media/ debris from the garden bed enter the OSD system.

Comprehensive design plans showing full construction details must be prepared by an accredited OSD designer and submitted with:

- A completed OSD Drainage Design Summary Sheet;
- Drainage calculations and details, including those for all weirs, overland flow paths and diversion (catch) drains, catchment areas, times of concentration and estimated peak run-off volumes;
- A completed OSD Detailed Design Checklist;
- A maintenance schedule.

The design and construction of the OSD system must be approved by either Council or an accredited certifier. This certification must be included with the documentation approved as part of any Construction Certificate.

A Design Compliance Certificate (DCC) certifying the detailed design of the OSD system can be issued by Council subject to the following being provided:

- i. A completed application form;
- ii. Four copies of the design plans and specifications;
- iii. Payment of the applicable application and inspection fees.

ii) Water Sensitive Urban Design Elements

The WSUD elements must be designed and constructed in accordance with best practice water sensitive urban design techniques and guidelines. Such guidelines include, but are not limited to, the following:

- Water Sensitive Urban Design – Technical Guidelines for Western Sydney, 2004, <http://www.wsud.org/tools-resources/index.html>
- Australian Runoff Quality – A Guide to Water Sensitive Urban Design, 2005, <http://www.ncwe.org.au/arq/>

The stormwater concept plan referred to earlier in this consent is for DA purposes only and is not to be used for construction. The detailed design must reflect the approved concept plan by Loka Consulting Engineers.

Detailed plans must be suitable for construction, and include detailed and representative longitudinal and cross sections of the proposed infrastructure.

The detailed design must be accompanied, informed and supported by detailed water quality and quantity modelling. All model parameters, data outputs and electronic copies are to be provided.

These elements must be designed and constructed in accordance with best practice water sensitive urban design techniques and guidelines. Such guidelines include, but are not limited to, the following:

- *Water Sensitive Urban Design – Technical Guidelines for Western Sydney, 2004, <http://www.wsud.org/tools-resources/index.html>*
- *Australian Runoff Quality – A Guide to Water Sensitive Urban Design, 2005, <http://www.ncwe.org.au/arq/>*

The design and construction of the OSD and WSUD system must be approved by either Council or an accredited certifier. This certification must be included with the documentation approved as part of any Construction Certificate.

Design Compliance Certificate (DCC) certifying the detailed design of the OSD system can be issued by Council subject to the following being provided:

- i. A completed application form;*
- ii. Four copies of the design plans and specifications;*
- iii. Payment of the applicable application and inspection fees.”*

New Condition 39A be **added** as follows:

“39A. Mechanical Exhaust

Prior to the issue of a construction certificate the mechanical exhaust system for the basement carpark is to be reviewed. The design / location of the system is to take into consideration the residential units within the development and neighbouring residential properties to ensure that they are not adversely impacted by odour / emissions. In addition the mechanical exhaust is to be fitted with sufficient control equipment to prevent the emission of offensive odours from the system.”

(C) That a new condition under the heading **“PRIOR TO WORK COMMENCING ON THE SITE”** be **added** as follows:

“57A. Trenching within Tree Protection Zone

Any trenching for installation of drainage, sewerage, irrigation or any other services shall not occur within the Tree Protection Zone of trees identified for retention without prior notification to Council (72 hours notice) or under supervision of a project arborist.

If supervision by a project arborist is selected, certification of supervision must be provided to the Certifying Authority within 14 days of completion of trenching works.

Root pruning should be avoided, however where necessary, all cuts shall be clean cuts made with sharp tools such as secateurs, pruners, handsaws, chainsaws or specialised root pruning equipment. Where possible, the roots to be pruned should be located and exposed using minimally destructive techniques such as hand-digging, compressed air or water-jetting, or non-destructive techniques. No roots larger than 40mm diameter to be cut without Arborist advice and supervision. All root pruning must be done in accordance with Section 9 of Australia Standard 4373-2007 Pruning of Amenity Trees.”

(D). That Condition 59 under the heading “**DURING CONSTRUCTION**” be amended as follows:

“59. Compliance with BASIX Certificate

Under clause 97A of the Environmental Planning and Assessment Regulation 2000, it is a condition of this Development Consent that all commitments listed in BASIX Certificate No. 932470M dated 14 June 2018 are to be complied with. Any subsequent version of this BASIX Certificate will supersede all previous versions of the certificate.

*A Section 4.55 Application **may** be required should the subsequent version of this BASIX Certificate necessitate design changes to the development. However, a Section 4.55 Application **will** be required for a BASIX Certificate with a new number.”*

(E). That the following conditions under the heading “**PRIOR TO ISSUE OF OCCUPATION AND/OR SUBDIVISION CERTIFICATE**” be amended / added:

Condition 71 to be **amended** as follows:

“71. Landscaping Prior to Issue of any Occupation Certificate

Landscaping of the site shall be carried out prior to issue of any Occupation Certificate (within each stage if applicable). The Landscaping shall be either certified to be in accordance with the approved plan by an Accredited Landscape Architect or be to the satisfaction of Council’s Manager Environment and Health. All landscaping is to be maintained at all times in accordance with THDCP Part C, Section 3 – Landscaping and the approved landscape plan.”

New Condition 88A to be **added** as follows

“88A. Provision of Signage for Waste Storage Areas

Prior to any Occupation Certificate being issued, 2 full sets of waste educational signage (English and Traditional Chinese) must be purchased and installed in visible locations on internal walls of all waste storage areas. The signage must meet the minimum specifications below and must be designed in accordance with Council’s approved artwork. Contact Council’s Resource Recovery Education Officer to obtain artwork designs.

- *Flat size: 330mm wide x 440mm high*
- *Finished size: 330mm wide x 440mm high. Round corners, portrait*
- *Material: Aluminium / polyethylene composite sheet 3.0mm, white (alupanel)*
- *Colours: Printed 4 colour process one side, UV ink*
- *Finishing: Over laminated gloss clear. Profile cut with radius corners and holes”*

(E). That the following new conditions be added under the heading “**THE USE OF THE SITE**”:

“91. Offensive Noise - Acoustic Report

The carpark exhaust system shall not give rise to “offensive noise” as defined under the provisions of the Protection of the Environment Operation Act 1997.

The car park exhaust system (when in operation) is not to be more than 5 dB above the background noise level when measured at the boundary of any adjoining premise or at the window or balcony of any unit within the site.”

“92. Mechanical Exhaust

The mechanical exhaust system is to be regularly maintained and serviced to prevent the emission of offensive odours, to protect the health and amenity of residents within and neighbouring the development.”

ATTACHMENTS

1. Locality Plan
2. Aerial Photograph
3. Zoning Map
4. LEP 2012 Building Height Map and Approved and Proposed Height Plane Diagrams
5. Approved & Proposed Site Plans
6. Approved & Proposed Basement Level 2 Plans
7. Approved & Proposed Basement Level 1 Plans
8. Approved & Proposed Ground Floor Plans
9. Approved & Proposed First Floor Plans
10. Approved & Proposed Second Floor Plans
11. Approved & Proposed Third Floor Plans
12. Approved & Proposed Fourth Floor Plans
13. Approved & Proposed South Elevations
14. Approved & Proposed North Elevations
15. Approved & Proposed East Elevations
16. Approved & Proposed West Elevations
17. Approved & Proposed Ground Level Landscape Plans
18. Approved & Proposed Level 4 Landscape Plans
19. Shadow Diagrams
20. Approved & Proposed Perspectives

<< Insert ALL attachments below the section break >>