

## SYDNEY CENTRAL CITY PLANNING PANEL – PPSSCC-33 – ADDENDUM REPORT

**TO:** Sydney Central City Planning Panel (SCCPP) – **Addendum Report**  
**SUBJECT:** 11 – 17 Joyner Street, Westmead (Lot 2, 3, 4, and 5 in DP 35287)  
**FILE No:** 2019/141/1

<b>Application lodged</b>	26 April 2019
<b>Applicant</b>	Mr Joshua Wehbe
<b>Owners</b>	NSW Land and Housing Corporation (LAHC)
<b>Application No.</b>	2019/141/1
<b>Description of Land</b>	11 – 17 Joyner Street, Westmead
<b>Proposed Development</b>	Demolition of existing structures, consolidation of four (4) allotments), and construction of a five (5) storey residential flat building under State Environmental Planning Policy (Affordable Rental Housing) 2009 comprising 46 units (including 12 Dual key units) over two (2) levels of basement parking for 57 vehicles and a car wash bay.
<b>Site Area</b>	2200.4m <sup>2</sup>
<b>Zoning</b>	R4 High Density Residential
<b>Disclosure of political donations and gifts</b>	Nil disclosure
<b>Heritage</b>	N/A
<b>Principal Development Standards</b>	<ul style="list-style-type: none"> <li>Floor Space Ratio – 1.2 :1 (HLEP 2013)</li> <li>Height of Buildings – 15m (HLEP 2013)</li> </ul>
<b>Issues</b>	<ul style="list-style-type: none"> <li>Updated BASIX Certificate</li> <li>Updated Clause 4.6</li> </ul>

### SUMMARY

- On 17 March 2020, Development Application DA-2019/141/1 was considered by the Sydney Central City Planning Panel (SCCPP) for *Demolition of existing structures, consolidation of four (4) allotments), and construction of a five (5) storey residential flat building under State Environmental Planning Policy (Affordable Rental Housing) 2009 comprising 46 units (including 12 Dual key units) over two (2) levels of basement parking for 57 vehicles and a car wash bay.* Subsequently, the SCCPP deferred the application (refer to Attachment 1) for the following reason:
  - Enable the Applicant to prepare an amended Basix Certificate that relates to the amended plans before the panel for determination;*
  - Enable the Applicant to prepare an amended clause 4.6 variation request to address the specific environmental planning considerations of the variation to the height control;*
  - Enable Council to prepare amended conditions of consent that respond to the Applicant's request for various amendments and to include corrections to unit numbering, timing for payment of contributions and the timing of the discharge of conditions; and*
  - Enable the applicant to confirm in writing that the draft conditions are acceptable*
- On 25 March 2020, the applicant submitted additional information to satisfy panel's deferral request. This addendum report provides an assessment of the additional information submitted in response to Panel's deferral items. In this regard please refer to Attachment 2 for an amended Basix Certificate and an amended 4.6 variation statement at Attachment 3 and also a letter from the applicant to confirm in writing that the draft conditions are acceptable at attachment 5.
- The proposal remains consistent with the aims and objectives of State Environmental Planning Policy (State and Regional Development) 2011, State Environmental Planning Policy (Affordable Rental Housing) 2009, Statement Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65), State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55), State Environmental Planning Policy (Infrastructure) 2007 (ISEPP), State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005, State Environmental Planning Policy

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(Vegetation in Non-Rural Areas) 2017, Holroyd Local Environmental Plan 2013, Holroyd Development Control Plan 2013.

4. The proposed development has been assessed against the relevant matters for consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979, including likely impacts, the suitability of the site for the development, and the public interest, and the proposed development is considered appropriate.
5. The application is recommended for approval subject to the amended conditions as provided in the draft determination (Attachment 5).

### REPORT

#### PLANNING COMMENTS IN RESPONSE TO PANEL'S DEFERRAL ITEMS

- a) ***Enable the Applicant to prepare an amended Basix Certificate that relates to the amended plans before the panel for determination;***

The applicant submitted an amended Basix Certificate.

#### Response:

The amended Basix Certificate is satisfactory.

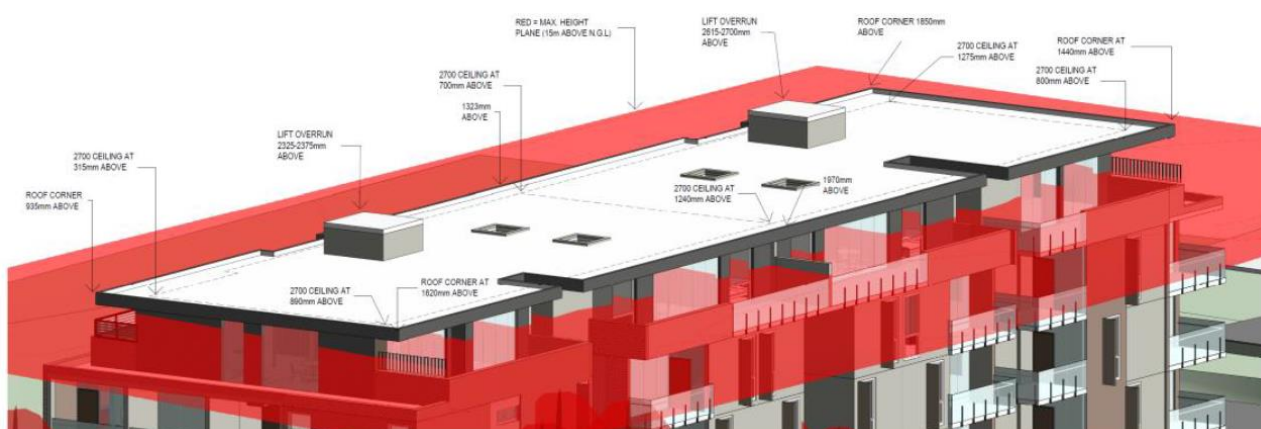
- b) ***Enable the Applicant to prepare an amended clause 4.6 variation request to address the specific environmental planning considerations of the variation to the height control;***

The applicant has submitted a revised clause 4.6 (refer to attachment 3).

#### Response:

The proposal seeks a variation to Clause 4.3 – Height of Buildings that stipulates that the height of building is not to exceed 15m on the subject site.

The proposed building has an overall height of 17.67m to the top of the lift core and 16.32m to the top of the upper level of residential units (i.e. habitable floor area) associated with the roof top. The proposal breaches the overall height by 2.67m representing a maximum variation of 17.8%. The majority of the height breach is associated with the roof of the building and the top of the lift core.



**Clause 4.6 – Variation to Building Height**

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Clause 4.6 allows the consent authority to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. The consent authority may grant the exception as the Secretary's concurrence can be assumed where clause 4.6 is adopted as per the Department of Planning Circular PS 18-003, dated 21 February 2018.

The proposal involves a non-compliance with the Height of Buildings standard. The proposal has a height of 17.67m where the maximum height permitted is 15m. This represents a 17.8% departure from the standard.

The applicant submitted a written request to vary the standard pursuant to clause 4.6 of the LEP, which adequately addresses the requirements of subclause 3. Based on various case laws established by the Land and Environment Court of NSW such as *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 and *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 and *Initial Action Pty Ltd v Woollahra Council*, a 3 part assessment framework for a variation request proposed under clause 4.6. The relevant provisions of clause 4.6 are considered in the following table.

4.6 Exceptions to development standards	Comment
(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.	The <i>height of buildings</i> development standard is not expressly excluded from the operation of clause 4.6 and accordingly, consent may be granted to the application despite the variation.
(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating: <ul style="list-style-type: none"> <li>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</li> <li>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</li> </ul>	<p>As stated above, the proposed development contravenes the height of buildings development standard. A written request to vary the standard was provided by the applicant, and this request seeks to justify the contravention.</p> <p>The applicant submits that strict compliance with the 15m height limit is unreasonable and unnecessary for the following reasons:</p> <ul style="list-style-type: none"> <li>(i) <i>Non-compliance is minor in nature with the majority of the building being compliant with the building height control and with the lift overruns recessed, their impact to the streetscape is negligible as it will be visually unnoticeable when viewed from the street level.</i></li> <li>(ii) <i>The variation is primarily as result of appropriately responding to the overland flow constraints of the site. Given the extent of development within the catchment, the extent of overland flow is likely to have been reduced through the provision of OSD within these developments. Notwithstanding this, a conservative engineering approach has been adopted, resulting in the building being raised to cater for overland flows. The resultant development is consistent with the 5 storey development envisioned for the precincts.</i></li> <li>(iii) <i>Due to the minor nature of the variation it will not have any adverse amenity impacts. In this</i></li> </ul>

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	<p>regard it is noted. The variation will be visually unnoticeable and will have no adverse impact on the physical bulk, height or scale of the development.</p> <ul style="list-style-type: none"> <li>- The variation will be visually unnoticeable and will have no adverse impact on the physical bulk, height or scale of the development.</li> <li>- The variation will not lead to a reduction in solar penetration on site or to adjoining properties nor will it lead to sunlight loss or overshadowing.</li> <li>- The proposed variation will not lead to view loss or interrupt views to and from the site.</li> <li>- The proposed variation will not lead to a reduction in privacy afforded to existing residents or future residents of the proposal.</li> </ul> <p>(iv) The proposal has been designed to ensure that privacy impacts are mitigated and that the proposal will not obstruct existing view corridors.</p> <p>(v) The proposed development will permit the site to develop to its full zoning potential whilst complementing the future vision envisioned for the site by providing an attractive mixed use building that provides good address to the street frontage and complying with other key planning controls applying to the proposal.</p> <p>(vi) The scale of the proposed development will be appropriate and will be visually consistent with the permitted building height with the upper level recessed and designed using a lighter design style to ensure a positive streetscape presentation.</p> <p>(vii) The scale of the proposed development will be appropriate and will be visually consistent with the permitted building height with the upper level recessed and designed using a lighter design style to ensure a positive streetscape presentation.</p> <p>(viii) Given the height control is based on a modelled building envelope that has regards to ADG setbacks, it is inevitable that 'something has to give' in order to give effect to the provisions in the ARHSEPP relating to bonus FSR. It is not that this is without merit limitation, it is of course, however, those are to be guided by the other provisions in (the SEPP) as well as looking at other general merit matters. The variation to the height control is consistent with the objective of the ARHSEPPs.</p> <p>(ix) The development proposes an FSR of 1.64:1 which is less than the maximum FSR of 1.7:1 permitted by the ARHSEPP. This assists with</p>
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	<p><i>demonstrating that the proposal is not an overdevelopment of the sites.</i></p> <p>(x) <i>The proposal is consistent with the Cumberland Interim Affordable Housing Policy as this development provides for affordable housing and accommodation for key workers in a highly accessible location which is consistent with Transit Oriented Development.</i></p> <p>(xi) <i>The proposal is not located within a low-density area and the proposal represents an appropriate built form on the site.</i></p> <p><u>Planners Comment:</u></p> <p>The objectives of the building height standard are to enable appropriate development density to be achieved and to ensure that the height of the building is compatible with the character of the locality as outlined above. The proposal is compliant (subject to conditions) with the maximum FSR of 1.64 inclusive of the bonus provision under the ARH SEPP.</p> <p>The departure sought is considered to be modest and does not unreasonably impact on adjoining properties. The additional height does not result in the appearance of bulk when viewed from the existing streetscape and would not impinge on the changing streetscape that is anticipated for the immediate area. Given that the proposed development responds to the site and does so without compromising relationships with adjoining development is acceptable and does not unduly compromise other relevant controls. The proposal is considered to be consistent with the objectives of height requirements and development within the R4 zone.</p> <p>It is also important to note that the height variation is largely to address the overland flow that the subject site is affected from.</p>
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<p>(4) Development consent must not be granted for development that contravenes a development standard unless:</p> <p>(a) the consent authority is satisfied that:</p> <ul style="list-style-type: none"> <li>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</li> <li>(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</li> </ul>	<p>The Panel can be satisfied that:</p> <ul style="list-style-type: none"> <li>• the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) as detailed above, and</li> <li>• the proposed development is in the public interest as it is consistent with the objectives of the height standard and the objectives of the R4 zone as detailed below:</li> </ul> <p>Objectives of the height standard are as follows:</p> <ul style="list-style-type: none"> <li>(a) <i>to minimise the visual impact of development and ensure sufficient solar access and privacy for neighbouring properties,</i></li> <li>(b) <i>to ensure development is consistent with the landform,</i></li> <li>(c) <i>to provide appropriate scales and intensities of development through height controls.</i></li> </ul> <p>The proposal satisfies the objectives of the height standard in that it has been located within the site to minimise its visual impact on neighbouring properties. There are no impacts on any neighbouring sites in terms of privacy or overshadowing.</p> <p>The intensity of the development is well below the maximum FSR permitted for the site.</p> <p>Objectives of the R4 zone are as follows:</p> <ul style="list-style-type: none"> <li>• <i>To provide for the housing needs of the community within a high density residential environment.</i></li> <li>• <i>To provide a variety of housing types within a high density residential environment,</i></li> <li>• <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></li> </ul> <p><u>Planners Comment:</u></p> <p>The proposal satisfies the objectives of the zone in that it provides facilities and services to meet the day to day needs of residents.</p> <p>The Panel can be satisfied that the proposal is in the public interest, as it satisfies the objectives of the standard, and the objectives of the R4 zone.</p>
<p>(b) the concurrence of the Secretary has been obtained.</p>	<p>The concurrence of the Secretary can be assumed in the present circumstances as the consent authority.</p>

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- c) ***Enable Council to prepare amended conditions of consent that respond to the Applicant's request for various amendments and to include corrections to unit numbering, timing for payment of contributions and the timing of the discharge of conditions; and***

Response:

The conditions of consent have been revised to address the above (see attachment 4).

- d) ***Enable the applicant to confirm in writing that the draft conditions are acceptable***

Response:

The applicant has confirmed in writing that the draft conditions are acceptable (see attachment 5).

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**CONCLUSION**

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The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*. The likely impacts of the development in the locality have been assessed and are considered satisfactory.

The proposal is consistent with the relevant requirements of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy No. 55 – Remediation of Land, Apartment Design Guide, Holroyd Local Environmental Plan 2013 and the Holroyd Development Control Plan 2013 and is considered to be satisfactory for approval subject to the draft conditions. The proposal involves a limited number of LEP and DCP non-compliances, which are considered satisfactory on merit as discussed in detail above.

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**RECOMMENDATION**

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1. That the Sydney Central City Planning Panel approve the variation to the Development Standard relating to building height as contained within Clause 4.3 of the Holroyd Local Environmental Plan 2013 as the applicant's Clause 4.6 objection has adequately addressed the matters required to be demonstrated by Clause 4.6 (3) and the development will be in the public interest because it is consistent with the objectives of the Height Standard and the objectives of the R4 – High Density Residential zone
2. That DA 2019/141/1 for demolition of existing structures, consolidation of four (4) allotments), and construction of a five (5) storey residential flat building under State Environmental Planning Policy (Affordable Rental Housing) 2009 comprising 46 units (including 12 Dual key units) over two (2) levels of basement parking for 57 vehicles and a car wash bay on land at 11-17 Joyner Street, Westmead be approved subject to the conditions provided in the draft determination.
3. Persons who have lodged a submission in respect to the application be notified of the determination of the application.

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**ATTACHMENTS**

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1. Record of Deferral
2. Revised Basix Certificate
3. Revised statement including revised Clause 4.6
4. Amended draft Conditions of consent
5. Letter from Applicant to confirm that the Draft Conditions are acceptable