



Proposed Modification to Consent
Section 4.55(2)
DA 17/0592

62 Bradley Street, Glenmore Park

July 2019

LIST OF APPENDICES		
Appendix	Title	Prepared By
1	Architectural Plans	DDC Architects
2	Traffic and Parking Statement	Transport and Urban Planning
3	Basix Assessment	Partners Energy

1. Introduction

1.1 Preamble and background

On 14 March 2018, consent was granted for development application DA17/ 0592 for “*Community Title Subdivision x 25 Residential Lots & 1 Community Lot & Construction of 20 x Two (2) Storey Terrace Dwellings, 1 x Three (3) Storey Terrace Dwelling, Access Road & Visitor Car Parking*”.

This application seeks to amend the internal designs of the twenty-one (21) terraces facing Bradley Street. The building footprints remain unchanged, except for very minor changes that create several ‘notches’ or recesses in the front façade to articulate the row. The amendments will rationalise the dwelling designs and also removes the studios from above several of the rear carports. Specific details of the proposed modifications are provided in the next section and on the plans.

Pursuant to Section 4.55(3), this report also considers relevant matters listed in Section 4.15(1) that are relevant to this application. In reviewing the approved plans and the impact of the change, the proposed modification will result in substantially the same development as that which was approved. This report demonstrates the legal precedent for this.

The proposed changes can be assessed pursuant to Section 4.55(2) of the Environmental Planning & Assessment Act 1979.

1.2 Context

The Site was originally part of Precinct F which was located at the eastern edge of the Glenmore Park Stage 2 release area. The original approval was represented by Stage 3 in the Precinct F Concept Plan - Bradley Heights.

Bradley Street forms the northern boundary of the Stage 3 area and Edgewater Drive bounds the western and south-western boundaries. Existing or approved residential development adjoins the site to the east and south east.

The slope of the site has been an issue throughout the overall project. The site falls from east to west and from north to south. The access complexities arising from attached housing is being improved as part of this modifications.

The overall site context remains the same however many nearby buildings are now constructed or being constructed.

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1.3 Site Description

The site is known as Lot 176 DP 1203990 or 62 Bradley Street, Glenmore Park. The site was a residue allotment in the original subdivision, being DA 13/1359. The site has an area of 7,284m².



Figure 1 – Aerial photo of the site (Source: SixMaps).

1.4 General Description of the proposed modifications

This application seeks to amend the design of north facing terrace dwellings. Specifically, the following changes are proposed:

- Rationalise the dwelling types down to two broad styles, within the same footprint.
- Remove the studios (“Fonzi” units) that were proposed above some of the rear carports.
- Redesign of the northern façade by creating three notches to assist in building separation and to rationalise the window placement.
- Redesign internal layouts within the approved building footprints.
- Reduce the approved dwelling on Lot 505 down to two storeys but create two dwellings within the existing approved building footprint (noted as Units 1a and 1b).
- A relocation of the carport for proposed new Lot 506 to provide vehicular access from the internal road and not Edgewater Drive. This will remove one driveway from Edgewater Drive.
- A reduction the width of the internal road to 6m and a rationalisation of levels to properly reflect the required levels throughout the site.

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The changes are noted on the attached plans. Overall there will be a small reduction in the total Floor Space Ratio for the site. There is no change to the building footprints other than the creation of separations to articulate the northern façade.

In terms of vehicular access, one less dwelling now takes direct access from Edgewater Drive. A minor reconfiguration of the access arrangements of the eastern dwellings, meaning the private access road is utilised more effectively. No driveway is moved closer to the roundabout intersection.

1.5 Detailed Description of the proposed modifications

Detailed descriptions and reasons for the modifications are provided by the architect and noted below:

Aesthetics and Building Form

- The proposed development has been redesigned with high quality finishes and materials, to meet current market expectations.
- The design of the building has been revised with the intention of providing a good transition between the existing two storey detached residential dwellings to the east and the existing multi-unit, multi-level residential units to the north west of the site.
- The proposed development has been redesigned to emphasise a defined middle and ends for the row of dwellings through variations in architectural detail, colours and roof forms.
- A pair of duplexes towards the centre and the duplexes on the eastern and western ends of the development has been differentiated through the use of architectural detail, colours and roof forms to give the development visual balance and to “bookend” the development visually within the street scape.
- The proposed townhouse units have been redesigned to incorporate more traditional roof forms than the previously approved building which were characterised by contemporary asymmetrical roof forms or varying pitch. A full review of market expectation and response to the DA approved roof forms indicated that more traditional roof forms were considered appropriate and desirable for this market and location.

Internal layout and design

- The plans of all units have been reviewed and redesigned to enhance liveability and to meet current market expectations.
- Six units (Units 16, 17, 18, 19, 20, 21) have been redesigned to include a full size bedroom to the ground floor with ensuite to enhance flexibility and liveability for less mobile owners by allowing for one-level living. Additional bedrooms and family spaces are located on the second floor.

1. Introduction

- The units in the approved DA had no bedrooms provided on the ground floor with all bedrooms located on the first floor level of all designs. 28% of units within the proposed modification include a full size bedroom to the ground floor with ensuite to enhance flexibility and to meet current market expectations.
- Of the 21 approved units, only 1 unit had a full sized laundry located on the ground floor, with the remaining 20 dwellings having a cupboard type laundry on the first floor.
- All units in the modified submission have been redesigned with a full sized laundry at ground floor level to enhance access to rear yard and terrace areas to encourage natural rather than mechanical drying and to meet current market expectations for town house style units.

Access from the Street and Site Levels

- The approved DA had 95% (20 Units) of the units with steps from the street whilst the proposed Sec 4.55 has only 60% (13 units) that require steps from the street.
- No stairs are required to the street for the following units: 1a, 1b, 2, 3, 4, 5, 6, 7, 9 (40% of units have no steps to street)
- 2 steps are required to the street for the following units: 8 (4% of units have 2 steps to street)
- 3 steps are required to the street for the following units: 10, 11 (10% of units have 3 steps to street)
- 4 steps are required to the street for the following units: 12, 13, 14, 15 (18% of units have 4 steps to street)
- 7 steps are required to the street for the following units: 16, 17, 18, 19 (18% of units have 7 steps to street)
- 8 steps are required to the street for the following units: 20, 21 (10% of units have 8 steps to street)
- No stairs are required to the street for the following units: 1 (5% of units have no steps to street)
- 2 steps are required to the street for the following units: 15, 17, 19, 21, (19% of units have 2 steps to street)
- 3 steps are required to the street for the following units: 3, 5, 7, 9, 11, 13 (29% of units have 2 steps to street)
- 4 steps are required to the street for the following units: 20 (5% of units have 3 steps to street)
- 5 steps are required to the street for the following units: 14, 18 (9% of units have 4 steps to street)
- 6 steps are required to the street for the following units: 2, 4, 6, 8, 10, 12, 16 (33% of units have 7 steps to street)
- Lift the ceiling heights on the carports for units: 6, 7, 12, 13, 18 and 19 to allow for larger vehicles. No increase in height is proposed as these were approved with the studios above.

2. Planning issues

2.1 Provisions of the Act & Regulations:

Section 4.55(2) of the Environmental Planning & Assessment Act 1979 states:

- (2) *Other modifications. A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*
 - (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all),*

Clause 115 of the Environmental Planning and Assessment Regulation 2000 establishes several requirements relevant to this application (not all clauses included below):

- (1) *An application for modification of a development consent under section 4.55(1), (1A) or (2) or 4.56 (1) of the Act must contain the following information:*
 - (d) *a description of the proposed modification to the development consent,*
 - (e) *a statement that indicates either:*
 - (i) *that the modification is merely intended to correct a minor error, misdescription or miscalculation, or*
 - (ii) *that the modification is intended to have some other effect, as specified in the statement,*
 - (f) *a description of the expected impacts of the modification,*
 - (g) *an undertaking to the effect that the development (as to be modified) will remain substantially the same as the development that was originally approved,*

The following legal background is provided to Council demonstrating that this application: (1) can be determined via a Section 4.55 modification. The following background supports the fact that this application is substantially the same development as approved can be determined via a Section 4.55 modification.

The Land & Environment Court consistently describes the Section 4.55 modification provision as “*beneficial and facultative*”. It is designed to assist the modification process rather than to act as an impediment to it. “*It is to be construed and applied in a way that is favourable to those who seek to benefit from the provision*” (see *North Sydney Council v Michael Standley & Associates Pty Limited [1998]*). The consent authority must, therefore, be very cautious in demanding that a full DA be lodged, as the modification power is there for a reason, namely, to avoid the full DA process that is always otherwise available.

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Further, the proposal does not “*radically transform*” the buildings on the site as set out in *Sydney City Council v Ilenace Pty Ltd [1984]*. This Court finding supports the broad use of Section 96 (now 4.55) with the use of such wording, leaving much scope for it to be used.

There are several Court cases where significant modifications were dealt with via Section 96 modifications because the Court ruled that they passed the “substantially the same” test. These cases are summarised below:

Case	Summary of changes to the buildings
<i>Bassett and Jones Architects Pty Limited v Waverley Council (No 2) [2005]</i>	One additional level from 3 storeys to 4 storeys, representing a 28% increase in total height and a 20% increase in floor area, where both exceeded the applicable council controls. This application was ultimately refused on the basis of privacy impacts, but it did pass the “substantially the same” test.
<i>Davi Developments Pty Ltd v Leichhardt Council [2007]</i>	Removal of one level, a total revision of unit mix from 42 dwellings to 30 dwellings and an “entirely different” basement design.
<i>Bathla Investments Pty Limited v Blacktown City Council [2008]</i>	Eight townhouses presenting as four, single-storey buildings, where some were attached. Application sought to change some of the townhouses to two storeys, separate the dwellings and made changes to the carport designs and parking layout. The Court noted that there were “ <i>numerous differences</i> ” between the schemes, however, the townhouse development presented as materially and essentially the same development.
<i>Marana Developments Pty Limited v Botany City Council [2011]</i>	The original approval was for the construction of five residential flat buildings (with basement car parking) comprising a total of 76 units. The modification application sought ‘significant changes to the external appearance and layout of the buildings’ including an increase in unit numbers from 76 up to 102, and an additional level of basement car parking. This also involved changing the unit mix. Despite significant internal changes, the minimal change to the external floorplates and layout was of great significance and the “substantially the same” test was satisfied.

In the decision of *Gann v Sutherland Shire Council [2008]* Justice Lloyd dealt with a Section 96 modification to increase the building’s bulk that would also breach the applicable development standards. In confirming that a SEPP 1 variation was not required, the Court however noted:

“This does not mean that development standards count for nothing. Section 96(3) still requires the consent authority to take into consideration the matters referred to in s 79C, which in turn include the provision of any environmental planning instrument. That is, any

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development standard in an environmental planning instrument must be taken into consideration by the consent authority, but the absolute prohibition against the carrying out of development otherwise than in accordance with the instrument in s 76A(1) does not apply.”

All relevant Court judgments say that Section 4.55 is a ‘free-standing provision’ with a broad power to approve, subject to its own stand-alone tests (such as the “substantially the same” test, and a requirement to consider all relevant Section 4.15 matters). While there are no proposed breaches of any development standard in this case, strict numerical compliance with a standard must not be enforced simply for the sake of compliance. Justice Lloyd’s decision does however, require proper consideration of the standard’s objectives and all ensuing impacts to ensure they are acceptable in the context. An application can only be refused on the basis that the *impact* is unacceptable or it compromises the objectives of the standard in some way.

Modifications can be determined under Section 4.55(1A) or (2). A modification pursuant Section 4.55(1A) is to be of “minor” impact. Minor is a subjective judgment however can be construed as meaning negligible or insignificant. The Court has determined that modifications have nothing to do with the extent of *changes* but rather, the extent of *impact*. In comparison, Section 4.55(2) is reserved for “*Other Modifications*” which, by inference, can have a greater level of impact beyond what is considered as “minimal”.

An examination of both plans indicate that this proposed modification will make only minor changes to the overall appearance. The proposed lot widths and sizes remain unchanged. The building footprint remains unchanged. The heights remain generally the same. The roof forms adopt a similar style but are rationalised. The level changes within the site are necessary for level access into the site. The removal of the studios from carports is imperceptible from the public domain. The modification to the approved dwelling on lot 505 to create two dwellings is within the same building footprint and reduces the height by one level. On this basis, this modification is lodged pursuant to Section 4.55(2), albeit, the overall impacts from the proposal are likely reduced.

2.2 Provisions of Relevant Environmental Planning Instruments – 4.15(1)(a)(i)

The proposed modification will result in no new assessment of the site pursuant to SEPP 55 – Remediation of Land. Existing conditions will apply.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies and new certificates have been issued.

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Sydney Region Environmental Plan No 20 (SREP 20) applies to the entire Hawkesbury-Nepean River catchment and sets out policy framework to protect the environmental significance of the catchment. The relevant Section in SREP 20 is Clause 6 which includes policies and strategies that must be considered when considering development proposals within the catchment. There are no changes to the building footprint, roadways or stormwater provisions that will impact any control within the SREP.

Relevant to this proposed modification are the provisions of the Penrith Local Environmental Plan (LEP) 2010. The site is zoned R1 General Residential and the modifications are permissible. The modified proposal remains compliant with height and floor space ratio requirements and all other LEP controls.

This site specific DCP is a requirement of Clause 6.3 under the LEP. Chapter E7 of the Penrith Development Control Plan (DCP) 2014 provides specific controls for the Glenmore Park Stage 2 release area.

The proposal also remains consistent with the Glenmore Park Masterplan and the Precinct F structure plan, yield, road hierarchy and pedestrian access.

The endorsed Concept Plan for Precinct F identified the Stage 3 area for medium density development in the form of apartments or terraces. The Concept Plan and associated report incorporated a range for each dwelling type to be achieved, providing flexibility in the delivery of dwelling typologies. This proposed modification remains consistent with the objectives of the Glenmore Park Stage 2 DCP as well as the dwelling and diversity targets.

The modified development remains consistent with the R1 zone objectives, as previously determined:

- To provide for the housing needs of the community;
- To provide for a variety of housing types and densities;
- To enable other land uses that provide facilities or services to meet the day to day needs of residents;
- To ensure that a high level of residential amenity is achieved and maintained; and
- To ensure that new development reflects the desired future character and dwelling densities of the area.

The modified proposal will support all these objectives. Indeed, the design changes are the result of more extensive market research into the desires of future residents of the homes. This supports the final objective.

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The modified proposal also accords with the objectives of Clause 7.16 Glenmore Park Stage 2 in that it does not change lot sizes or land use.

2.3 Provisions of Development Control Plans – s4.15(1)(a)(iii):

Chapter E7 of the Penrith Development Control Plan (DCP) 2014 provides specific controls. There are no significant changes to the design that will affect any compliance with the DCP.

- The angled roof formations and architectural variations still comply with the intention of the dwelling diversity and interesting streetscapes.
- There is no change that affects the corridors or has an impact on bushfire assessment.
- There is no change to stormwater.
- Minor changes to levels throughout the site are necessary for access and construction. They will have no significant impact on flood planning or levels.
- No change is required to any vegetation.
- Roof lines remain compliant with the Northern Road view shed.
- There is no variation to vehicle access into the site. There is a very minor reorganisation to the carport at Lot 506 to improve efficiency and visual quality.
- Landscaping concepts and front yard designs are generally consistent with the approval.
- The controls in 7.4.4.1 of the DCP provide for larger frontages for corner lots. The main corner lot is 9m wide which is 50% wider than all others. It has the 35m frontage of the curve and side street. The entries have been combined to ensure the corner form still appears as a larger single dwelling. The architectural design ensures the stand alone nature of the corner dwellings, meaning they appear as one large frontage.

2.4 Provisions of the Regulations – s4.15 (1)(a)(iv):

There are no provisions in the Regulations which are impacted by this proposed modification.

3. Impact assessment

3.1 Assessment of Likely Impact – s4.15 (1)(b):

Guidelines for assessing Section 4.55 modifications state that council must:

- consider the impacts of the original development as if they were occurring at the time the modification application is determined.
- compare the likely impacts of the proposed modified development, including the environmental, social and economic impacts, with the impacts of the original development.

Since the original approval, there have been no major changes to the natural or built environment that were envisaged around the site that warrant consideration as part of this proposed modification. Obviously, much of the envisaged development around the site is being constructed.



The proposed modification:

- does not involve any significant changes to the approved building footprint.
- does not involve any change to the road layout or subdivision layout, although it does delete one driveway.
- reduces the height of the three storey home which reduces shadowing impacts, although a taller form is retained to create a strong corner element.
- reduces the height of rear studios which reduces shadowing impacts.
- will not compromise the internal amenity of any site.

3. Impact assessment

- will not cause any significant increase in traffic flows around the site, and
- maintains existing private open space areas, except for the changes to the corner building.

Access, traffic and parking:

Minor changes. The approved plans had two driveways entering the site from Edgewater Drive (approved lots 505 and 506) and all others gaining access from the internal private road. This modification seeks to create two dwellings within the corner building form. The eastern-most dwelling will gain its access from the currently-approved driveway crossing onto Edgewater Drive. Given its proximity to the curve associated with the Bradley Street intersection, it is proposed to redesign the carports so that approved lot 506 now gains access from the internal private road, rather than Edgewater Drive. The second dwelling within the corner building has a car space located on the side of the internal road.

This proposed redesign of vehicular access around the entry to Edgewater Drive represents an improvement from the current approval. This will ensure no additional movements occur onto Edgewater Drive. The minor increase in traffic on the private internal road is negligible in the context and will not cause unacceptable burden on local traffic flows or intersections. This is confirmed by an attached letter (Appendix 2) from the traffic consultant. It states:

The proposed change to the vehicle access arrangements for Units 1a, 1b & 2 is an improvement from the approved development resulting in less potential conflicts from reversing movements into Edgewater Drive.

The proposal reduces the number of reversing movements into Edgewater Drive and therefore is an improvement on the approved development.

Minor increase in ceiling heights are proposed to several carports, that had studios removed from above. This allows for larger vehicles but still result in a lower roof height than what was approved.

A reduction the width of the internal road to 6m and a rationalisation of levels to properly reflect the required levels throughout the site. This has required modification to drainage details and levels. The design complies with relevant standards for the internal road and has been reviewed by the traffic engineer. Details will be provided with construction documentation.

Public domain:

There is no significant change to the public domain. The main change is the reduction in the corner dwelling from three storeys down to two. To assist with a strong corner element the floor to ceiling heights have been increased and a larger roof attic has been created to give the corner element some

3. Impact assessment

distinction. This has been achieved. The entries have been designed to make the corner building appear as a larger single dwelling.

Internal changes are also proposed to all dwellings to meet market demands and create more efficiency. This has little change to the external façade other than minor changes to window and door locations. The appearance is generally the same.

The studios above certain carports are also proposed to be deleted. This will create a single storey building form to the internal road. This change is acceptable and not readily visible from public spaces, except from the footpath directly adjacent to the internal road.

Economic impact, social impact, privacy:

The reasoning behind several changes are the result of market forces and a desire to improve the quality of the development for residents. The three storey home at the corner of the site (adjacent to the intersection) is significantly large and there is no market for such a large home at this location, particularly within a medium density area. The potential buyers for this home are buying homes in lower density locations. This is the driver to create two smaller dwellings within this corner building which are more affordable. The design has been generally retained as a large home to accord with the desire for larger frontages at the corner.

Internal modifications aim to create a design and finishes which better suits the design aesthetic of the area, which also improving amenity, liveability, open space, traffic function, environmental performance and affordability.

A similar economic driver existed for the studios above some of the rear carports. There is no market for such a product and it also blocks views of Surveyors Creek green corridor.

There is no change that will result in any new privacy issue.

Overshadowing:

With the reduction in some heights, overshadowing is improved. All shadows were internal in any case and there is no external impact in this respect.

Utilities; Other land resources; Water; Soils, Natural Environment etc.:

No impact. Minor changes to levels are proposed to rationalise levels and improve access gradients.

3.2 Suitability of the Site – s4.15 (1)(c):

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The suitability of the site has already been assessed. There is no proposed modification that renders the site to be unsuitable.

3.3 Variations to Conditions of Approval or Consent.

Condition 1 is to be amended to reflect the latest plan references and dates.

Change to, or deletion of, the references in Condition 8 in relation to finishes of the studios above the carports of lots 508, 509, 522 and 523.

A minor variation to the Section 7.12 developer contributions set out in Condition 66.

Note: If Council desires it can update the references to the new updated sections of the EPA Act 1979. This affects conditions 65, 66, 68.

4. Final Remarks

4.1 Required Statements

In accordance with Clause 115(1)(g) of the Regulation, the following statements are provided:

1. This Section 4.55(2) modification aims to.
 - To rationalise the dwelling types within the same footprint.
 - Remove the studios that were proposed above some of the rear carports.
 - Redesign of the northern façade by creating three notches to assist in building separation and to rationalise the window placement.
 - Redesign internal layouts.
 - Reduce the dwelling on Lot 505 down to two storeys but create two dwellings within the existing approved building footprint.
 - A relocation of the carport for proposed new Lot 506 to rationalise the access and remove one driveway onto Edgewater Drive.
 - A reduction the width of the internal road to 6m and a rationalisation of levels to properly reflect the required levels throughout the site.
2. This modification is substantially the same development that was originally approved.
3. This modification will have no unacceptable environmental impact on the site and its surrounds.

4.2 Concluding comments

A detailed examination of bulk, relative scale, internal amenity, streetscape, context and impact has already been completed. Council has found that these matters are acceptable.

This modification responds to the current market and minor changes reflect these socio-economic desires of future owners. It is an improvement on the previous design in terms of appearance, amenity, use of internal and external space, views, traffic and street scape.

There are no LEP non compliances. The proposal remains complaint with the DCP controls. The main operative control that is relevant was to create a strong corner building in the style of a large home. The design of the two dwellings has retained this larger, distinct form in line with this objective.

It is demonstrated that there are really no impacts that result from the modification. The application is well founded on this basis.



4. Final Remarks

Tim Stewart
Town Planner