

ITEM 12. DEVELOPMENT APPLICATION: 501, 509 BOTANY ROAD ZETLAND AND 511-515 BOTANY ROAD ZETLAND**FILE NO:** D/2014/1757**DEVELOPMENT APPLICATION NO:** D/2014/1757**SUMMARY**

Date of Submission: 13 November 2014

Applicant: Amended plans were received on 24 April 2015, 10 June 2015 and 16 June 2015

Architect: Lateral Estate

Developer: Lateral Estate

Owner: GMNT Properties Pty Ltd, Petao Pty Ltd and Korifi Pty Ltd

Cost of Works: \$36,455,218

Proposal Summary: On 27 March 2017 Council delegated authority to the Central Sydney Planning Committee (CSPC) to determine this application. The development itself is not a *major development* with a cost over \$50 million. However, the recommended resolution includes using a determination of the subject application to modify a previous related consent granted by the CSPC.

The proposed development comprises the demolition of existing structures and the construction of two mixed use buildings on Sites 10A, 10B and 11C within the Green Square Town Centre.

The proposal includes:

- Building A comprising a 10 storey mixed use building containing 69 apartments;
- Building B comprising a 8 storey mixed use building containing 54 apartments;
- a three-level basement below Buildings A and B containing 110 parking spaces, storage and basement connection to the adjoining site;
- construction of a portion of Hinchcliffe Street, embellishment and dedication of a 1.4m footpath widening along Botany Road and a pedestrian through-site link from Botany Road to Hinchcliffe Street;
- landscaping and public domain works; and
- subdivision of the site

**Proposal Summary:
(continued)**

The application was previously reported to the Planning and Development Committee on 4 August 2015 and Council on 10 August 2015.

The design of the development has not changed since August 2015. The application includes a request to vary the maximum building height standard under Clause 4.6 in Sydney LEP (Green Square Town Centre – Stage 2) 2013. The request to vary the height standard is supported as it relates to a lift overrun and structures for rooftop open space.

On 10 August 2015, Council supported the application and resolved to delegate authority to the Chief Executive Officer (CEO) to determine the application after the following events:

- (a) a draft amendment to the existing Voluntary Planning Agreement being publicly exhibited and any submissions considered.
- (b) the surrender of a portion of the consent already granted (D/2013/1947) in relation to an overlapping building (Building 11C).

Part (a) of the terms of the Council's delegation to the CEO has been satisfied. An amended VPA between the landowners and Council was negotiated, exhibited, executed and registered on 25 July 2016.

However, satisfaction of part (b) of the resolution to delegate authority to the CEO is not possible. A consent cannot be partially surrendered. As such, the pre-conditions to the delegation allowing the CEO to determine the application cannot be satisfied and a determination cannot be made in this manner.

The Applicant has requested that the current application be subject to a condition which modifies an earlier and related consent (D/2013/1947) by reference to amended plans which remove the 'overlapping' building, Building 11C, from that earlier consent. The Applicant's request seeks to utilise the powers of a consent authority to impose a condition of development consent that modifies a consent already granted.

D/2013/1947 was granted consent by the Central Sydney Planning Committee on 30 October 2014. The CSPC holds the power to amend a decision granted by it.

Authority has been delegated to the CSPC to determine the application subject to a condition which amends D/2013/1947.

Summary Recommendation: The development application is recommended for approval subject to a deferred commencement consent. The recommended deferred commencement conditions require a formal modification to D/2013/1947 to remove Building 11C from that consent before D/2014/1757 can become operational.

Development Controls:

- (i) State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development
- (ii) State Environmental Planning Policy No. 55 - Remediation of Land
- (iii) State Environmental Planning Policy (Infrastructure) 2007
- (iv) Sydney Local Environmental Plan (Green Square Town Centre Stage 2) 2013
- (v) Green Square Town Centre Development Control Plan 2012

Attachments:

- A - Recommended Conditions
- B - Assessment Report for the Planning and Development Committee - 4 August 2015
- C - Resolution of Council of 27 March 2017
- D - Selected DA Drawings

RECOMMENDATION

It is resolved that:

- (A) the variation sought to Clause 4.3 regarding the maximum height of a building in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan (Green Square Town Centre – Stage 2) 2013 be supported in this instance; and
- (B) pursuant to Sections 80A(1)(b) and 80(3) of the Environmental Planning and Assessment Act 1979, a deferred commencement consent be granted to Development Application No. D/2014/1757, subject to the conditions as detailed in **Attachment A** to the subject report. The deferred commencement conditions require a Notice of Modification to be lodged in relation to D/2013/1947 to remove Building 11C from that consent before D/2014/1757 can become operational.

BACKGROUND

The Site and Surrounding Development

1. Site visits were carried out in February 2015 and May 2016.
2. The site address is 501, 509 and 511-515 Botany Road, Zetland. The site is located on the eastern side of Botany Road between Bourke Street in the north and Hansard Street to the south. It has a primary frontage to Botany Road of 59m and a secondary rear frontage to the proposed Hinchcliffe Street.
3. The site has an area of 2,736m² and is generally flat in topography. It is currently occupied by a single storey industrial building used for vehicle repairs, servicing and refuelling. A large concrete apron at the Botany Road side of the site provides extensive open car parking. The southern portion of the site is an access driveway for a 'battleaxe' lot to the rear containing a large warehouse building.
4. The site is within the Green Square Town Centre (GSTC) redevelopment area (14 hectares) as part of the broader Green Square Urban Renewal Area (278 hectares).
5. The site is known within the GSTC planning controls as Development Sites 10A, 10B and 11C. The GSTC contains 19 Development Sites under various ownership and stages of redevelopment. Sites 10A, 10B and 11C are at the interface between future mixed use development along Botany Road and predominantly residential development to the south.
6. Surrounding development includes vacant sites to the north and east which have approval for mixed use and residential development as part of the GSTC redevelopment, light industrial uses to the immediate south and to the west and low density residential development within a heritage conservation area to the south-east.
7. Photos of the site and surrounds are provided below:



Figure 1: Aerial image of subject site and boundary of Green Square Town Centre



Figure 2: Site viewed from Botany Road looking east



Figure 3: Site viewed from Botany Road looking south



Figure 4: Adjoining site to the south at 517 Botany Road



Figure 5: View south to the rear of Hansard Street terraces along Tosh Lane

PROPOSAL

8. The proposal seeks consent for:
 - (a) demolition of existing structures, tree removal and excavation of basement levels;
 - (b) staged construction of two mixed use buildings containing 123 apartments and 440sqm of retail floorspace;
 - (c) landscaping of the site;
 - (d) land subdivision; and
 - (e) public domain works comprising the construction of a portion of a new road, footpath widening along Botany Road and a 9m wide through-site link for the needs of the future Green Square Town Centre.
9. The proposed buildings have a scale of 8 and 10 storeys. Building A is the northern 10 storey component with ground floor and mezzanine retail space, 69 apartments from ground to Level 9 and a rooftop terrace for communal open space. Building B is the southern 8 storey component with ground floor and mezzanine retail space and 54 apartments from ground to Level 7.
10. Basement car parking is proposed across 3 levels containing 110 parking space, bike parking and storage. The basement has provision for a 'break through panel' to the adjoining basement for the approved residential development to the east (D/2013/1947).
11. Plans of the proposed development are provided below. A full set of architectural plans are within **Attachment D**.



Figure 6: Site plan showing proposed Buildings A and B, through-site link and future public domain



Figure 7: Ground floor plan showing retail space along Botany Road and apartments behind

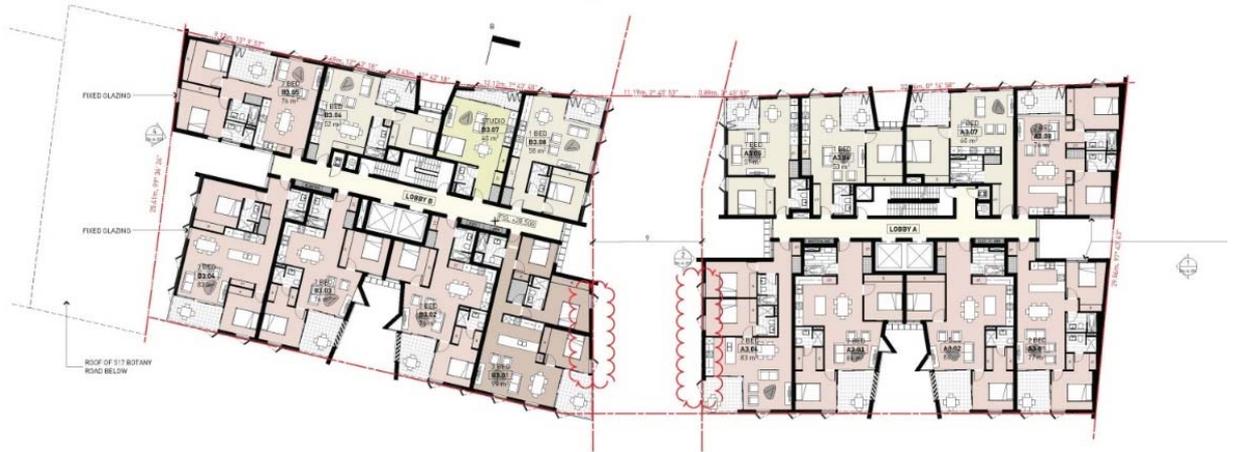


Figure 8: Typical residential floor plan

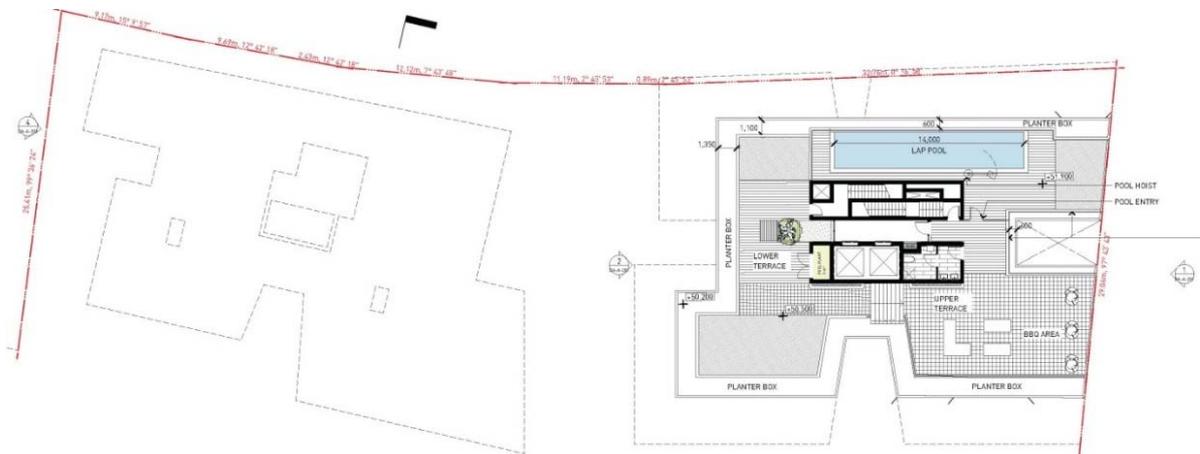


Figure 9: Roof plan of Building A



Figure 10: West elevation (to Botany Road)



Figure 11: East elevation (to Hinchcliffe Street)



Figure 12: Photomontage of development from Botany Road



Figure 12: Photomontage of development from Hinchcliffe Street

HISTORY RELEVANT TO THE DEVELOPMENT APPLICATION

Development Application D/2013/1947

12. On 30 October 2014, the CSPC granted development consent for the demolition of existing structures and the construction of three buildings on Sites 11A, 11B and 11C within the Green Square Town Centre. The approval relates to construction of basement car parking, 308 apartments and public domain works. That consent remains current; however, construction has not commenced at this stage.
13. Figure 13 below identifies the land to which D/2013/1947 relates showing the overlapping land at Site 11C. The Applicant had intended for the subject DA to supersede the consent granted for Site 11C under D/2013/1947.



Figure 13: Site plan showing Development Sites and current DAs

Council Resolution of 10 August 2015

14. On 10 August 2015, Council resolved to delegate authority to the Chief Executive Officer to determine the subject DA after an amended VPA was exhibited and after an earlier, related, consent being partially surrendered to remove the overlapping Building 11C on Site 11C.
15. An administrative issue arises within the resolution. A consent cannot be partially surrendered in the manner set out within the resolution. As such, the second precondition of the Council's resolution cannot be satisfied and the CEO's delegation to determine the DA is not enlivened under the current resolution.
16. A procedural remedy is available through a determination of the subject application, by the CSPC, which imposes a deferred commencement condition requiring the modification of the earlier consent granted by the CSPC to remove Building 11C.

Council Resolution of 27 March 2017

17. On 27 March 2017, authority was delegated by the Council to the CSPC to determine this application. This authority enables the CSPC to determine the application subject to a deferred commencement condition which modifies D/2013/1947.

Assessment of the DA

18. The Planning and Development Committee and Council considered the merits of the proposal and supported the development when providing a resolution to delegate the determination of the application to the CEO in August 2015. A copy of the Assessment Report for the August 2015 meetings is contained at **Attachment B**.

19. The recommendation within this report seeks a fresh determination of the application. The application has been assessed under Section 79C of the Environmental Planning and Assessment Act 1979 within the report in **Attachment B**. The assessment of the compliance of the proposal with environmental planning instruments and development control plans is unaltered since this time.
20. In November 2016 amended plans for Sites 11A, 11B and 11C in relation to D/2013/1947 were lodged. The amended plans seeks to delete Building 11C from that consent due to the overlap of Building B in the subject application. It is recommended within this report that a deferred commencement consent be granted which requires a Notice of Modification to D/2013/1947 with reference to the amended plans that remove the overlapping building.

Voluntary Planning Agreement

21. Since August 2015, a Deed of Amendment to a Voluntary Planning Agreement was exhibited, executed and registered on 25 July 2016. The amended VPA removed the creation of a temporary vehicle access from Botany Road to and through the site and established staging protocols for permanent basement access from the internal Town Centre road network. The amended VPA secured the following public benefits in relation to the proposal:
 - (a) dedication of land for new public domain, comprising a portion of a new street, footpath widening and a through-site link;
 - (b) works in kind for the construction of the abovementioned public domain;
 - (c) payment of a monetary contribution towards essential infrastructure within the Green Square Town Centre; and
 - (d) the design and construction of all buildings so that they are capable of connection to Council's green infrastructure within the Green Square Town Centre.

ECONOMIC/SOCIAL/ENVIRONMENTAL IMPACTS

22. The application has been assessed under Section 79C of the Environmental Planning and Assessment Act 1979 within the report in **Attachment B**. The assessment of the compliance of the proposal with environmental planning instruments and development control plans is unaltered since this time.
23. It is noted that amendments to State Environmental Planning Policy No. 65 (SEPP 65) were published on 19 June 2015. The amendments to SEPP 65, including the introduction of the Apartment Design Guide in replacement of the Residential Flat Design Code came into force on 17 July 2015.
24. Clause 31 of SEPP 65 contains a transitional provision that a development application made but not finally determined before the making of the abovementioned SEPP 65 amendment is to be determined as if the amendment had not commenced. As such, the assessment of the application against SEPP 65 and the Residential Flat Design Code within the report in **Attachment B** remains current.

ISSUES

Height, Bulk, Scale, Parking, Access and Safety

25. As the proposal remains the same as the development reported to the Planning and Development Committee on 4 August 2015, the assessment of issues surrounding the height, bulk, scale, parking, access and safety issues associated with the development remains valid. Paragraphs 66 to 83 of the report in **Attachment B** remain an assessment of these matters.

Other Impacts of the Development

26. It is considered that the proposal will have no significant detrimental effect relating to environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

Suitability of the site for the Development

27. The proposal is of a nature in keeping with the overall function of the Green Square Town Centre locality and site. The site is within a mixed use emerging neighbourhood and amongst similar uses to that proposed.

INTERNAL REFERRALS

28. The conditions of other sections of Council have been included in the proposed conditions in Attachment A.
29. The application was discussed with the Heritage and Urban Design Specialists; Building Services Unit; Environmental Health; Public Domain; Safe City; Surveyors; Transport and Access; Tree Management; Waste Management; who advised that the proposal is acceptable subject to the recommended conditions.

EXTERNAL REFERRALS

Notification, Advertising and Delegation (Submissions Received)

30. The application constitutes integrated development and was notified and exhibited for 30 days between 26 November 2014 and 5 January 2015 in accordance with the Environmental Planning and Assessment Regulations 2000. Two submissions were received in objection to the application. The grounds of objection were summarised in Paragraph 94 of the report in **Attachment B**, and a response to the matters raised was provided.

PUBLIC INTEREST

31. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

FINANCIAL IMPLICATIONS

S94 AND AFFORDABLE HOUSING CONTRIBUTIONS

32. The development is subject of a S94 contribution under the provisions of the City of Sydney Section 94 Development Contributions Plan 2006.

33. The following monetary contribution is required towards the cost of public amenities. These are updated amounts to account for inflation compared to the contributions calculated in 2015 referred to in the Assessment Report in Attachment B.
- | | |
|--------------------------|----------------|
| (a) Community Facilities | \$369,633.72 |
| (b) Public Domain | \$204,720.68 |
| (c) New Open Space | \$1,595,144.11 |
| (d) New Roads | \$405,121.95 |
| (e) Accessibility | \$16,803.69 |
| (f) Management | \$18,168.56 |
| Total | \$2,609,592.71 |
34. The development is also subject to an affordable housing levy of \$2,191,985.
35. The recommended conditions in Attachment A include a condition requiring Section 94 contributions and payment of the affordable housing levy.

RELEVANT LEGISLATION

36. The Environmental Planning and Assessment Act 1979.

CONCLUSION

37. The proposal seeks consent for the demolition of existing structures and the staged construction of a mixed use development comprising two buildings of a scale of 8 and 10 storeys containing basement car parking and 123 apartments.
38. The proposal was reported to the Planning and Development Committee on 15 August 2015 and Council on 10 August 2015. Council resolved to delegate authority to the Chief Executive Officer to determine the DA after an amended VPA was exhibited and an earlier consent being partially surrendered to remove an overlapping building on the same land.
39. An administrative issue within the resolution arises. A consent cannot be partially surrendered in the manner set out, therefore the resolution cannot be satisfied.
40. Council resolved on 27 March 2017 to delegate authority to the CSPC to determine this application to enable the subject DA to include conditions which modify the DA which overlaps.
41. The assessment of the application finds that the proposal is generally compliant with the Green Square Local Environmental Plan and Development Control Plan. A proposed variation to the Green Square LEP in relation to a lift overrun and open space structure which protrude above the height of building development standard is supported.

42. The proposed development is the product of a competitive design process and further design development that adopts a suitable form, scale and architectural response to the site. The proposal will result in a built form that is suitable to the site and that minimises impacts on the amenity of the site and surrounding properties.
43. It is recommended that a deferred commencement consent be granted to the application subject to the conditions set out in **Attachment A** to this report. The deferred commencement conditions require a Notice of Modification to be lodged in relation to D/2013/1947 to remove Building 11C from that consent before D/2014/1757 can become operational.

GRAHAM JAHN, AM

Director City Planning, Development and Transport

(Russell Hand, Senior Planner)