

7 June 2018

**Independent Planning Commission NSW Determination Report
Section 75W modification requests to Former Rachel Forster Hospital, Redfern
(MP 07_0029 MOD 1 and MP 09_0068 MOD 1)**

1. INTRODUCTION

On 26 March 2018, the Independent Planning Commission received from the Department of Planning and Environment two modification requests from Kaymet Corporation (the proponent) in relation to the Concept Plan and Project Approval for the redevelopment of the Rachel Forster Hospital, Redfern. The two modification requests (i.e. one for the Concept Plan and one for the Project Approval) relate to the same proposal to introduce affordable rental housing within the re-development by increasing the height of two of the four buildings on site and increasing the overall density of the development.

The Department referred the modification requests to the Commission concurrently for determination under the Minister for Planning's delegation dated 14 September 2011 because the Department received an objection from the relevant local council and more than 25 submissions from the public in the nature of objections.

Prof. Mary O'Kane, Chair of the Commission, nominated John Hann (chair), Prof. Helen Lochhead, and Soo-Tee Cheong to constitute the Commission to determine the modification request.

1.1 Summary of modification requests

The modification requests propose to:

- modify the Concept Plan to increase the height of Buildings B and C from four to six-storeys, increase the maximum floor space ratio (FSR) from 2.0:1 to 2.252:1, and permit neighbourhood shop uses on the site; and
- modify the Project Approval to increase the height of Building B and C reconfigure the internal layouts and external facades of Buildings A, B, C and D, increase the number of apartments from 158 to 213, increase the number of parking spaces from 138 to 160, introduce 3,993m² of affordable rental housing floor space, and provide two neighbourhood shops on the ground floor of Buildings A and D fronting Pitt Street.

1.2 Need for Modification

The Department reported the proponent's motivation for the modification requests result from legislative, policy and demographic changes that support the introduction of affordable rental housing at a higher density and non-residential uses on the site, and that a more efficient layout could be achieved with revised apartment configurations.

The Department's assessment report considered that the modification request is strategically well justified noting it is consistent with the aims and objectives of State, regional and local planning policies and strategies. The Commission notes that *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPPARH) does not apply to the project because there are mapped heritage items on the site under *State Environmental Planning Policy (State Significant Precincts) 2005* (SEPPSSP).

1.3 Section 75W modification

On 1 March 2018, the *Environmental Planning and Assessment Act 1979* (EP&A Act) was amended. The Concept Plan and Project Approval are transitional Part 3A projects under Schedule 2 of the *Environmental Planning and Assessment Act (Savings, Transitional and Other Provisions) Regulation 2017*. The Commission's power to modify transitional Part 3A projects (as the Minister's delegate) is under section 75W of the EP&A Act as in force immediately before its repeal on 1 October 2011. The ability to modify transitional Part 3A projects under section 75W of the EP&A Act is being discontinued, however as the request for this modification was made before 1 March 2018, the provisions of Schedule 2 continue to apply.

1.4 Background

The site is located on the corner of Pitt and Albert Streets, Redfern. From 1937, the Former Rachel Forster Hospital Site was a place where a wide range of medical and social services were provided to women and children and, from 1967, to include men. The Rachel Forster Hospital was officially closed in 2000 and is identified as a State significant site under SEPPSSP. Buildings A and C are indicated on the Heritage Map accompanying SEPPSSP.

The heritage report accompanying the original Concept Plan, prepared by Weir and Phillips, dated February 2007, included a statement of significance explaining the former hospital had, among other things:

- historic significance for its association with women pioneers of twentieth century medicine;
- social significance for the former staff, patient and volunteers;
- aesthetic significance as a fine example of modernist hospital design; and
- landmark qualities because of its community associations and the size of the buildings relative to surrounding terrace housing.

On 9 October 2007, the then Minister for Planning approved the Concept Plan (MP 07_0029) to redevelop the site for a mix of residential and public open space uses. Key aspects of the Concept Approval included:

- 13,846m² gross floor area (equating to an FSR of 2:1);
- maximum building heights (from 3 to 6/7 storeys) and envelopes for each of the four residential development blocks (now known as Buildings A, B, C and D);
- retention and adaptive reuse of the existing heritage building and colonnade on the site; and
- public domain and landscape concept, including communal open space, public open space and pedestrian connections.

On 1 July 2013, the then Planning Assessment Commission granted Project Approval for:

- demolition of Buildings B, C and D and tree removal;
- adaptive reuse of the former surgery building (Building A) for residential housing and construction of three residential buildings comprising a total of 158 residential apartments;
- two levels of basement car parking for 138 car spaces;
- provision of publicly accessible communal open space; and
- strata subdivision.

2. THE DEPARTMENT'S ASSESSMENT REPORT

The Department reported that it received six agency submissions, including City of Sydney Council, the Heritage Division and the Regional Operations Group of the Office of Environment and Heritage, Sydney Water, Roads and Maritime Services and Transport for NSW. Conditions of approval recommended by the Office of Environment and Heritage and Roads and Maritime Services were addressed in the Department's recommended conditions.

The Department also reported it had received a total of 41 public submissions. The Department summarised the key issues in the public submissions in table 3 of its report, reproduced below.

Table 3: Summary of key issues raised in public submissions to the modification requests

Issue	Proportion of submissions
Incompatibility with the scale of the surrounding built form	59%
Solar access and overshadowing	44%
Adverse increase in density	32%
Impact on heritage buildings	27%
Affordable housing should be within approved GFA	29%
Visual privacy impacts	37%
Acoustic privacy impacts	32%
Traffic impacts	51%
Impact on on-street parking availability	27%
Oppose non-residential uses	34%
Alleged unlawful demolition of colonnade and tree removal	24%
Delays in developing the site	24%

The Department's assessment report identified density, built form, introduction of neighbourhood shops, heritage and archaeology, design excellence, residential amenity and traffic, parking and travel demand as the key impacts associated with this proposal. The report concluded that, taking into consideration all submissions and the proponent's response to submissions, the Department was satisfied that the impacts have been addressed by the proposal and through the recommended conditions.

3. THE COMMISSION'S MEETINGS AND SITE VISIT

As part of its proposal assessment, the Commission met with the Department, the proponent and the City of Sydney Council (Council). Notes of these meetings are available on the Commission's website. The Commission also held a public meeting on 24 April 2018. A transcript of the public meeting is available on the Commission's website.

3.1 Briefing from the Department

On 24 April 2018, the Department briefed the Commission on the history of the proposal and the Department's assessment of the project. The briefing included a summary of the key issues important to the Department's recommendation including the additional storeys proposed, the affordable housing, heritage, consistency with the *Apartment Design Guideline*, traffic and parking.

3.2 Briefings from Council

On 24 April 2018, the Commission met with Council to discuss its objection to the proposed modification. Council raised three main areas of objection to the modification as being amenity, design excellence, that SEPPARH did not apply to the site (because of its heritage listing) and that a floor space bonus ought not be granted on the basis that the modification proposal includes affordable rental housing.

3.3 Briefing from the Proponent and Site Visit

On 24 April 2018, the Commission met with the proponent and visited the site. The proponent provided the Commission with a brief history of the proposal, a detailed account of design improvements from the original Project Approval and how the modification addresses the requirements of the *Apartment Design Guideline*. The Commission subsequently visited the site and observed the existing Building A, the excavation works currently being undertaken and viewed the site from view corridors along Pitt Street and Albert Street.

3.5 Public Meeting

To hear the community's views on the proposal, the Commission held a public meeting at Club Redfern on 24 April 2018. No speakers registered for the public meeting, however the chair allowed three speakers the opportunity to address the Commission. In summary, the main issues of concern include noise and privacy issues with the rooftop terrace, demolition and construction impacts, certainty of the affordable housing, conservation of the site's heritage values and finalisation of the site as it has been under construction for many years.

4. ADDITIONAL INFORMATION

On 27 April 2018, the Commission sought additional information from the Department, requesting the preparation of photomontages of both approved and proposed buildings to assist with its evaluation of the modification proposal. This information was provided on 4 May 2018 and is available to download from the Commission website.

5. THE COMMISSION'S CONSIDERATION

In this determination, the Commission has carefully considered:

- all information provided by the proponent, including additional information;
- oral submissions and written comments at the public meeting;
- the Department's assessment report;
- Council submissions;
- advice and recommendations from government agencies;
- the public interest;
- matters for consideration specified by the EP&A Act, including Section 75W and the matters it requires the Commission to consider; and
- environmental planning instruments, including:
 - *State Environmental Planning Policy (State Significant Precincts) 2005* (SEPPSSP);
 - *State Environmental Planning Policy (Affordable Rental Housing) 2011* (SEPPARH);
 - *State Environmental Planning Policy No 65 (Design Quality of Residential Apartment Development)* (SEPP65) and the *Apartment Design Guideline* it refers to; and
 - *Sydney Local Environmental Plan 2012* (SLEP 2012).

Though referred to the Commission as two separate modification requests (i.e. modifications to both the Concept Plan and the Project Approval), the particular modifications proposed are common to both requests and the key issues can be considered concurrently. The key issues considered by the Commission stem from the additional building height and gross floor area and include heritage and local character impacts, density and the social aspects of affordable rental housing, and residential amenity (for the proposed apartments and dwellings on adjoining lots).

5.1 Heritage and local character

The five-storey former surgery building (Building A) and two-storey former administration block (Building C) are mapped on the Heritage Map in SEPPSSP. Building C featured a two-storey colonnade running along the entire eastern elevation of the former administration block, although it has now been demolished and is proposed to be reinstated in this modification proposal.

The Conservation Management Plan for the site indicates the site's heritage significance is historic, social and associative although not dependent on preserving the existing layout and fabric of the site in its entirety. However, the plan does recognise historically significant viewpoints of both Buildings A and C, and the aesthetically significant colonnade in front of Building C.

The surrounding area is a heritage conservation area under SLEP 2012, and there is a local heritage item immediately to the north at 130-132 Pitt Street. The area is recognised as an early Victorian subdivision representing a diversity of building types dating from the period of 1840-1890. The site was not identified within the heritage conservation area under the SLEP 2012 as the land was a 'deferred matter', mapped within the SEPPSSP, and the subject of a transitional Part 3A approval under Schedule 2 of the *Environmental Planning and Assessment (Savings, Transitional and Other Provisions) Regulation 2017*.

The site is subject to a split maximum building height of six and three storeys under SEPPSSP.

The proposed modification includes,

- two components relating to buildings A and C, which are:
 - revision of the northern and eastern elevations of building A;
 - the additional floors proposed for and revisions to the elevations of Building C; and
- reconstruction of the colonnade on the eastern elevation of Building C.

The existing colonnade had been demolished in contravention of the conditions of the Concept Approval and Project Approval and is proposed to be reinstated in this modification proposal.

Prominently featured in submissions to the Department was the potential impacts of the additional two storeys for Building C. The submissions said that no other developments in the area go beyond three-storeys and the modified development would be out of character with the local heritage conservation values of the area. Council's submission raised concern for the visual relationship of Building C with Building A, saying the height and façade treatment of the former now competed for dominance with the later, to the detriment of heritage values of the site. The Department also mentioned in its report that reinstatement of the colonnade was limited to the eastern elevation of Building C and it was not proposed to connect to Buildings A and D as it originally had.

The Department concluded that the additional height was consistent with the surrounding area because there are other apartment buildings ranging from two to six-storeys. The Department was also satisfied that the height of Building C would be mitigated by the upper levels being stepped back, the 24-metre setback from Pitt Street, and that the retained mature trees will partly obscure its visual prominence.

The Department found that even with the increase in height, Building C maintains an appropriate scale relationship with Building A and the upper level setbacks maintain an appropriate visual separation between Building C and Building A. The Department said that the design solution proposed by the proponent, which includes the incorporation of horizontally proportioned balcony structures to reference the architecture of the former surgery building, is consistent with the Conservation Management Plan as it enabled the interpretation of the former Rachel Forster Hospital from important view corridors.

As an additional measure, the Department recommended a condition requiring the northern and eastern elevations of level 5 incorporate architectural and window treatment agreed to by the nominated Conservation Architect for the project.

The Department also said the reinstatement of the colonnade to connect Building A and Building D was:

"... entirely critical to the interpretation of the former administration block in this location and appreciation of the historic significance of the former Rachel Forster Hospital."

The Department recommended a condition to achieve this.

The Heritage Council suggested that a condition should be included to ensure the colonnade is reinstated in accordance with the proponent's specifications, prepared by Weir Phillips, November 2016. This is covered by the conditions recommended by the Department.

The Commission requested further photomontages to help determine the impact of the additional storeys on Building C on the visual prominence of Building A from important view corridors. In the Commission's view, these photomontages show that from the important view points along Pitt Street, the visual impacts of the additional floors would not detract from the dominance of Building A in an unacceptable way.

The Commission finds that the proposed design of the northern and eastern elevation of Building A, with the inclusion of the Department's suggested conditions, would maintain an architectural design that does not significantly impact on the heritage values of the site. The Commission also notes that the additional storeys on Building C comply with the maximum permitted number of storeys for the site specified in the Building Height map in SEPPSSP.

However, the Commission considers that the architectural treatment of the floors above the colonnade on Building C can be improved. The Commission finds the treatment must be carefully re-considered to reinforce the dominance of the colonnade as a feature of Building C. While the upper level setbacks along the southern and eastern elevations are partially an adequate design response to the colonnade, the Commission has included a condition requiring a recessive architectural treatment for these levels.

The Commission reviewed the Department's recommended condition extending the colonnade to Buildings A and D. The connection of the colonnade has the potential to create flow on design and amenity impacts for the lower storeys of Building A and D. The Commission considers this design challenge would be technically difficult to overcome. The Commission also notes the walkway between Building A and Building C would be impeded by the placement of the columns' supporting structures in the pathway. The Commission is of the view that significant historical significance would not be lost if the colonnade did not 'bridge the gap' between buildings A and D, and does not find in the Heritage Council's submissions any imperative to do so. Therefore, the Commission finds that the requirement to connect the colonnade from Building A to Building D is not necessary and it has removed the Department's recommended condition on this matter from its determination.

Finally, the Commission has included a condition that requires revision of the eastern and northern elevations of Building D to reflect the scale and character of Pitt and Albert Streets. The facade design should be more varied in terms of building massing, fenestration, materials and detailing.

5.2 Density and affordable rental housing

The modification proposal includes additional gross floor area, increasing the overall amount from 13,846m² to 15,592m², which increases the floor space ratio (FSR) from 2:1 to 2.252:1. The proposed additional gross floor area exceeds the 2:1 FSR limit for the site identified within the SEPPSSP. The maximum FSR specified by SEPPSSP applies to the project where the Minister has not, in an approval for a Concept Plan for the development, provided for the construction of a building that exceeds the maximum floor space ratio. In this case, the additional gross floor area is proposed in both the Concept Plan modification (which, if approved, supersedes the maximum FSR in the SEPP) and the Project Application modification.

The proponent explained the proposed increased FSR is consistent with the bonus floor space ratio for infill housing in Part 2, Division 1 of SEPPARH, because 25% of the total FSR of the modified development would be affordable rental housing for a 10-year period. The proponent explained that the SEPPARH does not

apply to the site because the land is also identified in the Heritage Map to SEPPSPP, but that its provisions are useful tools to evaluate the merit of the proposed FSR and affordable housing arrangements. Council said that it strongly supported the provision of affordable housing within the City of Sydney local government area. However, Council did not agree that the additional FSR could be justified under SEPPARH. That SEPP, the Council said, specifically excluded sites with mapped heritage items because they, as a rule of thumb, were not suited to floor space ratio bonuses. Council was also concerned about the proposed ten-year horizon on affordable rental housing within the development, preferring instead for its provision in perpetuity.

The Department found that the site is highly suitable for accommodating additional density as it is within close proximity to jobs, public transport and community facilities and services. Although SEPPARH does not apply, the Department found it is appropriate to consider the proposed modification against the principles of SEPPARH given the affordable rental housing outcome the proponent is committed to deliver.

The Department also concluded that the FSR increase was acceptable for the following reasons:

- subject to conditions of approval, the additional floor space would not detrimentally impact on the heritage item or adjoining conservation area;
- the proposal will provide affordable rental housing close to public transport, employment opportunities, and existing community services and facilities;
- the proposal, whilst of a different form and scale is considered acceptable and compatible with the built form in the locality; and
- the proposal is capable of being consistent with the principles of the *Apartment Design Guideline*.

The Commission does not accept the view that additional floor space ratio can be justified by the provision of affordable rental housing because the proposal corresponds to such provisions in SEPPARH. Only when SEPPARH applies can a nexus between bonus floor space ratio and affordable rental housing be considered.

However, the Commission has considered the suitability of the site for additional floor space ratio and the merits of the proposal. The Commission finds that with the features of the locality mentioned by the Department, the minor nature of the FSR non-compliance with SEPPSPP (about 10%), and the absence of unacceptable density related impacts, such as impacts on local character (considered above) and residential amenity (considered in section 5.3 below), the additional floor space ratio could be found to be acceptable.

The Commission also considers the delivery of about 3,990m² of affordable rental housing for ten-years within the City of Sydney local government area is a not-insignificant social benefit. Taken together, the Commission is satisfied that the gross floor area and the affordable rental housing proposed by the modification are an appropriate outcome for the site.

5.3 Residential Amenity

The original Project Application in 2013 was assessed against SEPP 65 and the former *Residential Flat Design Code*. The former *Residential Flat Design Code* was replaced by the *Apartment Design Guideline* in 2015 and the Department considered the proposed modifications against the 2015 guidelines in its assessment report.

Building Separation and privacy

Council raised issues relating to compliance with the building separation distance requirements. It said the existing approved building footprints did not comply with the required building separation distances in the *Apartment Design Guideline*, and as a result, the proposed additional storeys could not comply either.

The Department reported:

- the reconfigured apartments in the eastern and western portions of Building A are adjacent to two storey buildings on the neighbouring site to the south and will largely overlook the roof space rather than into other apartments;
- the additional height of Building B from 3m to 4.4m will have little impact on 153 George Street to the west as the building is a converted warehouse which in part is built to the boundary with no windows to habitable rooms on its eastern elevation;
- mitigation measures have been proposed (highlight windows, frosted glass, privacy screens and screen plating) so that habitable rooms are not overlooking each other in cases where the internal separation of building walls is less than the recommended separation between habitable rooms within the *Apartment Design Guideline*; and
- in the one location where balconies directly face one another, conditions were recommended to ensure screening solutions were proposed to reduce privacy impacts.

The Department was satisfied that proposed building separation was acceptable with the design proposed by the modification together with the recommended conditions of consent.

The Commission has considered the proposed building separation of 15.3m between Building B and Building C and 17m between Building A and Building C. The Commission recognises that appropriate design and orientation of habitable rooms can mitigate potential impacts of building separation distances, meaning building separation can become less important in achieving appropriate standards of privacy.

The Commission is satisfied that the additional height of Building B will have negligible impact on residents of the westerly elevation as the building along George Street has been designed to not locate living spaces facing east. In addition, the Commission is satisfied that residents to the north and south of the site will not be impacted by the increased height of Building B and Building C as Building A and Building D book end the development and will mitigate any visual impacts. The Commission notes that the design treatment of Building C and existing and proposed landscaping will mitigate the visual impacts of the additional storeys from the eastern, Pitt Street elevation. The Commission finds that the additional height impacts proposed with the modification are both consistent with the SEPPSSP and have been appropriately mitigated.

Rooftop open space

The Commission heard from members of the public raising concerns over the rooftop open space of Building D potentially impacting on residents of Albert Street. The concerns primarily identified noise and privacy as key areas of concern.

The Department considered that the rooftop open space on Building D was an important aspect of the proposal. To ensure the rooftop area did not impact on the amenity of the surrounding suburb, the Department recommended:

- acoustic screening and planting be provided to mitigate potential noise transfer and overlooking of neighbourhood properties;
- use of the communal roof top area will be limited to 7am to 10pm Mondays to Saturdays and 8am to 10pm on Sundays;
- all external lighting complies with controls to reduce the effects of outdoor lighting; and
- noise testing to verify the effectiveness of the proposed mitigation measures.

The Commission notes that the 493m² of communal open space provided through the rooftop of Building D is a significant portion of the site's open space and is an important contributor to ensuring a high level of amenity to future residents of the development. The Commission has reviewed the Department's recommendation and finds that the robust conditions will ensure the amenity of nearby residents

(particularly Albert Street residents) will not be significantly adversely impacted by the modification.

Cross Ventilation

The *Apartment Design Guideline* seeks to ensure 60% of apartments are naturally cross ventilated. The proponent states that 64% of apartments are cross ventilated, using a combination of cross-through and corner apartments, as well as slots and skylights to provide forms of cross ventilation.

Council contended that due to limited separation, the proponent's assumptions were flawed and that only 37% of apartments are naturally cross ventilated, and up to 45% if specific corner apartments are provided with additional windows. Council also noted that the openable areas of highlight windows was not known and that some apartments in Building A rely on bathrooms to achieve cross ventilation.

The Department considered the proponent's justification as well as Council's analysis and its own assessment. When considering the alternative measures proposed, the Department considers that a total of 61% of apartments achieve good levels of ventilation, irrespective of being cross ventilated, achieving the intent of the *Apartment Design Guideline*. To ensure the effectiveness of the slots, highlight windows and ventilation grills/risers, the Department recommended a condition of approval requiring testing be undertaken to prove their effectiveness.

The Commission has considered the proponent's modification, Council's objection and notes the Department's recommendation and recommended conditions. The Commission agrees with Council that the cross ventilation of many of the apartments relies on secondary design solutions (slots, highlights windows, grills, risers). However, the Commission is satisfied that the condition recommended by the Department will ensure the proposed design will be sufficiently tested to ensure adequate cross ventilation to at least 60% of the apartments. Consequently, the Commission finds that cross ventilation would be adequate, subject to the Department's recommended condition.

5.4 Other issues

Within submissions and during the public meeting, other amenity matters such as traffic, parking, overshadowing, solar access, and building access arrangements were raised with the Commission. The Department responded to each of these matters within its assessment.

The Department also provided a comprehensive assessment of matters such as design excellence and architectural detailing, archaeology, the addition of neighbourhood shops to the site, public domain improvements, building sustainability (i.e. BASIX) parking and travel demand management, building entries, waste management, development contributions, construction impacts, tree removal and landscaping, the provision of a new substation, and consistency with the Greater Sydney Region Plan and Eastern City District Plan.

The Commission has considered the Department's assessment report and accepts the conclusions it made and the conditions it recommended in respect of these matters. The Commission is satisfied that the modifications requests will not substantially change the impacts of the development in relation to these issues and that the impacts are not significant.

6. THE COMMISSION'S FINDINGS AND DETERMINATION

The Commission has carefully considered the proponent's proposal, the Department's assessment report, and relevant matters under the EP&A Act, including Section 75W as it continues to apply to transitional Part 3A projects. The Commission has noted advice and recommendations from the City of Sydney Council, the Department and government agencies. Finally, the Commission has heard concerns from members of the community, during the public meeting at Club Redfern.

The Commission identifies that the proposed modification is not inconsistent with the heritage values of the former Rachel Forster hospital Building A and colonnade. The Commission concludes that the design is acceptable in this instance, subject to conditions requiring design modifications to improve the upper levels of the modified development.

The Commission is satisfied that the modification is consistent with the development controls for the site other than the increase of Floor Space Ratio from 2:1 to 2.252:1. While the Commission does not consider it appropriate to apply the FSR bonuses in SEPPARH to the site because of its mapped heritage buildings, the Commission is satisfied that the site attributes, the merits of the proposal and its additional floor area, and the benefits of the proposed social housing, when taken together, are an appropriate outcome for the site.

The Commission also finds that the conditions will sufficiently ensure that the principles of the *Apartment Design Guideline* are achieved and adequate amenity will be achieved for the apartments. The Commission is also satisfied with the Department's assessment of other matters, including introduction of neighbourhood shops, design excellence, traffic, parking and travel demand.

The Commission finds that the proposed modifications to the Concept Plan and Project Approval are within the scope of Section 75W of the EP&A Act as it applies to transitional Part 3A projects, and for the reasons outlined above are in the public interest. Therefore, the Commission has decided to approve the modification requests subject to the conditions set out in the attached instruments of approval.



John Hann (Chair)
Member of the Commission



Prof. Helen Lochhead
Member of the Commission



Soo-Tee Cheong
Member of the Commission