

Oatley Residents Against Overdevelopment Inc.

P.O. Box 121
Oatley 2223

October 30th 2006

The Acting-General Manager
Hurstville City Council
PO Box 205
Hurstville BC NSW 1481

Dear Mr Lampe

***MODIFICATION DEVELOPMENT CONSENT APPLICATION re DA 04/454
(Rev02) 47-67 MULGA RD, OATLEY LODGED ON 19 SEPTEMBER 2006***

ORAO would like to make the following points in objecting to this application:

1. Incomplete application

The Development consent modification application (the application) dated 15/9/06 has not been correctly prepared and is not fully completed. Further details supporting this contention are in the appendix.

None of the sections were checked or signed by the Customer Service Officer. The application itself states at the end: Note: An incomplete application will not be accepted. Therefore Council's Customer Service Officer should not have accepted the application, making the application invalid.

2. Limited access to information regarding the modifications

ORAO has identified flaws in the notification process:

- Differences between notification plans sent to residents and plans on display at Council. What guarantee does the public have that the plans on display at the Council are the same plans that show the modifications that the applicant is actually seeking?
- Denial of access to certain documents that are crucial and relevant to the application.
- Limited access to the only member of Council's Planning staff who has full knowledge of the application and its associated processes.

Full details of these flaws are in the appendix.

The failure of Council to adhere to due process has denied our community full and complete participation in the development process.

3. Proposed modifications are not minor s96(1)

The applicant indicates in his Statement of Environmental Effects dated 20th September 2006 that he is seeking a minor section 96(1) modification. A s96(1) modification is to correct a minor error, misdescription or miscalculation.

The modifications that the applicant has indicated he is seeking are to:

- Relocate staff amenities & admin offices for supermarket to commercial suite area C4 and C5

- Create separate commercial suite next to supermarket
- Provide additional fire escape stair to comply with BCA
- Relocate lift and landing entry to comply with BCA

These modifications alone are not minor.

However closer inspection of plans on display at Council and the Library reveal far more extensive modifications than indicated in the application. Full details of these are in the appendix.

As you can see, the modifications are definitely not minor and therefore Council does not have power to modify the development consent under s96(1).

4. Significant adverse impacts

The Statement of Environmental Effects attached to the application, states, “No Additional Impact on Area.”

However, the modifications highlighted above will have the following considerable impacts:

- The increase in the area of the retail/commercial space will generate more traffic, further overloading the local road network and impacting on local residents.
- The increase in the area of the retail/commercial space will require more on-site carparking spaces. However, there is no provision for extra on-site carparking spaces, which means that cars will be parked in the neighbourhood streets.
- The provision of louvres/grille will allow the noise of the car parking levels to directly impact upon the neighbouring properties.
- The significant loss of the landscaping in the south east corner will further adversely impact upon the adjoining properties.
- The provision of a footpath at the rear of the development to Waratah St where there was previously none will generate significant pedestrian traffic and will adversely impact on the neighbouring properties.
- The external modifications such as the roof outline and the height will have a detrimental visual impact and further increase overshadowing and blocking of views of neighbouring properties, negating earlier changes to the plans designed to reduce the bulk and impact of the development

5. Non-compliance with Hurstville Local Environmental Plan 1994

The subject land is within Zone 3 (a) Neighbourhood Business Zone.

The modifications already do not comply with the 2-storey height restrictions in Hurstville Local Environmental Plan 1994 (LEP). Any further increase in the height of the development would be inappropriate for a small neighbourhood shopping area.

The modification involves the provision of a large commercial space on the residential level 1 (above ground level) which contravenes Hurstville LEP 1994.

Further details supporting these contentions are found in the appendix.

6. Unauthorised works

Closer inspection of the plans on display at council shows that amendments to the court approved plans date as far back as 17/11/05. Some of these significant modifications have already been constructed. Eg

- The lift shaft has been extended to the residential level 1 and increased in size.
- The roof level is higher than in the court approved plan

Has Council already given approval for these modifications? If so, under what authority? Other than the current application, residents have not been notified of any other modification applications.

If Council did not approve of such modifications, then these works are unauthorised.

7. Actions requested of Council by ORAO

1. Council should reject the application, as it is incomplete.
2. If Council accepts this application, then Council should renotify residents ensuring that, this time Council follows the proper notification process.
3. If Council accepts this application as one for a s96(1) modification, then Council should reject it on the basis that the modifications the applicant is seeking are NOT to correct a minor error, misdescription or miscalculation.
4. If the applicant wants to proceed with the modifications, then Council should advise the applicant to lodge either:
 - (a) another development consent modification application, this one being complete and clearly identifying which type of modification he is seeking. In this case the modifications that the applicant is seeking are more than is allowed under s96(1) and, because the consent was granted by the Court, the modifications appear to fall more appropriately within s96AA modifications; or
 - (b) a new development application. The amended plans have made a large number of substantial changes to the original design that was approved by the Court, to the extent that the proposed development is not substantially the same development as the development for which consent was originally granted. The application form under the heading, **Type of modification** on page 1/4, states, "Substantial alterations may require a new development application." As the alterations are quite substantial, the applicant should be required to lodge a new development application.
5. If Council accepts this application for consideration, then Council should refer it to RTA for review and advice on the severe parking and traffic generation implications.
6. If Council accepts this application for consideration, then Council should reject it on the basis of the adverse impacts on the environment and our community.
7. If Council issues consent, then Council will need to be sure that it notes the exact plans to which the consent is given, including any whiteout.
8. Council should immediately inspect the site and identify any modifications that have already been constructed.
 - (a) If council granted consent to such modifications that are not outlined in the current application, we question on what authority was this consent given. Council is obliged to notify residents of such modification applications, and has not done so.
 - (b) When Council identifies such works that are not authorised, Council should:

- (i) serve a Penalty Infringement Notice under the Environmental Planning and Assessment Act 1979 on the owner/builder for carrying out construction beyond that provided for in the Court's consent. We note and commend Hurstville Council for seeking "significant increases in penalties for infringement notices relating to development that is not carried out in accordance with the development consent or is carried out without development consent." (Leader, October 28) at the Local Government conference this month; and
- (ii) institute legal proceedings for any accumulated unauthorised building works and non-compliance with development consent conditions of the Court. We note and commend Council for recently recommending prosecution regarding unauthorised building work elsewhere in Oatley (DAC024.02 - 06 - 68 Llewellyn St, Oatley); or
- (iii) order the developer to re-construct the works to the court approved plans.

Thank you for the opportunity to participate in the development process.

Yours sincerely

Geoff Shearsby
President
Oatley Residents Against Overdevelopment Inc

APPENDIX

1. Incomplete application

The Development consent modification application (the application) dated 15/9/06 has not been correctly prepared.

On page 1/4:

Under the heading **Type of modification**, none of the following options have been ticked:

Minor s96(1) – a minor error/miscalculation,

Minor s96(1A) – minimal environmental impact and

Major s96(2) – other modifications),

which are provided to identify the type of modification that is sought.

On page 2/4:

None of the following sections have been completed: Construction certificate, Type of consent, Other attachments required, Environmental impact, Probity, Signature of applicant.

None of the sections were checked or signed by the Customer Service Officer. The

application itself states at the end: **Note: An incomplete application will not be accepted.**

Therefore Council's Customer Service Officer should not have accepted the application, making the application invalid.

2. Limited access to information regarding the modifications

ORAO has identified flaws in the notification process, eg

(a) Notification plans and plans on display at Council

- The notification plans sent to residents are not exact copies of those on display at Council and the Library
- The two copies of the plans of the retail level on display at Council are not the same as each other. One has the newly designated "commercial office" area highlighted in pink texta and is stamped (red) and dated 19/9/06. The other has the same area highlighted with black texta, with the word "office" whited out – and is *not* stamped.
- The two copies of the plans of the residential ground floor on display at Council are not the same as each other. One has pink highlights and the other has black highlights. Neither of these plans are stamped.
- The copy of the plan of residential level 1 is stamped and dated 22/9/06
- The copy of the plan of the north and south elevations is not stamped.

(b) Access to certain documents relevant to the application has been denied

ORAO's repeated requests to Council to make available the plans L&EC02/F (Residential Level 1) and L&EC03/F (Residential Ground Floor) and stamped May 2005 for inspection been denied, the reason cited as "because the plans are residential". However this is at odds with the fact that the proposed plans on display at council are residential.

(c) Limited access to Mr Graeme Young, Manager Development Health & Building during the submission period.

Mr Young nominated himself as the contact person for any residents wishing to discuss any aspect of the application during the submission period starting on 5/10/06.

Unfortunately for concerned residents however, Mr Young has been absent for a substantial proportion of the submission period, with Mr Young being on leave since 12/10/06. It appears that Mr Young is the only person to have any knowledge of this development, because other members of the planning staff appear to have limited knowledge of the development.

The failure of Council to adhere to due process has denied our community full and complete participation in the development process.

3. Proposed modifications are not minor s96(1)

The following points are just some of the amendments/modifications dating from 17 /11/05, following the Court Orders on 12/07/05:

- Significant amount of the landscaping in the south east corner of the Development that was approved by the Court has disappeared with the proposed modification.
- Roof levels of the eastern end of the Mulga Rd elevation have been raised by approximately 1m.
- Roof levels of the residential units facing Mulga Rd have been raised by almost 1m.
- The area of the original small retail shop has been increased from approx 70sqm to 123sqm (a 75% increase)
- The provision of fire escape stairs at the southeastern corner of the development and exiting onto Waratah St
- The relocation of the Coles staff amenities and admin offices from the same floor as the supermarket to the residential ground floor and its reduction in size by about 25%
- The relocation of “commercial offices” from the residential ground floor to the retail level, increased to 150sqm and the change of use/description to just “commercial”, facilitating significant activities other than only offices.
- The size of the lift shaft has been increased.
- The combined area of the lift shaft and the lift lobby on the retail level has been reduced from 46sqm to 38sqm (17% change).
- The lift has been extended to residential level 1.
- Louvres have been added at the south east corner on the car parking level 1.
- The electrical substation has been relocated from the rear of the development on the carparking level to the Mulga Rd frontage on the retail level.
- Various amendments have been made to Apt 11 eg roof
- Courtyards for all apartments have been amended
- Entry for apartments 2,3,4, and 5 have been changed
- Awning over entrance to retail level on Mulga Rd has been adjusted
- Supermarket exit has been amended
- Roof outline has been revised

It appears that the BCA requirement for the extra fire escape stair is due only to the substantial change in use as described above.

As you can see, the modifications are definitely not minor and therefore Council does not have power to modify the development consent under s96(1).

5. Non-compliance with Hurstville Local Environmental Plan 1994

The subject land is within Zone 3 (a) Neighbourhood Business Zone.

1. The court approved development does not comply with the Hurstville LEP Amendment No. 60, which is currently in force. Amendment No. 60 of the Hurstville Local Environmental Plan 1994 provides that land within Zone No 3 (a) (the Neighbourhood Business Zone) is subject to a 2-storey height restriction. Any further increase in the height of the development would be obscene.

2. The modification involves the provision of a large commercial space on the residential level 1, which is above ground level. This contravenes Hurstville LEP 1994, wherein one of the objectives of Zone No 3 (a) is to facilitate retail and *business activities at ground floor level*.