

Response to Submissions

Section 75W Modification (2)

Mixed Use Development

21 – 35 Treacy Street, Hurstville

On behalf of:

Earljest Pty Ltd

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research strategies results

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1.0 Introduction

This Response to Submissions (RtS) is submitted on behalf of Earljest Pty Ltd (the 'proponent') in response to the Department of Planning and Infrastructure's letter dated 30/08/2013 requesting a RtS be prepared identifying how we have addressed issues raised by submissions and by the Department following public exhibition of a second application to modify a Concept Plan for a mixed-use development at 21-35 Treacy Street, Hurstville (Department Reference: MP10_0101MOD2).

Submissions in response to the public exhibition were received from:

- Hurstville City Council; and
- Sydney Airport.

In addition, the Department of Planning and Infrastructure has requested further information and amended plans in relation to concerns expressed about the proposed modified building height and its shadow impacts.

This report identifies how the issues raised in the submissions (including those raised by the Department) have been adequately addressed.

There are no changes proposed to the approved Statement of Commitments as a result of this RtS.

2.0 Summary of Submissions

2.1 Sydney Airport

The proposed development was considered by Sydney Airport and, in summary, they resolved to advise the Department of Planning and Infrastructure that they have no objection to the proposed development being developed to a height of 126 metres above Australian Height Datum (AHD). The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, etc.

2.2 Hurstville Council

The proposed development was considered by Hurstville Council and, in summary, they resolved to advise the Department of Planning and Infrastructure that Council:

1. Opposes Increase in building envelope because:
 - As with the original proposal and previous modification, this proposal substantially exceeds the height controls for the site set in Council's DCP No 2;
 - Increased overshadowing to properties in Kogarah;
 - it is the role of local plans to interpret the preferred locations for density development;
 - The recently completed and endorsed Transport Management and Accessibility Plan based on the Draft LEP did not propose any increase in height controls. Rather it accepted Council's plan as a long-term vision for Hurstville City Centre and set planning goals for a time horizon of 2036. The TMAP estimated that by 2036 only 73% of the LEP capacity would be met and on this basis there can be no justification for this site to be increased in height in order to meet a metropolitan or local housing target.
2. Does not oppose other proposed modifications, including:
 - Changes to car parking layout and increase in spaces;
 - Decrease in gross retail floor space;
 - Addition of child care centre; and
 - Amended 'Green Travel Plan'.

2.3 Department of Planning and Infrastructure

The Department has expressed concern about the proposed modified height of the building within the city centre context and its shadowing impacts and has asked for the following additional information;

- The provision of city centre cross-section drawings (west-east and south-north) similar to the cross sections provided with the Architectural Design Report in the original application, demonstrating the proposed building height relative to other buildings in the city centre.

- Further detailed analysis of shadow impacts to No 522 Railway Parade. In particular, shadow diagrams (approved and proposed) in plan and elevation at 15 minute intervals from 2pm to 3pm mid-winter, May 21 and May 10.
- Analysis of the shadow impacts to Nos 538 and 540 Railway Parade.
- Further information and amended plans demonstrating how the proposed childcare centre could satisfy open space requirements.
- Amended indicative car parking layouts demonstrating that the required number of car parking spaces can be provided in accordance with minimum size requirements (many spaces on the plans are only 4.4m in length).
- New consent from all owners giving consent specifically to this modification application.

3.0 Response to Submissions

The submissions received have been reviewed and the following is a detailed response on how the issues of concern have been considered and addressed where necessary to minimise any environmental impact.

3.1 Sydney Airports

Sydney Airports have no objection to the proposed modified building envelope being 126m above AHD. The actual proposed building height to parapet is 124.25 RL and this allows a further 1.75 metres for lift over-runs, vents, chimneys, aerials, TV antennae, etc.

In accordance with Sydney Airports requirements a new application will be submitted for any temporary structure and/or equipment that will be greater than 50 feet (15.24m) above existing ground height.

Approval to operate construction equipment (ie cranes) will be sought from Sydney Airport prior to any commitment to construct.

3.2 Hurstville City Council

Hurstville City Council summarised their concerns with the proposed modifications in a table attached to their submission. The table summarises the following;

1. Council's opposition and support for certain proposed modifications; and
2. Council's issue with certain reasons provided for the proposed modifications.

A response to Council's comments is provided in **Appendix 1**.

In summary it is considered that all of the issues raised by Council have been adequately addressed.

3.3 Department of Planning and Infrastructure

The following is provided in response to the additional information requested by the Department:

The proposed modified height of the building within the city centre context

Appendix 2 provides city centre cross-section drawings (west-east and south-north) as requested by the Department. The cross-sections contextualise the proposed maximum building height for 21-35 Treacy Street within the future Hurstville City Centre building envelope model prepared previously by Stanistic Architects.

The updated future Hurstville City Centre building envelope model extracts the proposed heights of building from either the *DCP- HCC 2012 – Height of Buildings Map* or Development Application approvals noted on the *Context - Building Heights Plan* previously prepared by Stanistic Architects.

The following provides justification on why additional height should be considered as part of this modification.

1. The west-east cross-section drawing details how the proposed building height (to parapet) on the subject site at RL 124.25 is a “good fit” within the context of buildings such as East Quarter (RL 124.95) to the east and Hurstville Rail Station, High Point (RL 127.30) and Meriton development to the west.
2. The buildings are placed on the existing topography and the cross-section clearly demonstrates the improved definition of the urban edge along the Illawarra Rail Line.
3. The south-north cross-section drawing details how the subject site continues to be a “good fit” in the context of existing and proposed development in the Hurstville City Centre.
4. The development context in Hurstville City Centre is changing dramatically with an increase in demand for taller buildings. This appears to be happening with a lack of objective policy direction from Council. The Planning Assessment Commission, in their determination of the original development application dated 1/7/2011, noted “a general perception of a lack of strategic planning in the City Centre” was noticeable. The development controls for Treacy Street have not been reviewed since at least 2004.
5. Buildings such as High Point and East Quarter are examples of developments that have been recently approved by the Joint Regional Planning Panel (JRPP) and were approved above the current height limits set by Hurstville City Council.
6. Highpoint has an approved maximum building height of RL 127.30. Approval was previously granted in 2008 for a similar development with a maximum RL of 113.5. Council controls for the site have a maximum 45m height limit (RL 115.55). The key reasons why the additional height for Highpoint was considered acceptable by the JRPP included:
 - a taller building on the site will be indicative of its location (western book-end) to the Hurstville City Centre; and
 - proposed increase in height does not result in any significant additional impacts to adjoining developments in terms of privacy, solar access, and view loss.
7. Like Highpoint, the proposed modified building relates well to the emerging scale of the Hurstville City Centre. In particular, the tall towers to the east and west of the subject site provide a height backdrop that will continue to ensure the height of the proposed modified development does not detrimentally contrast against the emerging Hurstville City Centre skyline.
8. The cross-section drawings depict how there is a contextual fit between the height of the modified building and its immediate locality. The proposed building does not rise above its context and is appropriate to its location.
9. Furthermore, the taller the building the greater the requirement for quality design to maintain amenity. Mr Frank Stanisic has been nominated and approved as the design architect for the proposed development. Mr Stanisic will ensure the design quality of the concept

approval continues through to the physical completion of the development. Mr Stanisic is also responsible for the design of the proposed modifications. As such, the built form and urban design of the proposed modification is in keeping with the high quality design of the approved building.

Detailed analysis of shadowing impacts to 522 Railway Parade, Hurstville

A Preferred Project Report (PPR) dated 15 March 2011 was submitted and approved as part of the original Concept Approval for the subject site. The PPR provided a detailed study of the overshadowing impacts from the proposed development on properties along the southern side of Railway Parade in the Kogarah local government area.

The study identified 24 sites potentially affected by overshadowing from the proposed development. At the winter solstice between 9am - 3pm, sites between 546 Railway Parade and 522 Railway Parade were identified to be potentially overshadowed for 3 hours or more by the proposed development. Of these sites, only 1 site at 522 Railway Parade was identified as being impacted by overshadowing to private open space.

In response to the Department's request for additional information in relation to the S75W (2) application, more detailed shadow diagram plans and elevations for the site at 522 Railway Parade have been prepared by architects Stanisic and Associates. A copy of these diagrams (SD01 - SD16) can be found at **Appendix 3**.

The diagrams detail the shadows cast by the approved and proposed development and have been prepared at 15-minute intervals from 2pm to 3pm on June 21 mid-winter (winter equinox), May 21 and May 10 as requested by the Department. In addition, we have provided shadow diagrams at 15-minute intervals from 2pm to 3pm on May 2.

Importantly the diagrams also detail the shadows cast from the building itself (balconies, eaves etc) but do not detail the shadows cast by a number of densely planted mature trees located within the property along the southwest boundary. These trees, shown in **Figures 1-5**, have a significant impact on the amount of sunlight that is currently received by the living areas on the southwest elevation of the building. **Figure 4** clearly shows there are only 2 units that do not have their principal open space and living rooms overshadowed by the densely planted trees.

In the assessment of overshadowing from proposed buildings on existing living areas and private open space of nearby residential dwellings, it is considered appropriate to make allowance for both natural and manmade features where those features are considered to be of significance and have a level of discernible permanence. The NSW Land and Environment Court has issued guidelines on solar access indicating fences, roof overhangs etc should be taken into consideration when assessing overshadowing impacts and vegetation may be taken into account in a qualitative way.



Figure 1 - Aerial View of 522 Railway Parade (outlined in red).



Figure 2 - View of 522 Railway Parade looking southeast from the corner of Railway Parade and Bellevue Parade.



Figure 3 - View of 522 Railway Parade looking northeast Bellevue Parade.



Figure 4 - View of 522 Railway Parade looking northeast from Bellevue Parade.

A review of the shadow diagrams for No 522 Railway Parade reveals that while there is a minor increase in the amount of shadow cast over the building as a result of the proposed modifications, this increase has little or no additional impact on the amount of sunlight the living areas and private open space areas (balconies) are actually receiving.

In the winter solstice (June 21) between 2pm and 3pm it has been previously recognised and adopted that the proposed development will overshadow the principal open space of all 6 units at 522 Railway Parade between 2pm – 3pm. Apart from an anomaly at around 2.15pm when the gap in the proposed building provides a very brief respite from overshadowing, the living areas of all 6 units in the building continue to be in shadow between 2pm and 3pm from the modified building proposal.

However, as previously identified, either side of the winter solstice the overshadowing impact improves very quickly. At 2pm on May 21 the site at 522 Railway Parade is not impacted upon from shadow on living areas from the approved development. By 3pm approximately 3 dwelling units have their living areas in shadow.

The modified development also does not cast any shadow on the living areas at 2pm. By 3pm all 6 dwelling units will have their living areas in shadow from the modified development.

On May 10 the site is not impacted upon by shadow on living areas from the approved development between 2pm and 3pm. The modified development begins to cast a shadow on the living areas of 1 unit from around 2.15pm and by 3pm, 3 dwelling units have their living areas in shadow from the modified development. These dwelling units are also the units that are impacted upon the most by the existing landscaping and are almost always in shadow.

As part of the approved development it was accepted that at May/July 21, one month either side of the winter solstice 4 of the 6 units at 522 Railway Parade are overshadowed by the development. With the modified building this level of overshadowing is now approximately 9-11 days further out either side of the winter solstice.

On May 2 there are no shadow impacts on the living areas and private open space areas (balconies) of the units at 522 Railway Parade. The PAC had previously accepted and approved this scenario occurring on May 10.

The increase of a further 8 days of overshadowing impact from the proposed modified development either side of the winter solstice is considered to still have only a minimal impact on the living environment enjoyed by the residents at 522 Railway Parade, Hurstville. The reasons are because:

1. For a substantial part of the year (approximately 8-9 months) there will continue to be no impact on living areas due to overshadowing from the modified building.
2. The south west orientation of the living areas to all 6 dwelling units means that they will always be significantly impacted from overshadowing from the building itself, including the protruding eaves and balconies.
3. It has been identified and acknowledged that the single most contributing factor to overshadowing of the living areas at 522 Railway Parade is the extensive tree planting along the street boundaries. These trees have been deliberately planted to provide residents with visual and acoustic privacy from the adverse impacts of adjoining roads,

railway line etc. The continuing maintenance and retention of these trees is a clear indication of thoughtful decision making to 'trade off' the value of uninterrupted solar access for the amenity of increased visual privacy and noise attenuation.

4. Given the important function and longevity of the existing landscaping it is considered appropriate to make allowance for the landscaping in the assessment of the overshadowing impacts of the proposed development.

Analysis of shadowing impacts to 538 and 540 Railway Parade, Hurstville

In response to the Department's request for additional information in relation to the S75W (2) application, more detailed shadow diagram plans for the sites at 538 and 540 Railway Parade have been prepared by architects Stanisic and Associates. A copy of these diagrams (SD21 & SD22) can be found at **Appendix 3A**. The diagrams show shadow impacts from the proposed building on the principal private open space of both properties at 9am, 10am, 11am, 12pm, 1pm, 2pm and 3pm on May 21 and the corresponding July 21.

The sites generally fall away to the south and east along the Railway Parade. The immediate neighbouring properties currently comprise of a 2 storey Col Jones swim fitness and lifestyle centre to the east; single storey detached dwelling and 4 storey residential flat buildings to the south; and a 2 storey residential flat building to the west.

The sites are currently occupied by single storey detached dwellings with frontage to Railway Parade. The main living areas to both dwellings are oriented south and southeast towards the rear open space. Bedrooms are located to the front of the dwelling and oriented northwest towards the street.

The principal private open spaces are located to rear of the properties and lay directly south east of their respective dwelling. Parts of the principal private open spaces located directly adjacent to the living areas are currently overshadowed for most times of the year by the dwellings on the site as shown in the shadow diagrams. Due to the south orientation, the windows to the main living areas would currently achieve very little or no solar access at the winter solstice between 9am and 3pm.

On May 21 and July 21, one month either side of the winter solstice, the shadow diagrams show there would be no additional overshadowing by the proposed development to the principal private open spaces of Nos 538 and 540 for four (4) hours between the hours of 11am and 3pm.

In addition, 50% of principal private open space at Nos 538 and 540 will receive 3 hours of daylight on June 3 and once again from July 9 between the hours of 12pm and 3pm.

A further detailed study has been undertaken comparing the shadowing impacts on the properties at 538-540 Railway Parade, Hurstville from the existing dwellings on the site, the approved 16-storey development on the subject site and the proposed additional 3 storeys on the subject site. The

comparisons are detailed at hourly intervals from 9am – 3pm on June 21 (winter solstice), June 2 and May 21 and summarised in a table. A copy of the diagrams (SD 31 – 48), table and summary of the comparison from Stanisic Architects can be found at **Appendix 3B**.

In summary, it is concluded that with the proposed 19 storey building form at Treacy Street:

- No 538 Railway Parade, Hurstville receives 5 hours of sunlight on June 21, 4 hours of sunlight on June 02 and 6 hours of sunlight on May 21 to at least 50% of the primary open space; and
- No 540 Railway Parade, Hurstville receives 2 hours of sunlight on June 21, 5 hours of sunlight on June 02 and May 21 to at least 50% of the primary open space.

While the 2 hours of sunlight achieved on the June 21 (winter solstice) does not comply with the 3 hours of sunlight required by Kogarah DCP for medium density housing it does satisfy the SEPP65 RFDC rule of thumb for daylight access for dense urban areas.

In addition it should be noted that both 538 and 540 Railway Parade, Hurstville are zoned R3 – Medium Density pursuant to Kogarah LEP 23012. The primary objective of the zone is *“to provide for the housing needs of the community within a medium density residential environment”*.

Provision of open space for the proposed child-care centre

The approval for the use of the ground floor as a childcare centre would be subject to a future development application to be submitted to Hurstville City Council. The application would be prepared in consultation with an accredited childcare provider, yet to be nominated. The physical environment of the child care centre, including required open space would be designed in accordance with *the Education and Care Services National Regulations* and local planning controls, currently DCP – HCC No2 2012.

It is envisioned that the outdoor open space would be located towards the front of the site along Treacy Street. The space would have a north orientation which would ensure that most parts of the open space would receive daylight at all times of the day during the year. The floor to ceiling height would be approximately 6 meters. It is envisaged that the front façade would be a fully operable glazed or screen system across the full height and length of the façade, with a security fence behind. It would be a space that could support natural features and play materials consistent with the *Education and Care Services National Regulations* (dated 9 December 2011) which states that:

“The approved provider of a centre-based service must ensure that the outdoor spaces provided at the education and care service premises allow children to explore and experience the natural environment.” P129.

In addition the *Guide to the Education and Care Services National Law and the Education and Care Services National Regulations 2011* (dated November 2011) notes that:

"Providers whose outdoor play spaces are largely made up of built environments should consider how they can bring in additional elements to increase children's access to natural features and play materials. Loose parts such as logs, rocks, hay bales, tree stumps, branches, pinecones and potted plants may be added at little cost. Natural materials in the education and care environment should reflect those found in the local community. It is important to consider allergies and other health and safety issues when selecting type and placement of materials. Services should consider how to provide natural materials that will allow children to use all of their senses, experience and understand seasons and life cycles, and provide opportunities for open ended play."

If a child care centre was not to proceed there would be a number of other possible uses that could occupy the area in lieu of a child care facility that would only require the same amount of car spaces as the child care facility.

Amended indicative car parking layouts

All 90-degree car parking spaces have been designed with a length of 5.4m. Car parking bay lengths and driveway aisles are dimensioned in red on a typical car parking layout as detailed in CD04/1 - Basement 4A/4B (refer **Appendix 4**).

The typical basement car parking levels are organized around a north-south split system, part level A and part level B respectively, with a change of level of 1.5 metres. Generally the split-levels overlap one another by approximately 1 metre. Car parking spaces are located along the split, partially under the overlapping slab but with clearances in accordance with AS/NZ 2890.1:2004 Parking facilities Part 1: Off-street car parking as detailed in CD34/1 Section BB (refer **Appendix 4**).

Consents of all owners being contemporaneous.

Preliminary confidential legal advice on the contemporaneous nature of the existing landowners consents has been sought from Michael Osborne from Osbornes Lawyers and provided to the Department.

On the basis of this legal opinion we respectfully request that the existing land owners consent lodged with the modification application be accepted as being contemporaneous and there is no need to provide more recent owners consents.

4.0 Summary

This Response to Submissions (RtS) addresses all the key issues raised by submissions and by the Department of Planning and Infrastructure following public exhibition of a second application to modify a Concept Plan for a mixed-use development at 21-35 Treacy Street, Hurstville.

The following summary is provided in response to the key issues:

- The development context in Hurstville City Centre is changing dramatically with an increase in demand for taller buildings.
- The proposed modified building relates well to the emerging scale of the Hurstville City Centre. In particular, the tall towers to the east and west of the subject site provide a height backdrop that will continue to ensure the height of the proposed modified development does not detrimentally contrast against the emerging Hurstville City Centre skyline.
- The proposed building does not rise above its context and is appropriate to its location.
- A review of the shadow diagrams reveals that while there is a minor increase in the amount of shadow cast over the building as a result of the proposed modifications, this overshadowing has minimal additional impact over and above the shadows cast over living areas and associated private open spaces (balconies) by the approved development, by the existing buildings and in some cases by existing landscaping.
- During the hours from 9am to 4pm in mid winter (June 21) all previously affected neighbouring residential properties will either continue to receive 3 hours of solar access where this currently exists, or will not lose any solar access where there is currently less than 3 hours of solar access.
- The physical environment of the proposed child care centre, including required open space can and will be designed in accordance with the Education and Care Services National Regulations and local planning controls.
- All 90-degree car parking spaces have been designed with a length of 5.4m.
- Legal opinion confirms the consents from all owners to lodge this application are considered to be contemporaneous.

Given the absence of any significant environmental impacts it is our considered opinion that the application for modifications to the Concept Approval (MP 10_0101 MOD2) at 21-35 Treacy Street, Hurstville should receive favourable consideration and be recommended for approval.

Appendix 1 – RESPONSE TO COUNCIL SUBMISSION

Appendix 2 –CROSS SECTIONAL DRAWINGS

Appendix 3 –SHADOW DIAGRAMS FOR 522 RAILWAY PARADE

Appendix 3A –SHADOW DIAGRAMS FOR 538 & 540 RAILWAY PARADE

Appendix 3B –ADDITIONAL SHADOW
DIAGRAMS FOR 538 & 540 RAILWAY PARADE
AND COMPARISON TABLE

Appendix 4 –CAR PARK LAYOUT