

ADDENDUM IDAP REPORT

Property:	9-13 Beresford Road STRATHFIELD DA 2017/114/2
Proposal:	Section 4.55 (1A) Modification Application to delete Condition 4A of notice of determination
Applicant:	ABC Planning
Owner:	Vernor Pty Ltd
Date of lodgement:	2 September 2020
Date of IDAP Meeting:	16 October 2020
Notification period:	14 to 28 September 2020
Submissions received:	Nil
Assessment officer:	M Rivera
Estimated cost of works:	\$20,000.00
Zoning:	R3 – Medium Density Residential - SLEP 2012 Yes – No. 11 Beresford Road listed as an item under
Heritage:	Schedule 5 of SLEP 2012 (Item No. 96 – Wairuna: Victorian Italianate style house)
Flood affected:	No
Is a Clause 4.6 Variation Proposed:	No
RECOMMENDATION OF OFFICER:	Refusal



Figure 1: Locality Plan with subject site outlined in yellow.

EXECUTIVE SUMMARY

Proposal

Development consent is being sought for the 4.55(1A) Modification Application to delete Condition 4A of the notice of determination, which relates to development contributions.

Background

The application was considered by the Internal Development Assessment Panel (IDAP) on 16 September 2020. At this meeting the IDAP resolved to defer the application to allow the following matter to be addressed:

- Investigate the premises and continued operation of the premises as a boarding house.

Strathfield Local Environmental Plan

The site is zoned R3 – Medium Density Residential under the provisions of Strathfield Local Environmental Plan 2012 (SLEP 2012) and the proposal is a permissible form of development with Council's consent. The proposal as amended still satisfies all relevant objectives contained within the SLEP 2012.

Development Control Plan

The proposed development as amended generally satisfies the provisions of Strathfield Consolidated Development Control Plan 2005 (SDCP 2005). This is discussed in more detail in the body of the report.

Notification

There are no amendments to the application required in order to satisfy the matter raised by IDAP. As such, re-notification as per Strathfield Council's Community Participation Plan, was not required.

Conclusion

Further review of information was undertaken in response to the matter raised above. This addendum report provides confirmation that the deferred matter has been appropriately resolved.

Accordingly, having regards to the heads of consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, the original recommendation as delivered to the IDAP on 16 September 2020 is reinforced. Accordingly, Development Application 2017/114/2 is recommended for refusal.

ADDENDUM REPORT

Proposal

Council has received an application for the 4.55 (1A) Modification Application to delete Condition 4A of the notice of determination for DA2017/114.

Background

This report is to be read as an addendum to the report presented to IDAP on 16 September 2020. The subject application was deferred by the panel at this meeting for the following reason:

- Investigate the premises and continued operation of the premises as a boarding house

Referrals – Internal and External

There were no internal and external referrals required to address the above deferred matter.

Assessment

Matters Raised By IDAP

The deferred matter raised by the IDAP relates to investigating the premises and continued operation of the premises as a boarding house.

Investigate the premises and continued operation of the premises as a boarding house

The following background information is relevant in addressing the above deferred matter:

On 22 March 1994, development consent was issued for development application (DA93/162). This application was seeking Council approval for student accommodation development at No. 11 Beresford Road. Direct contributions was not levied under this application for the purposes of lodger rooms as the site was still deemed a single dwelling house in conjunction with the educational establishment.

It is noted that the educational establishment is no longer operating on the property. The use of the dwelling house continued as a boarding house.

On June 2001, development consent was issued for development application (DA0011/122). This application was seeking Council approval for the demolition of existing buildings at No. 9 Beresford Road and No. 11-13 Beresford Road; the refurbishing of the existing two (2) storey Victorian dwelling house; and the construction of two (2) residential flat buildings with basement level car parking.

In granting consent for the demolition of the buildings used for the education establishment land use, the consent for DA0011/122 effectively ensured the student (boarding) accommodation use is redundant and the dwelling house reinstated as a boarding house. The consent for DA0011/122 clearly reflects this and did not grant consent for the continued use as a student (boarding) accommodation. Given that this use is only connected to or ancillary to the educational establishment, this use is no longer considered valid. The consent intended

to have the dwelling house reverted back to a dwelling house use. Accordingly, the developer contributions conditions in the consent reflected this change.

On 26 February 2002, a Modification Application (DA0001/122/1) was granted approval including the modification the internal layout from the approved 45 units consisting of 22 x 1 bedroom, 22 x 2 bedroom and 1 x 3 bedroom to a total of 38 units consisting of 33 x 2 bedroom, 4 x 3 bedroom and 1 x 1 bedroom. Further modification to the basement to increase the setback to an existing sewer pipe at the rear of the site and an additional four (4) stacked parking spaces within the basement.

On 23 October 2008, Council issued a notice of order to stop the boarding house use. On 26 May 2009, a Class 1 Appeal was upheld by the Land and Environment Court against this order (08/11170 Warranby Pty Ltd v Strathfield Council). The respondent was to undertake modifications to ensure the dwelling house was no longer to be utilised as a boarding house. The site was to operate within the confines of their original consent DA0001/122. No contributions were issued for the use of the site as a boarding house.

On 31 March 2017, Council officers inspected the premises and it was determined that the dwelling house was used as an unauthorised boarding house. On the same date, a notice of order was issued to the owner to stop the boarding house use.

On 30 June 2017, Council received a Class 1 Appeal to challenge the order.

On 24 July 2017, correspondence was received confirming that the applicant intended to lodge a development application to authorise the boarding house, before 28 July 2017.

On 28 July 2017, a development application (DA2017/114) was lodged to Council seeking approval for regularising the use of the existing dwelling house as a boarding house, which comprised 19 boarding rooms and a manager's residence. It is noted that this approval did not grant approval for any construction/building works for a boarding house development.

On 21 March 2018, the IDAP approved development application (DA2017/114). Council issued the consent with the relevant Section 94 contributions applied for the boarding house use. The contributions were based on the number of rooms being provided. A credit to the contributions was applied for the existing dwelling house. The Section 94 contributions imposed in the consent were in accordance with the applicable plan at the time. The order issued on 31 March 2017 was revoked in 2018 – and consequently, the respective Class 1 Appeal was resolved.

On 13 June 2019, Council confirmed with the applicant (at the time) that the Section 94 contribution calculations for DA2017/114 were based on the relevant plan at the time of the consent. It was mentioned that a credit was also included in the calculation of the contributions to reflect the previous use of the site.

On 5 March 2020, Council confirmed with the applicant (ABC Planning) that the Section 94 contribution calculations were based on the relevant plan at the time consent was issued; however, there was an error in the calculation, in that the manager's residence was not included in the calculations. As such the contributions should have been greater. Council advised that due to the amount of time that has elapsed since the determination of DA2017/114, there are no appeal provisions available to challenge the contention.

To date, there were no Section 94 contributions paid to Council in accordance with the consent for DA2017/114.

In light of the above, the proposed modification to delete Condition 4A in the consent for the purpose eliminating the Section 94 contributions is not supported. As per previous advice provided by Council staff, the Section 94 contributions remain applicable to the approved boarding house use. Therefore, it is recommended that Condition 4A remains in the consent and the subject modification application be refused.

This matter is considered to be finalised and no further consideration will be given by Council in this matter.

Strathfield Local Environmental Plan

The proposed modification fails to satisfy the following aims of the SLEP 2012 as per Clause 1.2:

(b) to promote the efficient and spatially appropriate use of land, the sustainable revitalisation of centres, the improved integration of transport and land use, and an appropriate mix of uses by regulating land use and development.

(c) to promote land uses that provide a wide range of employment, recreation, retail, cultural, service, educational and other facilities for the local community.

(e) to promote future development that integrates land use and transport planning, encourages public transport use, and reduces the traffic and environmental impacts of private vehicle use.

(g) to promote opportunities for social, cultural and community activities.

The proposed deletion of Condition 4A effectively eliminates the ability for Council to utilise the relevant Section 94 contributions applicable to the boarding house development for critical community and transport infrastructure, local facilities and open recreational space, which would enhance liveability for the Strathfield local government area and the wider community. Therefore, the proposed modification is not supported.

(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and

There are no draft planning instruments that are applicable to this site.

(iii) any development control plan,

The proposed modification does not trigger any objectives and controls under the Strathfield Consolidated Development Control Plan 2005 (SCDCP 2005).

(iv) Any matters prescribed by the regulations, that apply to the land to which the development application relates,

The amendments do not impact on the original assessment of this provision.

(a) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

The proposed modification will have adverse and unacceptable social and economic impacts in the locality due to no monetary contributions provided by the intensified land use.

(c) *the suitability of the site for the development,*

The amendments do not impact on the original assessment of this provision.

(d) *any submissions made in accordance with this Act or the regulations,*

In accordance with the provisions of the CPP, the amendments to the application were not placed on neighbour notification.

(e) *the public interest.*

The proposed modification is not considered to be in the public interest as it will result in no payment made toward the contribution of public infrastructure and community facilities.

Local Infrastructure Contributions

The amendments do not impact on the original assessment of this provision, and the appropriate contributions as per Condition 4A of the consent must be included in the consent.

Conclusion

The application as amended has been assessed having regard to the Heads of Consideration under Section 4.15(1) of the *Environmental Planning and Assessment Act 1979*, the provisions of the SLEP 2012 and SCDCP 2005.

Following detailed assessment of these changes, it is considered that Development Application No. 114/2017 should be refused.



Signed:

**M Rivera
Senior Planner**

Date: 24 November 2020

I confirm that I have determined the abovementioned development application with the delegations assigned to my position;

I have reviewed the details of this development application and I also certify that Section 7.11/7.12 Contributions are applicable to this development and have been levied accordingly;

Report and recommendations have been peer reviewed and concurred with.

**Signed:
P Santos
Planner**

Date: 24 November 2020

Recommendation

Pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979, the proposed modification(s) to Development Consent No. 2017/114/2 involving the deletion Condition 4A of notice of determination be **REFUSED** for the following reasons:

1. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it fails to meet the aims of the Strathfield Local Environmental Plan 2012 relating to promoting efficient and spatially appropriate use of land as it fails to provide the relevant developer contributions applicable to the intensified use of the premises from a single dwelling house to a boarding house development.
2. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it fails to meet the aims of the Strathfield Local Environmental Plan 2012 relating to promoting land uses that provide a wide range of employment, recreation, retail, cultural, service, educational and other facilities for the local community as it fails to provide the relevant developer contributions applicable to the intensified use of the premises from a single dwelling house to a boarding house development. The proposed development results in the approved boarding house use to not contribute to any community facilities, services and infrastructure that would be support and facilitate this use.
3. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it fails to meet the aims of the Strathfield Local Environmental Plan 2012 relating to promoting future development that integrates land use and transport planning, encourages public transport use, and reduces the traffic and environmental impacts of private vehicle use. The proposed development results in the approved boarding house use to not contribute to any transport infrastructure that would be support and facilitate this use.
4. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 as it fails to meet the aims of the Strathfield Local Environmental Plan 2012 relating to promoting opportunities for social, cultural and community activities. The proposed development results in no opportunity for further enhancement of social, cultural and community infrastructure contributed the approved boarding house use.
5. The proposed development is considered unacceptable pursuant to the provisions of s7.33 of the Environmental Planning and Assessment Act 1979 – which allows Council to levy development contributions for new development. The proposed development is unable to meet the aims of the Direct Development Contributions Plan 2010 – 2030. The proposed development fails to provide adequate public facilities as part of any new development; it does not ensure the existing community is not burdened by the provision of public amenities and public services required as a result of future development; and it fails to enable Council to be both publicly and financially accountable in its assessment and administration of the development contributions plan.

6. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979 as it fails to meet the provisions of Part 4 of the Environmental Planning and Assessment Regulation 2000. The proposed development results in elimination of any development contributions that should be applied to the approved boarding house use.
7. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the proposed development will have adverse and unacceptable economic impacts due to no monetary contributions provided by the intensified land use.
8. The proposed development is considered unacceptable pursuant to the provisions of s4.15(1)(e) of the Environmental Planning and Assessment Act 1979 as the proposed development is not considered to be in the public interest. The proposed development would result in no payment made toward the contribution of public infrastructure.