



ADDENDUM TO STATEMENT OF ENVIRONMENTAL EFFECTS

The construction of 5 x 5 storey residential flat buildings with a mezzanine level comprising 165 units with basement car parking for 200 vehicles and consolidation of 9 allotments into 1 lot

22-32 Park Avenue
WAITARA NSW

Prepared for: Statewide Planning Pty Ltd

REF: M210062
DATE: 29 October 2021



DEVELOPMENT



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1. Introduction

This Addendum to Statement of Environmental Effects has been prepared to accompany amended Architectural Plans and supporting documentation, filed with the Land and Environment Court in a Notice of Motion prior to the Hearing relating to Proceedings 2021/167189 [*Statewide Planning Pty Ltd V Hornsby Shire Council*].

An amended package has been prepared involving the following documents:



| Table 1 Supporting documentation | |
|----------------------------------|--------------------------|
| Document | Author |
| Architectural Plans | Aleksander Projects |
| Landscape Plans | Site Design Studios |
| Civil Plans | SGC Consulting Engineers |
| Acoustic Report | Acouras Consultants |
| Access Report | BCA Logic |
| Waste Management Plan | Elephants Foot |
| Solar Access Report | SLR Consulting |
| Natural Ventilation Report | SLR Consulting |
| Traffic Report | TTPP |

The amended package has been prepared in response to contentions from the Council filed 3 August 2021. The amended proposal involves the construction of 5 x 5 storey residential flat buildings with a mezzanine level comprising 165 units with basement car parking for 200 vehicles and consolidation of 9 allotments into 1 lot. The balance of works includes new communal open spaces, landscaping and site works.

This Addendum to the Statement of Environmental Effects has been prepared in light of the Land & Environment Court 'Practice Note – Class 1 Development Appeals' dated 14 May 2007. I recognise that as an expert witness my overriding duty is to assist the Court impartially on matters within my expertise and that my paramount duty is to the Court rather than to any party to the proceedings. I have read the Expert Witness Code of Conduct in Schedule 7 of the Uniform Civil Procedures Rules and I agree to be bound by that Code.

It is my view that the amended plans and documents appropriately address matters raised by the Respondent and that the proposal merits approval. Most significantly, the proposal has been amended to:

1. The number of apartments has been reduced by 3 apartments; from 168 apartments to 165 apartments;
2. The apartment size and configuration has been altered from 168 apartments including 58 x 1 bed, 102 x 2 bed and 3 x 3 bed to 165 apartments including 52 x 1 bed, 102 x 2 bed and 11 x 3 bed;
3. The front setback of the buildings have been increased to 8m from the face of the building;
4. The front façades have been redesigned includes changes to the layout of the apartments and balconies with the glass line of apartments set back at least 10m;
5. The rear setback of buildings have been increased to 7m from the face of the building;
6. The rear façades have been redesigned includes changes to the layout of the apartments and balconies with the glass line of apartments set back at least 9.4m;
7. The gap between buildings A and B at the rear is increased to 9m;
8. The basement levels are setback 8m from the front boundary and 7m from the rear boundary to match the setbacks of the buildings above and provide deep soil landscaped areas;

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9. The car parking layout has been reconfigured to provide 200 car parking spaces, 50 bicycle spaces and 3 motorbike spaces;
 10. The corners of buildings C and E redesigned to enhance the streetscape appearance;
 11. The design of the mezzanine levels has been amended with additional setbacks from the front (between grids DC-DD, DE-DF, DG-DH, DM-DN, DO-DP, DQ-DR) and rear (between grids CF-CH and CN + CP);
 12. Changes to the materials including the removal of face brick “frames” and external operable screens provided in lieu of brick frames / overhangs;
 13. Basement level bulky waste room increased to 32sqm;
 14. The deep soil landscaped area is 2,110sqm (30% of site area);
 15. The communal open space is 2,275sqm (32.6% of site area); and
 16. The changes to the number of apartments and their layouts has facilitated an increase in the number of apartments receiving solar access.

This Addendum to the SEE should be read in conjunction with the original SEE prepared by Boston Blyth Fleming and dated December 2018. This addendum prevails over that document.

2. Amended Proposal

As discussed above, the amended package detailed in Table 1 above will amend the plans and documentation before the Court. The amended proposal involves the construction of 5 x 5 storey residential flat buildings with a mezzanine level comprising 165 units with basement car parking for 200 vehicles and consolidation of 9 allotments into 1 lot. The balance of works includes new communal open spaces, landscaping and site works.

The primary built form changes includes the provision of additional setbacks from the front to a minimum of 8m (Buildings C, D & E) and rear to a minimum of 7m (Buildings A & B) and also increases the separation distances to 9m between buildings A & B. These setbacks coupled with changes to the design and appearance of the mezzanine levels will result in the reduction of 3 apartments (from 168 as refused and 165 as proposed). The built form changes has also facilitated changes to the design and layout of the apartments, especially in Buildings C, D & E where the buildings are now setback 8m to the building line and 10m to the glass line which results in 2/3 of the façade being setback 10m. A similar situation occurs to the rear boundary with Buildings A & B are now setback 7m to the building line and a minimum of 9.4m to the glass line to provide increased articulation.

The changes to the built form provide for opportunities to increase the deep soil landscaped area and communal open space areas. The changes will in turn enhance the landscaped character of the site by providing larger and more appropriately located trees while also providing additional area for communal open space throughout the site. Table 2 provides a summary of the project data for the development.

Table 2 Project Data

| | Original DA | Amended DA | Second Amendment | Amended Proposal |
|-----------------------------|---|---|---|---|
| Site Area | 6977.6sqm | | | |
| Height (m) | Building A = 17.5m Building B = 17.5m | Building A = 18.16m Building B = 17.9m Building C = 18.58m Building D = 18.8m Building E = 18.67m | Building A = 17.91m Building B = 17.66m Building C = 18.45m Building D = 18.59m Building E = 18.49m | Building A = 17.91m Building B = 17.66m Building C = 18.45m Building D = 18.73m Building E = 18.49m |
| Buildings | 2 | 5 | 5 | 5 |
| Building Height | 6 storeys | Part 5, part 6 storeys | 5 storeys with mezzanines | 5 storeys with mezzanines |
| Number of apartments | 200 apartments 40 x 1 bedroom 152 x 2 bedroom 8 x 3+ bedroom | 181 apartments 36 x 1 bedroom 127 x 2 bedroom 18 x 3+ bedroom | 168 apartments 58 x 1 bedroom 102 x 2 bedroom 8 x 3+ bedroom | 165 apartments 52 x 1 bedroom 102 x 2 bedroom 11 x 3+ bedroom |
| Residential Parking | 286 cars over 2 basement levels | 219 cars over 2 basement levels | 198 cars over 2 basement levels | 200 cars over 2 basement levels |
| Setbacks | Front = 6-12.5m Rear = 4.5-9m Side = 4.5-9m | Front = 8-13.7m Rear = 6-9m Side = 4.5-9m | Front = 8-13.7m Rear = 6-9m Side = 6-9m | Front = 8-13.7m Rear = 7-10m Side = 6-9m |

We are of the opinion that whilst the proposal results in non-compliances with the relevant planning controls, the proposed development satisfies the objectives of those non-compliant planning controls and results in a size and scale that is entirely compatible with that of surrounding properties (noting compatible does not mean sameness in *Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191*), will result in a high level of amenity for the occupants and will not have an adverse impact on the amenity of adjoining properties. In particular, despite minor



variations for the height of buildings development standard, these can be attributed to the topography and flooding and are discussed in the amended Clause 4.6 variation request at Annexure 1.

Despite the changes discussed in Part 1, the assessment of the relevant planning controls in the original SEE prepared by Boston Blyth Fleming are still relevant to the assessment of the amended application. As such, the original SEE is to be read in conjunction with this Addendum to the SEE but this document prevails.

Where the amended proposal alters the assessment provided in the original SEE, these issues are assessed under Part 3 of this Addendum to the SEE where they relate to contentions in Proceedings 2021/167189 [*Statewide Planning Pty Ltd V Hornsby Shire Council*].



3. Response to Contentions

This Addendum to the Statement of Environmental Effects is framed in the context of the Contentions in these Proceedings.

3.1 CONTENTION 1 – BUILDING HEIGHT

The development application should be refused because the height of the proposed development is excessive and does not comply with the maximum 17.5m height permissible under clause 4.3(2) of the HLEP 2013, or the maximum 17.5m building height required by clause 3.4.4 of HDCP 2013, and the written request made pursuant to clause 4.6 of HLEP 2013 is inadequate.

Particulars

(a) *Clause 4.3 of HLEP 2013 provides as follows:*

“4.3 Height of buildings

(1) The objectives of this clause are as follows—

(a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.”

(b) *Pursuant to the Height of Buildings Map HOB_017 that was in force from 29 September 2017 to 3 December 2020, a maximum height of 17.5m is permitted on the site.*

(c) *The proposed development exceeds the maximum 17.5m building height standard as follows:*

- (i) Building A= 17.91m*
- (ii) Building B = 17.66m*
- (iii) Building C = 18.45m*
- (iv) Building D = 18.59m*
- (v) Building E = 18.49m*

(d) *The Applicant has submitted a written request pursuant to clause 4.6 of HLEP 2013 seeking to justify the contravention of the height of buildings development standard in clause 4.3(2) of HLEP 2013.*

(e) *The Court, having the functions of the consent authority for the purpose of hearing and disposing of this appeal, would not be satisfied that:*

- i) The Applicant’s written request under clause 4.6 of HLEP 2013 has adequately addressed the following matters required to be demonstrated:*
 - 1. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - 2. that there are sufficient environmental planning grounds to justify the contravention of the development standard in clause 4.3 of HLEP 2013.*



- ii) *The proposed development will be in the public interest because it is consistent with the objectives of clause 4.3 of HLEP 2013 and the objectives for development in Zone R4 High Density Residential*
- (f) *The non-compliance to the maximum building height results in an additional residential floor located substantially above the building height development standard, in total being more than 1 storey higher than anticipated by the Respondent's planning controls.*
- (g) *Notwithstanding the case put under the Clause 4.6 variation for additional height due to site topography and potential flooding issues, the building height breach diagram clearly shows the considerable extent and unvaried roof outline compared to surrounding and future buildings.*
- (h) *The proposed breach in height does not demonstrate reasonable compatibility with desired character of the area.*
- (i) *The Applicant's written request does not address the 16.5m height of building standard adopted pursuant to Hornsby Local Environmental Plan (Amendment No 11) that now applies to the site, which is to be taken into consideration as a draft instrument.*
- (j) *Amendment No. 11 to HLEP 2013 has been adopted and applies to new development applications. As a result of its certainty it should be given considerable weight.*
- (k) *Amendment No. 11 to HLEP 2013 was designed to preserve the character of the five storey neighbourhood and remove mezzanine levels from these precincts. The recently amended instrument will be substantially undermined by the approval of the development application.*

PLANNING COMMENT

As detailed in Table 2, the amended proposal results in the following heights:

- Building A would be 17.91m high and breaches the height standard by a maximum of 410mm or 2.3%,
- Building B would be 17.66m high breaches the height standard by a maximum of 160mm or 0.9%,
- Building C would be 18.45m high and breaches the height standard by a maximum of 955mm or 5.4%,
- Building D would be 18.53m high and breaches the height standard by a maximum of 1235mm or 7%,
- Building E would be 18.49m high and breaches the height standard by a maximum of 995mm or 5.6%.

Figure 1 provides a detailed Building Height Blanket for the proposed development and also provides consideration of surrounding development in terms of the height limit.

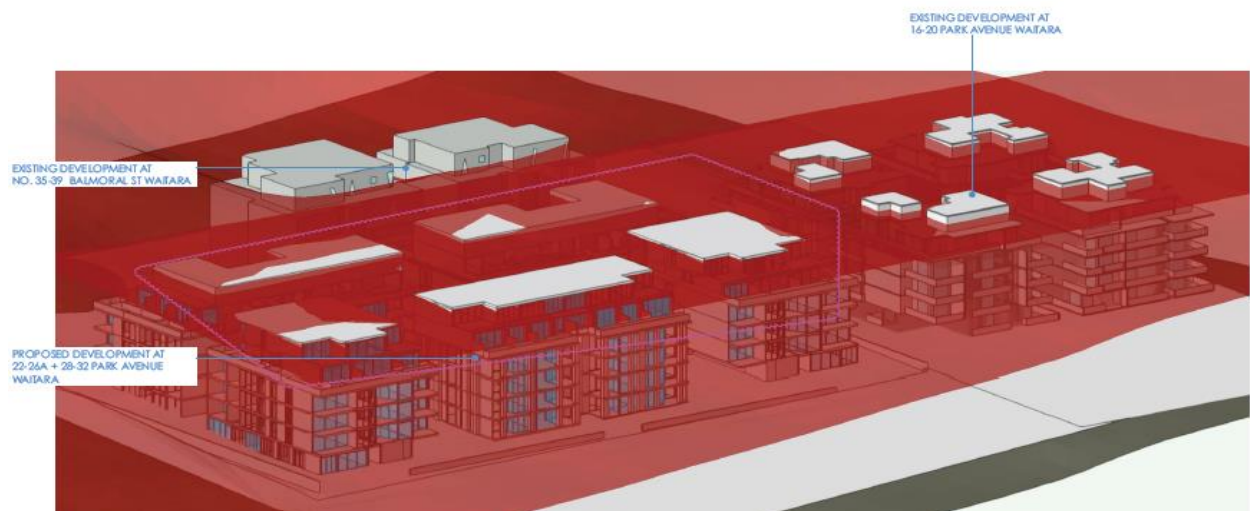


Figure 1 Height Blanket Diagram



A revised Clause 4.6 Variation Request has been provided in relation to Clause 4.3 – Height of Buildings under HLEP 2013 in **Annexure 1**.

The variation to the height of buildings development standard can be, in part, attributed to the requirement to provide development to the Flood Planning Level (including 500mm freeboard). When measuring the height of the each building above the FPL, the maximum height will be 17.95m. This is 450mm above the 17.5m height of building development standard. Therefore, if the FPL did not apply to each building the proposed development would need to be 450mm below existing ground level to ensure compliance with the 17.5m height of buildings development standard. Given the site has a maximum fall of 3.29m from the rear to front boundary, the development would be entirely capable of compliance with the height of buildings development standard had there not been a requirement to comply with the FPL. Therefore, it is a combination of the flooding and topography that result in a variation to the height of buildings development standard. Both of these factors are site specific factors that are not contemplated by Clause 4.3 of HLEP 2013.

In any event, the maximum variation for the height of buildings occurs predominantly at the western end of each building given the cross fall of the site. In most instances, the extent of the height variation at the eastern end of the building is negligible or compliant, setback up to 16.6m from Park Avenue and will not be readily discernible to the casual observer as detailed in Figure 2 below.

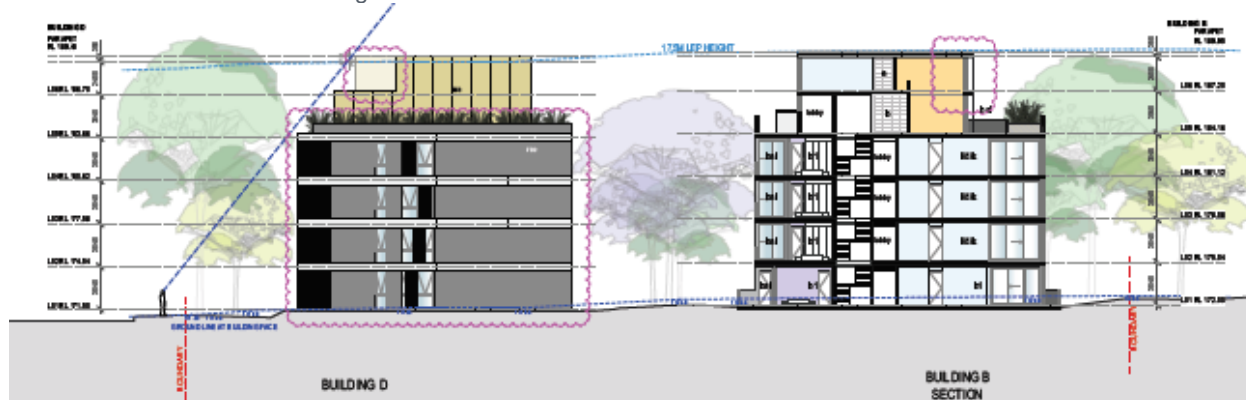


Figure 2 The proposed buildings detailing visibility of non-compliant sections on Park Avenue

The Balmoral Road, Waitara Precinct is not characterised by buildings that are compliant with the height of buildings development standard. It could be argued that the 17.5m height of buildings development standard has been virtually abandoned or destroyed by Council which necessitated the reduction in the maximum height of buildings to 16.5m under Amendment 11 of HLEP 2013. The existence of other height non-compliant buildings in the immediate locality sets a different context that must be considered. This is highlighted in the height blanket diagram in Figure 1 (above) which demonstrates the variations to the height control in the immediate surrounds of the site.

It is clear there is a gradual fall in the topography from south to north which is followed by existing development on the eastern side of Park Avenue. A table of the maximum RL heights for each of the existing and proposed residential flat buildings is provided below:

| Address | RL Height |
|-------------------|-----------|
| 4-6a Park Avenue | RL 191.6 |
| 8-10 Park Avenue | RL 190.99 |
| 12-14 Park Avenue | RL 190.64 |
| 16-18 Park Avenue | RL 190.47 |
| Building E | RL 190.15 |

| | |
|-------------------|---------------------------------|
| Building D | RL 189.65 |
| Building C | RL 189.05 |
| 34-38 Park Avenue | subject to future redevelopment |

Despite the height variation, it is demonstrated that the proposed development will continue to step with the change in topography and transition to the currently underdeveloped sites at Nos 34-38 Park Avenue. Insistence on compliance with the height control would put the development out of step with the gradual fall of building heights with the topography as detailed below:



Figure 3 Streetscape elevation

It is acknowledged that the proposed development exceeds the height of buildings development control, however, for the reasons discussed in the revised Clause 4.6 variation request, it is considered that the variations are minor, satisfies the objectives of the height of buildings development standard and the zone and there are sufficient environmental planning grounds to support the variation.

The **only** objective of Clause 4.3 of HLEP 2013 states as follows:

- (a) to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.

This objective sets a lower bar in that it only requires the height of buildings “that is **appropriate** for the site constraints, development potential and infrastructure capacity of the locality”. Furthermore, the terms “site constraints, development potential and infrastructure capacity” are not defined terms in HLEP 2013 which adds to the difficulty in considering the objective. In any event, the revised Clause 4.6 variation request details why compliance with the development standard is unreasonable and unnecessary and there are sufficient environmental planning grounds to support the variation. Interestingly, insistence on full compliance with the height of buildings development standard would result in the removal of a number of bedrooms and bathrooms on Level 6 but it would not reduce the number of apartments given the mezzanine design.

In terms of Particular (g), the Council contends that the proposal results in a considerable extent of unvaried roof outline compared to surrounding and future buildings. However, Part 3.4.1 of HDCP 2013 considered the future character as “roofs are flat pitched without parapets to minimise the height of exterior walls, incorporating eaves which cast shadows across the top storey walls”. The proposed flat roof achieves this and is entirely compatible with the shape and roof design of numerous Figures in Part 3.4 of HDCP 2013.

In terms of Particular (h) which contends the height breach does *not demonstrate reasonable compatibility with desired character of the area*, for the reasons discussed in Contention 5, we respectfully disagree. In any event, the objective of Clause 4.3 does not require consideration of the desired character of the locality. A similar conclusion could be drawn for Particular (f) which contends the proposal is 1 storey above the height control. A mezzanine is not defined as a storey under HLEP 2013 and therefore the proposed development is a 5 storey building with a mezzanine that results in a minor variation to the height limit.

In terms of Particulars (i) – (k), the revised Clause 4.6 variation request considers the implementation of Amendment 11 of HLEP 2013 which reduces the maximum height development standard to 16.5m. It is held in judgments of the Land and Environment Court that the savings in HLEP 2013 preserve the 17.5m height limit, however the 16.5m height limit in Amendment 11 is a matter for consideration but not a determinative matter. This is considered in *Terrace Tower Holdings Pty Ltd v Sutherland Shire Council* (2003) NSWCA 289 where Spigelman CJ found:

54 When Cowdroy J addressed the planning issue, he treated cl 51(2) of LEP 2000 as a relevant matter for consideration (at [66]), but not something that could be given determinative weight (see at [72]). His Honour weighed the competing evidence of the experts as to the reasonableness of the minimum gross floor space standard, preferring to uphold and apply it on its merits, but not as a mandated prescription (see at [67]-[72]).

In *Presrod Pty Limited v Wollongong City Council* [2010] NSWLEC 1257, Brown C considered the weight to be given to a draft LEP as follows:

20 The question to be answered is whether LEP 2009 should be given such weight that it should be preferred to LEP 2007 in the consideration of the application. In my view the question should be answered in the negative. The weight to be attributed to a draft environmental planning instrument will be greater if there is a greater certainty that it will be adopted (Terrace Tower Holdings Pty Ltd v Sutherland Shire Council (2003) NSWCA 289 at par 5). Relevantly, in Terrace Tower, Spigelman CJ states at pars 6 and 7 that:

6. Notwithstanding ‘certainty and imminence’, a consent authority may of course grant consent to a development application which does not comply with the draft instrument. The different kinds of planning controls would be entitled to different levels of consideration and of weight in this respect.

7. Where a draft instrument seeks to preserve the character of a particular neighbourhood that purpose will be entitled to considerable weight in deciding whether or not to reject a development under the pre-existing instrument, which would in a substantial way undermine that objective.

21 Terrace Tower (par 7) raises the question of whether the proposed development will preserve the character anticipated by the R1 zone and whether the proposed development will undermine the objectives of the R1 zone in LEP 2009. The submissions of Mr Mantei and Mr Hemmings come to different conclusions, however, I agree with the conclusions of Mr Hemmings.

Whilst the facts and degree of the above cases vary for the proposed development, it is clear that Amendment 11 to HLEP 2013 can be given weight, but not determinative weight, and consideration needs to be given to the character to ensure the objective is not undermined. It is important to note that while the maximum height limit has been reduced from 17.5m to 16.5m, the objective of Clause 4.3 of HLEP 2013 has not changed. That is, the effect of Amendment 11 of HLEP 2013 simply changes the numerical variation and does not change the way a Clause 4.6 is considered against the objective of Clause 4.3 of HLEP 2013.

The character or desired future character of the locality is not defined under HLEP 2013 and consistent with the judgment in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 is therefore subjective and can relate to the existing and approved development in the locality. As discussed above, the Balmoral Street, Waitara precinct is not characterised by height compliant or five storey residential flat buildings. Importantly, even with the reduction in height to 16.5m, Part 3.4.4 of HDCP still contains provisions that allow for mezzanines even though this is the very element that Council contends in Particular (k) that they wanted removed.

The character of the locality is that of five storey residential flat buildings plus a mezzanine level. In fact, no building to the south of the site on Park Avenue, including Nos. 4-6, 8-10, 12-14 or 16-20 Park Avenue would comply with the 16.5m height limit under Amendment 11 of HLEP 2013 and has less or no impact from flooding when compared to the proposed development. That is, the gazettal of Amendment 11 of HLEP 2013 will have no effect in preserving character given the scale of development already approved or existing in the locality.



Turning to the objectives of Clause 4.3 (which have not altered despite the gazettal of Amendment 11), the construction of Clause 4.3(a) of HLEP 2013 requires a consideration of the site constraints, development potential and infrastructure capacity of the locality to establish a height that is “appropriate”. There is no definition of the terms “site constraints”, “development potential” and “infrastructure capacity” under HLEP 2013. Accordingly, these terms are subjective.

However, the fact that heights of buildings are only required to be “appropriate” when considering the site constraints, development potential and infrastructure capacity sets a lower bar when considering the Clause 4.6 variation against the objective of the height of building development standard. These requirements are considered above and in the Clause 4.6 Variation request.

In conclusion, whilst weight can be attributed to Amendment 11 of HLEP 2013, it is not determinative weight and the consent authority, being the Court, may grant consent to a development application which does not comply with Amendment 11 of HLEP 2013. For the reasons discussed above and in the Clause 4.6 Variation request that the proposed development will not undermine the objectives of Clause 4.3 of HLEP 2013 and an appropriate degree of flexibility is to be applied to Clause 4.3 as required by Clause 4.6(1)(a) of HLEP 2013.

3.2 CONTENTION 2 – NUMBER OF STOREYS

The development application should be refused because the proposed number of storeys is excessive and contrary to the requirements of Section 3.4.4 of HDCP 2013.

Particulars

(a) Section 3.4.4 in Part 3 of HDCP 2013 relevantly provides:

“Section 3.4.4 Height within the Hornsby LGA

Desired Outcome

a. *A built form not exceeding 5 storeys in height and comprising residential flat buildings.*

Prescriptive Measures

Storeys

a. *Sites with the following maximum building heights under clause 4.3 of HLEP should comply with the maximum number of storeys in Table 3.4.4(a).*

Table 3.4.4(a): Translation of Height into storeys

| HLEP Area | Maximum Building Height (m) | Maximum Storeys (excluding basement car parking) |
|-----------|-----------------------------|--|
| O2 | 16.5m | 5 storeys |

Roof Design

h. *Top most storeys, including those with mezzanine levels, should be visually recessive with a setback from the storeys below and lightweight in design.*

i. *Mezzanines on any level are discouraged to minimise the visual bulk and scale of the building.*





- j. *Mezzanines will only be considered where the proposal demonstrated design excellence and incorporates sleaving to minimise the visual impacts of the stepping transition and provide potential for shading, perimeter planning and photovoltaic solar panels.”*
- (b) *The proposed development exceeds the current height limit of 16.5m and the superseded height limit of 17.5m and presents as a 6 storey building which is contrary to the desired outcomes of clause 3.4.4 of HDCP 2013 which seeks to limit residential flat buildings to 5 storeys.*
- (c) *The proposed top storey level of the development is not visually recessive and is not setback 3m from the ground floor level in accordance with the HDCP 2013 to minimise visual bulk and scale.*
- (d) *The mezzanine level is discouraged by the recent changes to the height of building standard in HLEP 2013 and associated controls in HDCP 2013 as mezzanine levels add to the visual bulk and scale of the building and do not demonstrate reasonable compatibility with the desired character of the area anticipated by the gazetted reduction in height.*
- (e) *The mezzanine level does not demonstrate design excellence.*

PLANNING COMMENT

In terms of Particular (a), the application of Prescriptive Measure (a) in Section 3.4.4 of HDCP 2013 is at the very least debatable as the height limit of the subject site is 17.5m under HLEP 2013 rather than 16.5m, but this will be a matter for legal submission.

Interestingly, even though the maximum height has been reduced to 16.5m under Amendment 11 of HLEP 2013, contrary to Particular (d), the provisions for mezzanines still exist in Section 3.4.4 of HDCP 2013. Importantly, Section 3.4.4 of DHCP 2013 was updated to detail the 16.5m height limit but was not updated to remove the requirements for a mezzanine which Council contends was the reason for the change to the height limit. That is, even with the reduction in height to 16.5m the controls in Section 3.4.4 of HDCP 2013 still contemplates 5 storeys with a mezzanine level. Given five storeys plus a mezzanine is contemplated in HDCP 2013 and the provisions of Clause 4.6 of HELP 2013 are not numerically limited but promote flexibility in the application of development standards, the proposed development is considered to be entirely reasonable in this regard.

Particular (a) notes that the DCP contemplates mezzanines for development in the locality subject to meeting the requirements of design excellence and sleeving while Particular (c) contends that the top storey level is not setback 3m from the ground floor level to minimise visual bulk and scale. Figure 3.4(f) clearly demonstrates an acceptable form of development under Section 3.4.4 of HDCP which is reproduced in Figure 4 below.



Figure 3.4(f) Example of perimeter sleaving with pergola and perimeter planters for greenery at upper levels.

Figure 4 Figure 3.4(f) under HDCP

Furthermore, a Key Development Principles for the Balmoral Street, Waitara Precinct states as follows:



Strategy - Redevelopment should be predominantly five storey residential flat buildings in garden settings, with parking in basements.

It is important to note that the above principle does not mandate five storey residential flat buildings in the Balmoral Street, Waitara precinct but rather sets a lower bar and requires that redevelopment “*should be predominantly five storey residential flat building*”. As discussed above, HDCP contemplates five storey buildings with a mezzanine and therefore strict application of a five storey residential flat building is not specifically required for the Balmoral Street, Waitara precinct.

It is considered that the actual built form and character of the Balmoral Street, Waitara precinct generally reflects the built form outcome in Figure 4 (above) which is five storeys plus a mezzanine. The proposed development is at the very least compatible with Figure 4 and also reflects the “strategy” rather than the strict application of five storey residential flat buildings as contended by Council. The amended proposal will also provide for at least a 3m additional setback from the base element below around the periphery of the site to reduce the apparent bulk and scale.

The proposed mezzanines provide a bedroom and bathroom that occupies 18-35sqm for each apartment (predominantly less than 30sqm) and cannot be said to be visually jarring or incompatible with the built form of surrounding properties which exist in the Balmoral Road, Waitara Precinct with examples provided below.



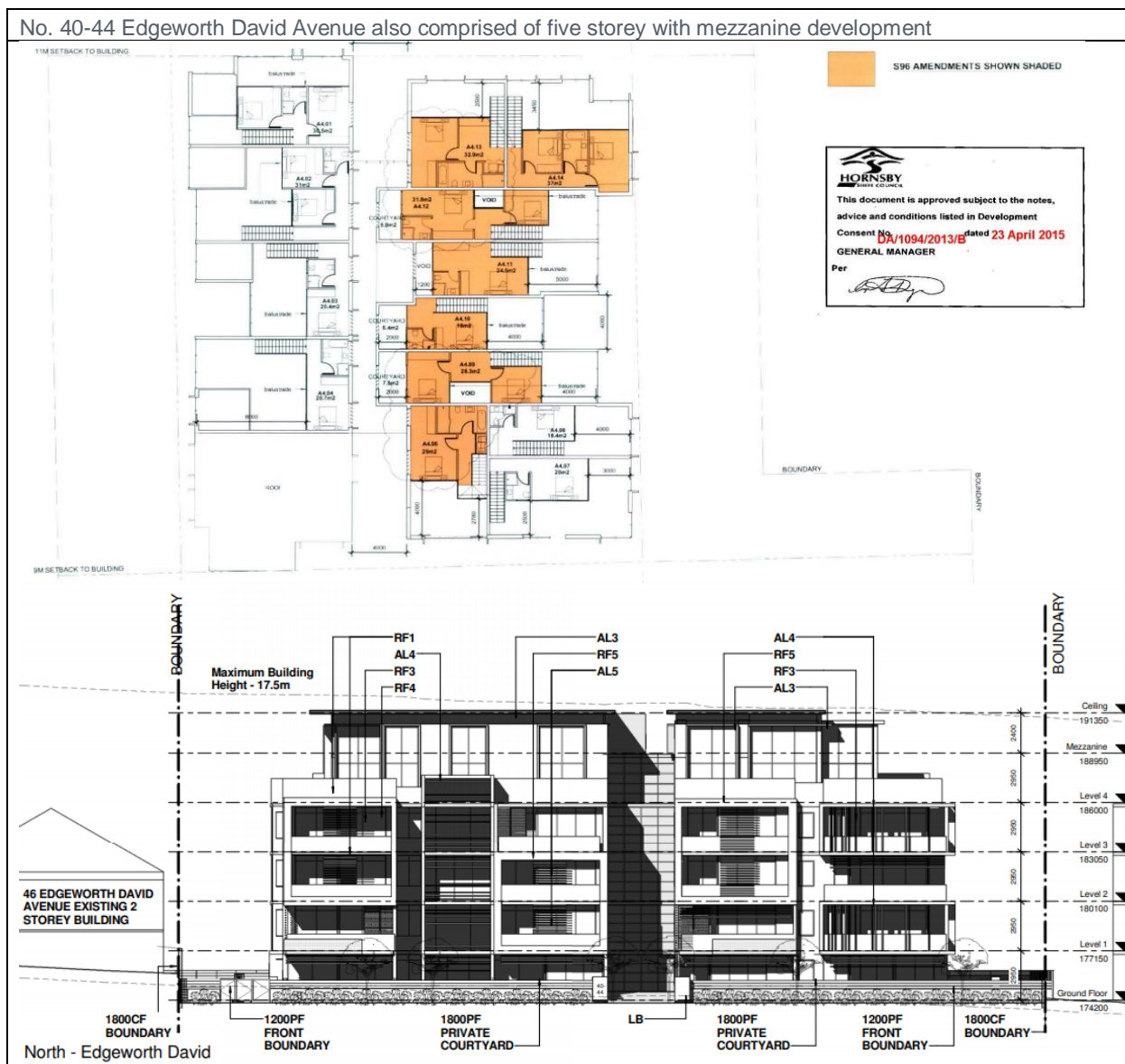


Figure 5: Approved Top level and elevation of 16-20 Park Avenue

As discussed above, the height of the proposed development (both overall height and storey height) will be entirely compatible with the height and character of surrounding development. The Balmoral Street, Waitara precinct is not characterised by buildings that comply with the HLEP or HDCP requirements (or previous iterations) which sets a different character to one that is governed by strict compliance with the current planning controls. Therefore, variations to DCP controls can be considered in the context of existing and approved buildings as required under Section 4.15(3A) of the EPA Act.

In any event, Council in the NSLPP report acknowledges the proposed development comprised of a five storey plus a mezzanine residential flat building. Therefore, the amended proposal will satisfy the only desired outcome under Part 3.4.4 of HDCP 2013 as the proposed development will not exceed five storeys in height and comprise of a residential flat building.

3.3 CONTENTION 3 – SETBACKS

The development application should be refused because the proposed development does not provide adequate front, rear or side setbacks and in that regard is contrary to Section 3.4.5 Setbacks of HDCP 2013.

Particulars

(a) Section 3.4.5 'Setbacks' in Part 3 of HDCP 2013 relevantly provides as follows.

“Desired Outcomes

- a. Well articulated building forms that are set back to incorporate landscaping, open space and separation between buildings.

...

- c. Setbacks that preserve and protect existing trees around the perimeter of sites and provide effective deep soil areas that are able to create a garden setting, including substantial tree canopy to all sides of the building.

Prescriptive Measures

- a. The minimum setbacks of all buildings and structures should comply with Table 3.4.5(a).

Table 3.4.5(a) Minimum Setbacks

| Setback | Minimum Setback |
|---|---|
| Front boundary (includes balconies) | 10m, which can be reduced to 8m for a maximum 1/3 of the building width |
| Side boundary (includes balconies) | 6m, which can be reduced to 4.5m for non-habitable rooms only, to a maximum of 1/3 of the building width |
| Rear boundary | 10m, which can be reduced to 8m for a maximum of 1/3 of the building width |
| Fifth storey setback | 3m additional setback for exterior walls of the fifth storey, measured from the walls of the lowest storey |
| Fifth storey setback where mezzanine proposed | 6m additional setback for exterior walls of the fifth storey, measured from the walls of the lowest storey unless there is a sleaving proposal incorporating pergolas and planters to the building perimeter. |
| Basement parking setback | 8m from the front boundary, 7m from the rear boundary and 4m from side boundaries to allow for deep soil planting.” |

(b) The proposed development does not comply with the front setback controls as follows:

- i) The ground floor of Building C and E is setback 8m for 60% of the building width and the ground floor of Building D is setback 8m for 47% of the building width instead of the HDCP 2013 prescribed setback that only 1/3 of the building width should encroach to 8m.
- ii) Private courtyards for buildings C and E encroach to 4.8m from the front setback and private courtyards for building E encroaches to 6m from the front setback instead of the 7m maximum prescribed measure for ground floor courtyards reducing availability of landscaping.



- iii) *Buildings C, D and E each incorporate design elements with a setback of 7m to 7.5m and encroach within the prescribed 8m front setback, reducing area for landscaping and adds to the bulk of the building.*
- iv) *Building D, located in the middle of the site projects to 8m for 48% of the building length instead of the required 1/3 for the building width which adds to the bulk of the building.*
- (c) *The proposed development is setback 6m from the rear boundary for the majority of the building including balconies, which is a significant departure from the rear setback control which requires a 10m setback with the building encroaching to 8m for 1/3 of the building width and balconies permitted to 7m.*
- (d) *The inadequate rear setback is unacceptable as the setback proposed does not achieve adequate landscape verges along the rear boundary and is inconsistent with the rear setback of the adjoining residential flat building at No.16-20 Park Avenue and anticipated rear setback of the undeveloped site to the north.*
- (e) *A number of pathways and private open space areas for ground floor units are located within the front, side and rear setbacks which do not comply with the provisions for setbacks in HDCP 2013 and do not allow for adequate deep soil landscaping to be established.*
- (f) *Numerous elements of the fifth storey for Buildings C, D and E are not setback 3m from the ground floor as required by Section 3.4.5 of HDCP 2013, which accentuates the mass and scale of the fifth storey.*
- (g) *The mezzanine level is not setback 6m from the ground level in accordance with the requirements of Section 3.4.5 of HDCP 2013 where a mezzanine level is proposed to reduce its visual impact on the streetscape.*
- (h) *The non-compliance with the setback controls results in an over development of the site and is not supported.*
- (i) *HLEP 2013 does not incorporate any floor space ratio or site coverage development standards for the precinct. The bulk and scale of a building on any site in these precincts is regularised by the planning controls for setbacks and landscaping in HDCP 2013. It is essential that the proposed development comply with the development controls for setbacks in clause 3.4.5 of HDCP 2013 to achieve the intended development outcome on the site and to avoid an over development of the site.*

PLANNING COMMENT

The amended proposal has significantly increased the front and rear setbacks, including basements, when compared to the original proposal. The proposed development now provides a minimum of 8m from the front boundary and a minimum of 7m from the rear boundary.

In terms of the setbacks, the amended proposal results in the following front and rear setbacks by building:

| | Building A | Building B | Building C | Building D | Building E |
|-----------------------|---------------|-------------|------------|---------------|------------|
| Min. Setback | 7m (rear) | 7m (rear) | 8m (front) | 8m (front) | 8m (front) |
| Building Width | 39.9m | 42.9m | 20.3m | 33.3m | 20.3m |
| % within 10m | 73.4% (29.3m) | 75% (32.2m) | 34.4% (7m) | 47.4% (15.8m) | 34.4% (7m) |

The amended proposal is clearly an improvement on the setbacks and percentage of building within the front or rear setbacks when compared to Council's contentions. Importantly, the increase to the minimum front and rear setbacks is accompanied by a reduction of gross floor area within the 10m setback area from both boundaries. The following points are noted with regard to the front and rear setbacks:



- The proposed buildings will be a minimum of 6m setbacks from the side boundaries which is greater than the minimum 4.5m setbacks required by Part 3.4.5 of HDCP 2013. The redistribution of area from the side setbacks to other parts of the buildings will result in a superior planning outcome by providing greater separation distances from surrounding properties and providing a deep soil landscaped area around the periphery of the site to accommodate large canopy trees as detailed in the Landscape Plan.
- The increased front and rear setbacks will allow for a greater portion of deep soil landscaped area and therefore allow larger canopy trees to be planted to enhance the landscaped character of the locality (refer to the amended Landscape Plan).
- The design elements that encroach within the front and rear setbacks have been removed with the facades redesigned to provide articulation and visual interest.
- The quantum of floor space within the 10m setback requirements for Buildings A, B & D is more than offset by the additional articulation provided for these buildings facing the front or rear boundaries.
- Buildings C & E would be compliant with the quantum of floor area within the front setback area if measured at the front alignment and it is only by virtue of the splayed living rooms that results in a variation when measured 10m from the boundary.
- The proposed front setbacks are entirely compatible with the front setbacks of surrounding residential flat buildings which have a combination of floor area and balcony elements within the 8-10m front setback area. At the very least, the proposed development will appear compatible with the setbacks and built form of surrounding residential flat buildings.
- HDCP 2013 contemplates balconies to within 7m of the rear setback which is not numerically limited. Furthermore, basements are permitted within 7m of the rear boundary. Therefore the HDCP contemplates structures along the length of the façade (an underground) to be setback 7m from the rear boundary.
- The built form facing the rear boundary is setback a minimum of 7m, complies with the ADG requirements for separation, highly articulated with a 4m x 3m articulated located in the centre of each building to ensure the length of unarticulated wall does not exceed 20m and provides 7m of unencumbered deep soil landscaped area to allow for the planting of canopy trees to enhance the landscaped character.
- There are no contentions raised in relation to adverse impacts in relation to privacy, solar access or view loss as a result of the variation to the front and rear setback requirements.

In terms of the ground floor level private courtyards, the amended proposal will provide a minimum setback of 6m which results in a 1m variation given these structures may encroach to 7m from the front boundary. The ground level apartments have sufficient area in the form of a balcony to provide the required private open space for an upper level apartment, however the provision of a minimum 2m wide courtyard rather than 1m wide courtyard as required by HDCP 2013 will significantly enhance the amenity of the occupants by providing useable open space without having an adverse impact on the visual scale and appearance of the building. Furthermore, the ground level courtyards do not reduce the deep soil landscaped area or interrupt the planting of large canopy trees within the front setback area and are considered entirely appropriate in this instance.

In terms of the setbacks for Levels 5-6, this has been discussed in Contention 2 (above) but it is noted that the amended proposal will be setback a minimum of 3m from the building alignment of the podium base below around the periphery of the site. The proposed fifth level and mezzanine will be sleeved and provide 18-35sqm of floor space which is entirely compatible with the HDCP 2013 requirements and surrounding properties (refer to Figure 5). Contrary to Particular (g), Table 3.4.5(a) only requires a 6m setback where there is no sleaving proposal incorporating pergolas and planters to the building perimeter. The amended proposal will provide a "sleaving" design response with planters to the perimeter to reduce the visual appearance of the proposal, however the provision of pergolas will have minimal visual benefit and have not been provided in this instance, which is a consistent design response to surrounding residential flat buildings.

The amended proposal will provide appropriate front, rear and side boundary setbacks that are contemplated by Part 3.4.5 of HDCP 2013. That is, the proposed development will match or be greater than the following:

- the minimum front setback of 8m;
- the minimum rear setback of 7m; and
- the minimum side setback of 4.5m.

Whilst the proposal results in numerical variations to the quantum of the building between the above-mentioned minimum requirement and the 6-10 setback requirements, the amended proposal establishes a built form that takes in cues from surrounding residential flat buildings and is entirely reasonable in this instance. The amended proposal achieves the desired outcomes under Part 3.4.5 of HDCP 2013 for the following reasons:

- The amended proposal will provide a well-articulated building form that provides the compliant of greater minimum setbacks to enhance the landscaped character, provide compliant levels of open space and provide compliant levels of separation between buildings;
- The proposed basement levels are compliant or better than the setback requirements from all boundaries to ensure a compliant level of deep soil landscaped area is provided which will in turn provide canopy trees to enhance the landscaped character of the locality;
- The site is surrounded by at least a deep soil landscaped area (clear of basements) to ensure useable active and passive COS is enriched by low level landscaped area and large canopy trees that provide a visual buffer and relief in the built form;
- The amended proposal will provide the required minimum setbacks to ensure landscaping is provided around the periphery and throughout the site to create a landscaped buffer between surrounding residential flat buildings;
- The proposed residential flat building satisfies the 6-9m separation requirements of the ADG and provides a built form that is compatible with surrounding buildings and presents a scale that responds to the pedestrian friendly location.

3.4 CONTENTION 4 – BUILDING FORM AND SEPARATION

The development application should be refused because inadequate building separation has is proposed on site, resulting in an unacceptable built form, which is contrary to Section 3.4.6 Building Form and Separation of HDCP 2013 and does not facilitate a landscape area as sought be Section 3.4.7 of HDCP 2013.

Particulars

(a) Section 3.4.6 'Building Form and Separation' in Part 3 of HDCP 2013 relevantly states:

"Desired Outcomes

- Buildings that are limited in width and depth, incorporating articulated facades and separated by garden areas.*
- Quality architecture that evolved from the guidelines of the Apartment Design Guide.*

Prescriptive Measures

Floorplates

- Floorplates should have a maximum dimension of 35 metres measures in a perpendicular direction between opposing exterior walls at any point. Balconies, terraces and ground floor lobbies may project beyond the maximum.*

Separation

- Building separation should comply with Part 2F Building Separation of the SEPP 65 Design Quality of Apartment Development, Apartment Design Guide.*
- On large sites where the floorplate control requires more than one building, adjoining buildings should be separated by a minimum of 9 metres."*

(b) Section 3.4.7 'Landscaping' in Part 3 of HDCP 2013 relevantly states:

"Desired Outcome

- a. *Landscaping that integrates the built form with the locality and enhances the tree canopy.*
- b. *Development that retains existing landscape features such as trees, flora and fauna habitats and urban streams.*

Prescriptive Measures

General

- g. *Landscaped areas should be provided between 2 or more buildings located on a development site, designed to:*
 - *Have a minimum total width of 8 metres,*
 - *Accommodate trees that will reach a mature height of at least 6 to 7 metres,*
 - *Provide a soil depth of 1 metre,*
 - *Be located in a deep soil area or above a basement car park, and*
 - *Include a component of deep soil area (i.e.: no basement intrusions) that measures at least 7 metres by 7 metres (sufficient for at least one canopy tree)."*
- (c) *Buildings A and B are separated by 5m to 6m instead of the HDCP 2013 stipulated 9m which accentuates their mass and scale and does not allow a landscape buffer.*
- (d) *The rear buildings A and B exceed the 35m maximum floorplate length by up to 9.5m, accentuating the unrelieved mass and scale of built form elements that provide backdrops to Park Avenue and neighbouring developments to the east along Balmoral Street.*
- (e) *The proposed development does not provide an 8m landscape area between buildings A and B at the rear in accordance with the requirements of section 3.4.7 of HDCP 2013 to moderate the scale of the development from adjoining buildings and provide an attractive and usable communal open space area.*
- (f) *The proposed development does not retain existing trees that could be preserved at the rear that could be retained if buildings A and B were not separated by only 5m to 6m.*

PLANNING COMMENT

The amended proposal has increased the separation distance between Buildings A & B to 9m to match the 9m separation of Buildings C & D and D & E. Therefore, as presented from the front and rear boundaries, the built form will comply with the minimum front and rear setback requirements and building separation distances. The increased separation distance between Buildings A & B will also enhance the quality of the centrally located Communal Open Space (COS) which is discussed below.

The amended proposal will maintain the 6m separation distances between Buildings A & C and B & E which results in a variation on Council's 9m requirement under Part 3.4.6 of HDCP 2013. Importantly, the amended proposal will comply with the ADG separation requirements given the apartment layout and design provides a non-habitable scenario between the buildings which will match the 6m separation distances between buildings for surrounding properties as detailed in Figure 6 below.



Figure 6: Building Separation distances of surrounding properties (source AE Design Partnership).

It is important to note that the amended proposal will provide a minimum of 6m setbacks from the side boundaries which is greater than the minimum 4.5m setbacks required by Part 3.4.5 of HDCP 2013. The redistribution of area from the side setbacks to other parts of the buildings, such as between Buildings A & C and B & E will result in a superior planning outcome by providing greater separation distances from surrounding properties and providing deep soil landscaped area around the periphery of the site to accommodate large canopy trees as detailed in the Landscape Plan.

The amended proposal, even with the 6m building to building separation will still provide landscaping between the buildings which is integrated into the landscaped design using a “clump and gap” landscape solution with a large “clump” of canopy trees placed between the buildings to enhance the landscaped character and provide appropriate visual separation. The landscaping solution detailed on the amended Landscape Plan is considered to be a superior outcome to retaining existing trees on the site.

In terms of building length, the amended proposal will reduce the length of Buildings A & B through the 9m separation distance between the buildings but still results in a variation for Building A (39.9m) and Building B (42.2m). The design and layout of Buildings A & B will provide a 4m x 3m “cut out” to the eastern elevation to the rear to break up the building

length. This form of articulation is contemplated under Part 3.4.6 of HDCP 2013 for buildings greater in length than 25m and has been provided in this instance to create *“the appearance of two separate “building pavilions” rather than a single building mass”*. Whilst not strictly compliant with the 4m x 4m requirement, the proposed 4m x 3m “cut-outs” are provided clear to the sky and will contain landscaping to accentuate the appearance of two built forms when viewed from surrounding properties. In this instance, the width of the articulation (4m) is considered to be of greater importance than the depth (3m) given the depth would only be appreciated directly opposite the “cut-out” whereas the width will be appreciated from a greater portion of properties to the rear. This is considered to be a reasonable variation to the articulation requirements.

Importantly, all other buildings comply with the building length requirements and therefore, as presented to Park Avenue, the building length, separation distances and setbacks are anticipated by the planning controls. At the very least, the amended proposal is considered compatible with the built form of surrounding residential flat buildings.

Whilst the proposal results in numerical variations to the building separation requirements, the amended proposal establishes a built form that takes its cues from surrounding residential flat buildings and is entirely reasonable in this instance. The amended proposal achieves the desired outcomes under Part 3.4.56 of HDCP 2013 for the following reasons:

- The amended proposal will provide a well-articulated building form that provides the compliant of greater minimum setbacks, especially on the side boundaries to enhance the landscaped character and setting of the buildings;
- The amended proposal will provide the required minimum setbacks to ensure landscaping is provided around the periphery and throughout the site to create a landscaped buffer between surrounding residential flat buildings; and
- The amended proposal is a quality design that complies with the ADG requirements for building separation under Part 3F-1 of the ADG.

3.5 CONTENTION 5 – CHARACTER

The development application should be refused because the proposed development does not respond to, or enhance, desirable elements of the area’s future character.

Particulars

- (a) *The relevant considerations are specified primarily by SEPP 65:*
- i) *Design Quality Principle 1: Context and neighbourhood character requires that the design of new developments demonstrates positive responses to “desirable elements of an area’s ... future character”;*
 - ii) *With regard to positive responses, Principles 2: Built Form and Scale, 5: Landscape and 9: Aesthetics require that built form, landscaping and the design of facades are appropriate to desired character of the site, its streetscape setting, and the surrounding locality.*
- (b) *Details of desired future character for the Site and surroundings are described and indicated by the local controls:*
- i) *According to the ‘summary’ statement in section 3.4.1 – Desired future character of HDCP 2013, together with supporting objectives and prescriptive requirements that are specified by section 1C.2.9 – Landscaping and throughout chapter 3.4 – Residential Flat Buildings (5 Storeys); and*
 - ii) *By reference to an appropriate building envelope which is indicated by numeric controls in HLEP 2013 and HDCP 2013, and which also responds to the detailed design requirements in HDCP 2013.*
- (c) *With regard to the Site and its surroundings, the key outcomes for desired future character are:*



- i) *Five storey residential flat buildings in landscaped settings;*
 - ii) *Landscape settings which comprise corridors of canopy trees around and through each development site, with mature canopy heights that are in proportion to the heights of buildings;*
 - iii) *Buildings that avoid the appearance of a “continuous wall of development” by limiting façade-widths, and by articulation of floorspace to create separate ‘pavilion-forms’;*
 - iv) *Facades with well-articulated designs that avoid repetition of similar elements, and that employ visually-recessive design solutions for top storeys;*
- (d) *The proposed development is contrary to the key outcomes for desired future character having regard to the following:*
- i) *The street frontage, together with backdrops to neighbouring properties, would be dominated by massively-scaled building forms;*
 - ii) *The proposed setback dimensions are not sufficient to emphasise the desired landscape setting by accommodating an appropriate pattern of canopy landscaping that is capable of screening or softening visual impacts of the proposed building forms.*

In general, the widths of proposed setbacks and landscaped areas are sufficient to accommodate linear hedgerow plantings of smaller-to-medium sized trees only, rather than clusters of medium-to-larger trees which are typically observed in this locality’s house-gardens;
 - iii) *The proposed development provides setbacks to outermost faces of the proposed buildings provide with clear minimum dimensions of:*
 - A. *Along the street frontage: 7m to 7.5m;*
 - B. *Along the rear boundary: a consistent dimension of 6m;*
 - C. *Alongside boundaries: consistent dimensions of 6m;*
 - iv) *Within those limited setbacks, plantings are constrained by substantial encroachments:*
 - A. *Along the front setback: by proposed paths, driveways and building services that occupy approximately 40% of the frontage, together with proposed ground floor terraces that project 1m from the fore-most building alignments;*
 - B. *Within the rear setback: by a proposed 1m high retaining wall (and associated footings) that are setback 1m from the boundary, and a 1.2m paved pathway that is proposed along the full setback;*
 - C. *Alongside setbacks: by proposed 1m wide paved terraces that extend along approximately 40% of each ‘setback-frontage’.*
 - D. *A qualitative assessment of landscaping that is proposed within these setback areas is provided by contentions under the heading “Landscape Design Quality”.*
 - v) *Viewed from the street and neighbouring properties to the east, buildings will appear as continuous walls of development which are approximately 90m long and which have heights equivalent to six residential storeys:*
 - A. *The apparent height of six storeys is expressed by the number of occupied levels that would be visible to the casual observer;*





- B. *Blank-sided walls which flank courtyards between buildings C, D and E would be visible from the street and, without effective canopy landscaping between adjoining buildings, would contribute to the appearance of an extended “wall of development”;*
- C. *A similar situation applies for the rear elevation where buildings A and B have overall widths of approximately 41m to 44m.*
- vi) *Mass and scale would be accentuated by:*
 - A. *The continuity of linear alignments which are proposed for elements that define the profile or silhouette of eastern and western elevations: four storey base-elements, two-level penthouse-elements, and roof-eaves or parapets;*
 - B. *For the street elevation in particular: by an architecturally ‘assertive’ design of the four storey building bases, which (in particular) comprises massively-scaled portals at the outermost corners of buildings C and E;*
 - C. *For the rear elevation: by overall dimensions, together with insufficient articulation, and repetitive design treatments, resulting in planar facades that would present massively-over scaled backdrops to neighboring properties;*
 - D. *In relation to two-level penthouse elements: by supplementary setbacks that are not sufficient to moderate their height, mass or scale, together with an architecturally incoherent composition which is demonstrated by two-storey portal-framed elements that conflict with modulation and proportioning of the four storey base-elements;*
 - E. *For penthouse facades in building D: by planar facades without any embellishment or articulation (according to the detailed design section as well as plans for level five and the mezzanine which are not consistent with elevations that depict a repetitive application of two storey portals).*

PLANNING COMMENT

Particular (b) contends that the desired future character for the site and surrounds are described and indicated by the local controls. This appears contrary to the prescriptive control and character statement under Part 3.4.1 of HDCP 2013 or the Key Development Principles for the Balmoral Street, Waitara precinct which makes no mention of the local controls. In fact, with the exception of the character statement noting 5 storey residential flat buildings, there is no mention of any numerical requirements. The desired outcome under Part 3.4.1 of HDCP 2013 states as follows:

- a. *Development that contributes to the desired future character of the area.*

While the perspective measure for Part 3.4.1 states as follows:

- b. *Development applications should demonstrate compatibility with the following statement of desired character:*

This desired outcome or perspective measure does not require development to match or be consistent with the desired future character statement but sets a lower bar in that it must “contribute” or be “compatible” with the desired future character noting that compatibility does not mean sameness but rather existing in harmony (in *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191).

Particular (c) does provide a summarised version of the character statement in Part 3.4.1 of HDCP 2013, however when considering the desired future character statement of Part 3.4.1 of HDCP 2013, the amended proposal:

- is 5 storeys (with mezzanine which is not defined as a storey) in a landscaped setting with basement parking;



- will provide a landscaped scheme that provides a superior landscaped outcome to the existing site and those of surrounding development by providing large canopy trees around the periphery of the site and between buildings;
- will provide high levels of articulation with a mixture of balcony and floor space elements facing the street and deep “cut outs” to provide articulation and avoid the appearance of a continuous wall of development;
- will provide a range materials, colours and finishes to differentiate the buildings and also differentiate between the podium and top levels of the building;
- will provide flat roofs with no parapets but eaves to cast a shadow across the top storey;
- has altered the design of the corners of buildings to provide open wrap around balconies for articulation; and
- promote activity and alternative forms of transports given its proximity to public transport and open space and provision of bicycle spaces and walking tracks around the site.

Turning to the Key Development Principles for the Balmoral Street, Waitara Precinct, these require the following:

Strategy - *Redevelopment should be predominantly five storey residential flat buildings in garden settings, with parking in basements.*

It is important to note that the above requirement does not mandate five storey residential flat buildings in the Balmoral Street, Waitara precinct but rather sets a lower bar and requires that redevelopment “*should be predominantly five storey residential flat building*”. As discussed in Contention 2 (above), the HDCP contemplates five storeys including a mezzanine and strict application of a five storey residential flat building is not specifically required in the above strategy for the Balmoral Street, Waitara precinct. The amended proposal will at the very least, be compatible with the mezzanine levels already approved and constructed in the precinct.

In terms of the other elements of the “strategy”, the amended proposal clearly provides two levels of basement parking, however in terms of landscaping, this will be discussed below but it is important to note the increased front and rear setbacks and changes to the facades will provide a greater level of articulation and allow for greater landscaping in proportion to the height of the buildings.

Landscape setting - *Provide broad setbacks along street frontages and rear boundaries and locate communal open spaces in order to retain remnants of Blue Gum High Forest and existing trees that are prominent streetscape features. Surround and screen new buildings with canopy trees and shrubs.*

The amended proposal will provide a deep soil landscaped area surrounding the site enhanced by canopy trees with a “clump and gap” layout as detailed in the Landscape Plan. This is considerably better than surrounding development and allows the amended proposal to sit within a landscaped setting. Importantly, the amended proposal will provide an 8m front setback and 7m rear setback that is considered as deep soil landscaped area which will align with the minimum setback requirements for above and below ground built form. These increased setbacks will in turn ensure that the site achieves 2,110sqm (30.3%) as deep soil landscaped area and of this 1,882sqm (27%) will have a minimum dimension of 6m as detailed in the Landscape Plan.

The increased deep soil landscaped areas around the periphery of the site which will contain “clump and gap” landscaping coupled with the deep soil landscaped area at the centre of the site will permit large canopy trees to be provided relative to the height of the proposed buildings. The amended landscape plan demonstrates that the amended proposal will enhance its visual appearance within a landscaped setting.

There are no remnants of the Blue Gum High Forest on the site and the proposed development will provide numerous large canopy trees underlain with shrubs and grass covers throughout the site to screen the proposed buildings and ensure the buildings are provided within a landscaped setting.

Built form - To reflect the established pattern of detached-dwellings: limit the width of new facades that would be visible from any street and divide the floorspace of every new building into well-articulated pavilion forms that are separated by courtyards with canopy trees.

Siting and design should provide at least two hours sunlight daily for living areas in 70% of new dwellings.

Design quality of facades should respond to visibility from all street and laneway frontages.

Immediately adjoining heritage items: ensure garden setbacks, heights, building forms + design features are compatible with values that are specified by the Hornsby Shire Heritage Inventory.

Employ setbacks and building forms that retain reasonable sunlight + privacy for existing neighbours.

The amended proposal will ensure that dimensions of Buildings C, D & E comply with the HDCP requirements which will ensure the visual presentation of the buildings will be, at the very least, anticipated by the planning controls and entirely compatible with the scale and form of surrounding development. The built form is highly articulated through building design, setbacks, recessed balconies, materials and colours and is considered to be entirely compatible with development to the south at Nos. 4-20 Park Avenue and surrounding properties in Edgeworth David Avenue and Balmoral Road. That is, well articulated development that is surrounded by landscaping elements.

The amended proposal will ensure 122 of 165 (73.9%) of apartments receive more than 2 hours of solar access and only 12 of 165 (7.2%) receive no direct solar access in accordance with the ADG. This is detailed in the Solar Access Report by SLR Consulting. In addition, the amended proposal will ensure that the extent of overshadowing to adjoining properties is minimised within the context of an R4 – High Density Residential zone and 17.5m height limit. Similarly, the setbacks and separation distances of the proposed development satisfy the requirements of Part 3F-1 of the ADG and will ensure privacy impacts are minimised between dwellings on the subject site and to neighbouring properties.

There are no heritage items in the vicinity of the site.

Overall, it is considered that the amended proposal will positively contribute to the existing and desired future character of the Balmoral Street, Waitara precinct when viewed in context with the surrounding buildings. Therefore, the proposal will satisfy the only desired outcome to ensure that development *contributes* to the desired future character of the area and will not be visually “jarring” in the streetscape or as viewed from the surrounding properties.

3.6 CONTENTION 6 – DENSITY

The development application should be refused because the density of the proposed development is excessive.

Particulars

(a) SEPP 65 Design Quality Principle 3 – Density relevantly provides as follows:

“Good design achieved a high level of amenity for residents and each apartment, results in a density appropriate to the site and its context.

Appropriate densities are consistent with the area’s existing or projected population.

Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.”

(b) *Density is not limited by the local instrument, and may be understood in terms of proposed floor area and the number of dwellings.*

(c) *In relation to floor area, an excessive density is demonstrated by the proposed building envelope which is contrary to local numeric controls, and which also fails to satisfy outcomes that are specified by those local controls in relation to desired future character.*

- (d) *In relation to the proposed number of dwellings, satisfactory levels of amenity would not be achieved for a significant proportion of apartments, or for common areas within the proposed development.*
- (e) *Excessive density is indicated by the combined effects of an excessively-large building envelope and unsatisfactory levels of amenity which would be achieved for proposed dwellings and common areas.*

PLANNING COMMENT

HLEP 2013 does not contain and FSR control nor are there any requirements for building/dwelling density or apartment numbers contained in HDCP 2013 or the ADG. It is therefore difficult to comprehend the contentions that there is excessive density when there is effectively no starting point to consider if density is “excessive” as contended by Council. In any event, density is a relative term which is undefined in HLEP 2013. For example, boarding houses are permissible in the R4 High Density Residential zone which would have a greater density than the proposed residential flat building given the room sizes are much smaller or alternatively much larger dwellings could be provided within the same envelope which would reduce the density without changing the built form.

The subject site is within the R4 High Density Residential zone where higher residential densities are anticipated. If density was a concern to Council for this or other sites within the Balmoral Street, Waitara precinct then FSR controls could have been inserted along with changes to the height development standard under Amendment 11 of HLEP 2013. Furthermore, the Hornsby LSPS details that the Waitara precinct was specifically rezoned in order to assist with delivering the 4,500 dwellings for the locality. The density of the amended proposal is entirely appropriate given its proximity to transport, services and open spaces and gives greater effect to the objectives of the R4 High Density Residential zone.

The amenity of the apartments is discussed below in this submission while even if the mezzanine levels were deleted as appears to be contended by Council, this would not alter the number of apartments (density) but simply alter the number of bedrooms. It is considered there is no correlation between built form and density in this instance.

3.7 CONTENTION 7 – AMENITY OF COMMUNAL AREAS

The development application should be refused because the proposed development does not provide satisfactory amenity for common areas within the development, and consequently, these areas will not contribute sufficiently to positive social interaction between residents of the proposed development.

Particulars

- (a) *The relevant considerations are specified by SEPP 65 Design Quality Principles 6 – Amenity, 7 – Safety, and 8 – Housing Diversity and Social interaction.*
- (b) *Common areas include ground floor lobbies and associated access, upper storey lobbies, and communal open spaces.*
- (c) *Pedestrian pathways to entrance lobbies of buildings A and B are hemmed between buildings C, D and E, and spatial proportions together with the absence of opportunities for informal surveillance would compromise both amenity and perceived safety of those pathways:*
 - i) *Pathway-corridors have effective widths of 6m, lengths of approximately 20m, and would be flanked by wall heights that are equivalent to six storeys;*
 - ii) *Amenity and perceived safety would be further-compromised by the predominance of blank walls which would have overbearing visual impacts in terms of scale and bulk, as well as limiting opportunities for surveillance;*



- iii) *The proposed location of security gates behind building alignments creates recessed areas that would be accessible from the street and, consequently, which would be inherently unsuitable in terms of crime prevention design principles.*
- (d) *Ground floor lobbies in buildings C, D and E do not provide clear sightlines to the primary communal outdoor space: the absence of clear sightlines would prevent appropriate surveillance of the outdoor spaces, and also would be unlikely to encourage optimum use of those spaces.*
- (e) *Upper storey lobbies in all five buildings do not provide clear sightlines from lift waiting areas to ground level common areas: appropriate levels of surveillance would not be achieved, and indoor amenity would be compromised by constrained outlooks from the central portions of lobbies.*
- (f) *Top-most lobbies in buildings C and E contain dog-legs which compromise perceived safety for two apartments: apartment entrances are concealed behind garbage chutes, and would not be visible when exiting the lifts.*
- (g) *Common outdoor spaces in general provide unsatisfactory amenity, and consequently are unlikely to encourage use by residents:*
 - i) *Outdoor spaces comprise the central courtyard, 'corridor extensions' to that courtyard, and accessible portions of the side and rear setbacks.*
 - ii) *Amenity of the central open space is compromised by dimensions and orientation of the space, together with the heights of flanking building forms:*
 - A. *The space has an effective width of 11m to 12m, a length of 49m, and would be flanked by wall heights that are equivalent to four or six storeys;*
 - B. *Dimensions of the proposed space and surrounding buildings would be spatially-unpleasant and, in the absence of reasonable outlooks to the wider setting, would be unlikely to encourage the use of proposed bench seating and recreation areas;*
 - C. *Amenity of the courtyard would be further-compromised by extensive overshadowing during midwinter;*
 - D. *Due to narrowness of 'corridor extensions' which are proposed to the north, south and east, it is highly-likely that the central courtyard would be exposed to wind-tunnel effects of prevailing summer and winter winds, which would further-compromise ground level amenity.*
 - iii) *Amenity of corridor extensions to the central court would be compromised by the narrowness of proposed spaces:*
 - A. *Spaces have effective widths of 5m to 6m, lengths of approximately 20m, and would be flanked by wall heights that are equivalent to four or six storeys;*
 - B. *Amenity of ground level sitting areas would be compromised not only by spatial proportions but also by the predominance of blank walls which would have overbearing visual impacts in terms of scale and bulk.*
 - iv) *Amenity of open space within the rear setback is compromised by dimensions that prevent positive place-making which involves the creation of 'destinations':*
 - A. *The effective width of 5m is further-constrained by a continuous retaining wall and pathway, and place-making solutions rely upon two bench seats that adjoin the proposed gravel path;*
 - B. *Due to the absence of 'focal-point' destinations, the rear setback would not contribute substantially to communal recreation or promote social interaction between residents.*



PLANNING COMMENT

The amended proposal will provide changes to the front and rear setbacks and increase separation distances between Buildings A & B to enhance the amenity of the open space areas.

In relation to Particular (c), contrary to the contentions, the access pathways for Buildings A & B are provided between Buildings C & D and D & E which are separated by 9m at the upper levels and 7m on ground level (due to the driveway) which is significantly greater than the separation distances of surrounding properties and satisfy the HDCP separation requirements. Furthermore, there is a direct line of sight from the street to the lobbies of Buildings A & B with the footpath flanked by landscaping and upper level apartment balconies or windows which will overlook the pathways to provide casual surveillance. The location of the security gate behind the building line maximises the area available for deep soil landscaped area and canopy trees within the front setback area so any entry structures, mailboxes, gates and the like are setback from the street.

In relation to Particulars (d), (e) and (f) the following points are noted:

- Only Building D backs onto the primary COS area and it provides a clear line of sight from the entry to this space. Buildings C & E provide access to the COS area from the ground floor level lobbies as does Buildings A & B but it is not possible to provide a clear line of sight to the primary COS area from all lobbies given it is offset from this space.
- Control (f) of Part 3.4.8 of HDCP 2013 requires a direct sightline and convenient access from the lobby to the COS. All lobbies have direct access at ground level to COS and sufficient way finding signage in accordance with 3G-2 Of the ADG can be provided to enhance accessibility and usability if required;
- All lobbies and hallways have direct openings for natural light and ventilation to ensure internal amenity for these areas is provided by the amended proposal;
- There are no requirements to provide direct line of sight from lifts to apartment entrances.

In terms of the outdoor COS, the ADG does not designate the location of COS but simply requires a minimum dimension of 3m under the Design Guidance and an undefined primary area while Part 3.4.8 of HDCP 2013 requires a primary COS area at ground level with a minimum dimension of 4m and area of 50sqm. The amended proposal will provide 2,275sqm (32.6%) of COS which have dimensions of greater than 3m and are effectively all areas behind the security access gates at the front building line. The amended proposal provides significantly greater COS than surrounding properties and provides for a range of facilities and locations to allow for both active and passive use.

The primary area of COS is provided at the centre of the site and was specifically chosen in this location so the level of solar access can be pre-determined and set in the proposed development rather than be affected by externalities such as redevelopment of surrounding properties.

The amended proposal will provide a 9m separation distance between Buildings A & B which will enhance the appreciation of space within the primary COS area and provide better amenity outcome for occupants. As detailed on the amended architectural and landscape plans, the primary COS area at the centre of the site will contain seating, BBQ area and a variety of active and passive spaces that will receive solar access for more than 2 hours in midwinter. The ADG or HDCP 2013 does not require solar access to the entire COS area but rather 50% of the primary COS area and the amended proposal achieves these requirements. This is considered to be entirely appropriate in this instance and a better outcome than the primary COS areas of Nos. 16-20 Park Avenue and 35-39 Balmoral Street which are also located between buildings but do not provide the separation or landscaping provided by the amended proposal. In this instance, the location of the primary of COS in the centre of the site will provide the following benefits for the occupants:

- allow the user the choice to follow the sun or shade, depending on the season and temperature, to maximise the amenity of the occupants;
- provide linkages around the site between active and passive COS areas;

- allow for casual surveillance of the principal area of COS from multiple balconies and windows on the upper levels; and
- allow direct access from the lobbies of Buildings A-E to the COS at the centre of the site which was not previously provided.

There are no requirements that dictate the location of the primary COS under the ADG or HDCP 2013. Council contends that the central location of the COS is not appropriate given the separation distances and building heights but ignores the fact that Part 3.4.8 of HDCP 2013 requires the primary COS to be located at ground level, irrespective of the height limit of buildings and therefore it will be inevitable that the primary COS is flanked by buildings. Furthermore, Parts 3.4.5 and 3.4.6 of HDCP 2013 only requires 9m separation distances between buildings, a minimum of 4.5m to side boundaries and a minimum of 7m to the rear boundary. Therefore the amended proposal within a centrally located primary COS area with a minimum width of 9.8m is greater than anticipated by the planning controls under HDCP 2013.

The Design Guidance of the ADG states the following:

Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:

- *provide communal spaces elsewhere such as a landscaped roof top terrace or a common room*
- *provide larger balconies or increased private open space for apartments*
- *demonstrate good proximity to public open space and facilities and/or provide contributions to public open space*

The subject site is located in the R4 High Density Residential zone and is entitled to be considered for alternative solutions to provide COS. However, this requirement is not enlivened as the amended proposal complies with the Design Criteria. Despite this, the site is ideally located opposite Mark Taylor Oval which is zoned RE1 which will give occupants the choice to utilise the COS provided on site or the public recreation area opposite the site.

The amended proposal will provide a COS that is greater than required by the ADG and HDCP 2013 and achieves solar access in accordance with the ADG. The amended Landscape Plan details spaces for active and passive recreation which is entirely appropriate for the proposed development and will provide amenity for the occupants. The location of the primary COS at the rear or any other location on the site would have the following negative planning outcomes:

- The primary COS would provide solar access due to the underdeveloped nature of buildings to the north and east. The redevelopment of adjoining properties would have unknown and unquantifiable impacts on the solar access to the COS;
- HDCP 2013 allows rear balconies and basements to be built within 7m of the rear boundary and 4.5m of the side boundary, therefore providing an effective width less than the primary COS space in the amended proposal (9.8m);
- COS at the rear of the site would compromise the ability to provide significant canopy trees in a “clump and gap” layout as pathways, BBQ areas, seating, equipment and the like would need to be provided for the occupants; and
- Primary COS at the rear of the site will not be centrally located and would not be directly accessible from all buildings.

Therefore, the amended proposal will improve the quantity of the COS but also improve the quality and accessibility to the COS which will satisfy the only objective of Part 3D-1 of the ADG to provide “*an adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.*”

3.8 CONTENTION 8 – RESIDENTIAL AMENITY

The development application should be refused because the proposed dwelling layouts do not provide for satisfactory residential amenity.

Particulars

- (a) *The relevant considerations are specified by SEPP 65 Design Quality Principle 6 – Amenity, with further details provided by elements in parts 3 and 4 of the ADG, relevantly including:*

“Objective 4A-1

To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.

Design Criteria

1. *Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.*
- (b) *Solar amenity is unsatisfactory:*
- i) *Approximately 74 apartments, or 44% of the proposed total, would receive two or more hours of daily sunlight during midwinter;*
 - ii) *Solar access is constrained by east-facing apartments which, at 11am during midwinter, would not receive sufficient sunlight to balconies and / or interior living areas.*
- (c) *Entrances to several apartments on each level allow direct views from common hallways into living areas, and the opportunity for direct visibility would intrude upon private residential territory as well as perceived levels of privacy.*

PLANNING COMMENT

The amended proposal is accompanied by a solar access report prepared by SLR Consulting detailing that the proposed development complies with the Design Criteria under Part 4A-1 of the ADG. In this regard, the amended proposal will ensure 122 of 165 (73.9%) of apartments receive more than 2 hours of solar access and only 12 of 165 (7.2%) receive no direct solar access in accordance with the ADG.

In relation to Particular (c), this is a subjective, is not substantiated through any controls and is typical of apartment designs. In any event, the numerous indicative apartment layouts in the figures of Part 4D-1 of the ADG detail that access from the hallways / lobbies will go straight into the primary living areas and is expected and entirely appropriate in this instance.

3.9 CONTENTION 9 - HOUSING CHOICE

The development application should be refused because the proposed development does not provide sufficient 3 bedroom units to allow for demographic diversity, which is contrary to Section 3.4.12 Housing choice of HDCP 2013.

Particulars

- (a) *Section 3.4.12 ‘Housing Choice’ in Part 3 of RDCP 2013 relevantly states as follows:*

“Desired Outcome

- a. *A range of dwelling types that match the demographic diversity of Hornsby Shire and are accessible or may be adapted to meet the needs of people who have limited physical mobility.*

Prescriptive Measures

- a. *Development should include a mix of 1, 2 and 3 bedroom dwellings. For developments with 10 or more dwellings, at least 10 percent of each dwelling type should be provided.”*
- (b) *The proposed development does not incorporate a minimum 10% of 3 bedroom units to allow for demographic diversity, no justification has been provided on why this cannot be provided.*

PLANNING COMMENT

The amended proposal will increase the number of 3 bedroom apartments from 8 (5%) to 11 (7%). Whilst it is acknowledged that the amended proposal does not achieve 10%, the proposed development does satisfy the Desired Outcome detailed in Particular (a) by providing a range of dwelling types to match the demographic diversity of Hornsby.

The Hornsby LSPS details that 72% of the population live in a separate houses which would be typically 3 bedroom or greater while only 15% live in a high density dwellings. The provision of less than 10% of 3 bedroom apartments is a direct response to the demographic of Hornsby given 3 bedroom apartments will compete with the separate house demographic which appears to be over catered in the market. As such, the client has elected to provide the 32% (52) x 1 bedroom apartments and 62% (102) x 2 bedroom apartments but still provide 7% (11) x 3 bedroom apartments to provide a range of dwelling types.

3.10 CONTENTION 10 - LANDSCAPE DESIGN

The development application should be refused because the proposed landscape design is unacceptable, will not provide acceptable amenity for residents and will not provide appropriate amenity for the streetscape.

Particulars

- (a) *Objective 3E-1 of the ADG relevantly provides as follows:*

“Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality

Design Criteria

1. *Deep soil zones are to meet the following minimum requirements:*

| <i>Site Area</i> | <i>Minimum Dimensions</i> | <i>Deep soil zone (% of site)</i> |
|---|---------------------------|-----------------------------------|
| <i>Greater than 1,500m²</i> | <i>6m</i> | <i>7%</i> |
| <i>Greater than 1,500m² with significant existing tree cover</i> | <i>6m</i> | <i>7%</i> |

Design Guidance

On some sites it may be possible to provide larger deep soil zones, depending on the site area and context:

- 10% of the site as deep soil on sites with an area of 650m² - 1,500m²*
- 15% of the site as deep soil on sites greater than 1,500m²”*

- (b) *The Applicant's development application indicates that the proposed development provides 29% of the site as deep soil, or 2,020m², however this calculation includes areas of private open space, retaining walls, pathways and numerous hard surface areas. In addition, due to the proposed retaining walls along the perimeter of the site and numerous retaining walls and seating areas within the central part of the site, the Respondent contends that the proposed development does not achieve the 6 metre minimum width requirement of the ADG for deep soil area in any location.*
- (c) *When areas containing retaining walls and hardstand, and areas with a dimension less than 6m are excluded from the calculation of deep soil, the proposed development does not meet the 7% deep soil requirement (or the 15% requirement for sites greater than 1,500m² such as the subject site).*
- (d) *Section 3.4.7 'Landscaping' in Part 3 of HDCP 2013 relevantly states:*

"Desired Outcome

- a. *Landscaping that integrates the built form with the locality and enhances the tree canopy.*
- b. *Development that retains existing landscape features such as trees, flora and fauna habitats and urban streams.*

Prescriptive Measures

- g. *Landscaped areas should be provided between 2 or more buildings located on a development site, designed to:*
- *Have a minimum total width of 8 metres,*
 - *Accommodate trees that will reach a mature height of at least 6 to 7 metres,*
 - *Provide a soil depth of 1 metre,*
 - *Be located in a deep soil area or above a basement car park, and*
 - *Include a component of deep soil area (i.e.: no basement intrusions) that measures at least 7 metres by 7 metres (sufficient for at least one canopy tree)."*

Retention of Landscape Features

- k. *Existing healthy trees should be retained and protected wherever possible. Any trees removed as part of the development should be replaced elsewhere on site wherever possible."*
- (e) *The width of the proposed rear boundary areas are inadequate and do not provide the minimum 7 metres of deep soil required by prescriptive measure (g) of Section 3.4.7 of HDCP 2013. The proposed deep soil setback will compromise the planting requirements for canopy trees of 10-12 metres in height.*
- (f) *The soil over slab between buildings is only 400mm deep which is not adequate for any meaningful volume of landscape amenity for an area between 5 story built form, and is inconsistent with the minimum soil depth required by prescriptive measure (g) of Section 3.4.7 of HDCP 2013. This is particularly noticeable where an access pathway is adjacent to the driveway under Building E, resulting in poor amenity.*
- (g) *The proposed development is inconsistent with the desired outcome and prescriptive measure (k) of Section 3.4.7 of HDCP 2013 in circumstances where the proposed development does not seek to retain any trees on the site. In particular, the two trees located to the front boundary (being Tree 45: *Banksia integrifolia*, and Trees 46 *Melaleuca bracteata*) are both proposed to be removed notwithstanding that they are identified as being high retention value in the Applicant's arborist report prepared by Urban Forestry Australia.*



- (h) *The proposed development is highly dependent on street trees to provide landscape amenity to the streetscape. Details of whether wires are proposed to be undergrounded have not been provided. If wires are to remain, the street trees will not provide appropriate amenity.*
- (i) *The proposed development is located opposite Waitara Park that incorporates Mark Taylor Oval, a heritage listed item. The proposed development will impact on the curtilage of the park as a result of its substantial built form that is not mediated by appropriate landscape amenity.*
- (j) *The landscape setting of the proposed development fails to acknowledge the overall amenity of the surrounding area with tall remnant trees (for example to the south of Park Avenue) interspersed with new plantings and built form. In that regard the front of the built form should cut back to allow for specimen tree planting(s) and to modulate the streetscape presence.*
- (k) *Section 3.4.8 'Open Spaces' in Part 3 Residential of HDCP 2013 relevantly states:*
- "Desires Outcome*
- a. Development that incorporates passive and active recreation areas with privacy and access to sunlight.*
- ...*
- Prescriptive Measures*
- Communal open space*
- f. A principal communal open space area should be provided for each residential flat building of 10 or more dwellings as follows:*
- ...*
- Be landscaped for active and/or passive recreation and encourage social interaction between residents,*
 - Include deep soil planting to support advance tree canopies and minimize hard paved areas,*
- ...*
- Be sited and designed to protect the amenity of adjacent dwellings."*
- (l) *Communal areas fail to provide an appropriate amenity for the number of units, lacking focal and gathering areas, visually overlooked by the units above, and are linear in nature.*
- (m) *Raised planters are constrained in a number of locations, potentially restraining landscape volume and growth.*
- (n) *Access for the planters are through private apartments. This does not guarantee the ongoing sustainability of these planters (which will be highly dependent on maintenance watering etc being on slab) and therefore the treatment of the top level being visually recessive is not guaranteed as there are no procedures nominated by the Applicant for maintenance of these planters.*
- (o) *There are extensive paved areas within the landscape areas that restrict soil and air exchange for the healthy and sustainable growth of the proposed vegetation.*
- (p) *There is minimal impact of planting to the upper storeys, with limited soil depth and ground covers.*



PLANNING COMMENT

The amended Architectural Plans and Landscape Plans provided detail the increased building setbacks from the front and rear boundaries to provide a total deep soil area of 2,110sqm (30.3%) of the site. This is a significant improvement on previous schemes and allows for more space between buildings and importantly more space for the “clump and gap” planting of canopy trees relative to the height of the proposed buildings.

Council contends that when excluding retaining wall structures and impervious surfaces the proposed development does not achieve the required 7% of deep soil landscaped area with a minimum dimension of 6m. Figure 3E.2 in Part 3E of the ADG details that footpaths are not excluded from the deep soil landscaped area calculation as shown below:

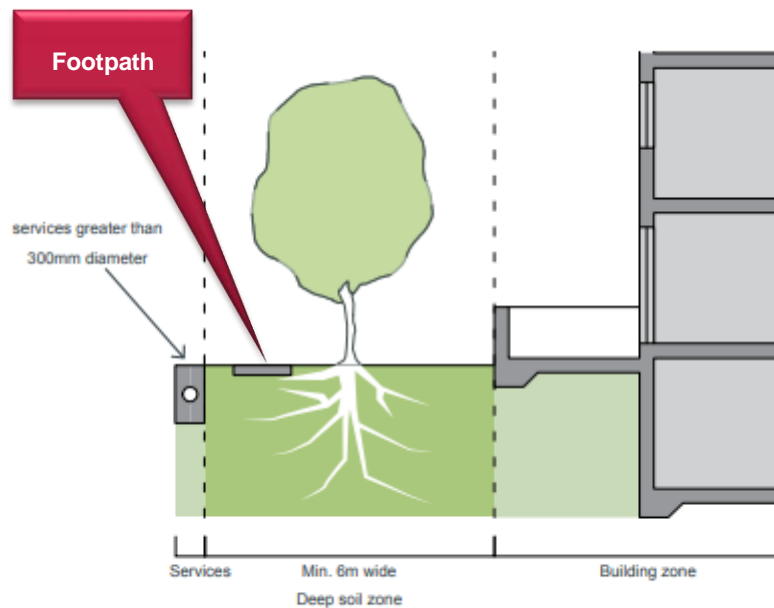


Figure 3E.2 Diagram showing the minimum dimension of deep soil zones for sites greater than 1,500m²

Figure 7: Demonstration of what is included in deep soil landscaped area (source: ADG).

In accordance with Figure 7, footpaths are permitted to be included in the deep soil zone and to remove any doubt, the amended proposal will ensure the footpaths for the proposed development will comprise of porous paving. That is, they will not be impervious surfaces and allow for gaseous exchange and water penetration. Therefore, the amended proposal will provide 1,882sqm (27%) of deep soil landscaped area with a minimum dimension of 6m and detailed in the Landscape Plan. In any event, structures such as footpaths, fences and the like will not impede the growth and planting of canopy trees as the root system will simply grow below these structures.

In terms of Particular (d), the amended proposal complies with the prescriptive measures under Part 3.4.7 of HDCP 2013 with the exception of the space between Buildings A & C and B & E which are both 6m. Despite the numerical variation, the 6m wide area can still accommodate significant canopy trees within the space between the buildings that are relative to the height of the buildings. These canopy trees are detailed on the amended Landscape Plan and include *Livistona Australis* (Cabbage Tree Palms) which grow to a height of 10-15m and a spread of 6-10m and *Melaleuca stypheloides* (Prickly Paper Bark) which grow to a height of 10-15m with a spread of 2-3.5m. These trees are either provided in the central deep soil zone or provided in a planter box above the basement with a soil depth of 1200mm as detailed in the sections on the Landscape Plans. As discussed in Contention 3 above, the amended proposal has redistributed area from the side boundary setbacks to other areas of the development which will provide a superior landscape outcome around the periphery of the site. The minor numerical variation to the separation between buildings does not hinder the ability to provide large canopy trees between buildings generally in accordance with the prescriptive measures under Part 3.4.7 of HDCP 2013.

In terms of the remaining Particulars, the following points are noted:

- The amended proposal will provide a 7m deep soil landscaped area at the rear to allow for “clump and gap” planting of large canopy trees (Angopohra Costata – Sydney Red Gums) which grow to heights of 15-20m and a spread of 6-15m;
- The two trees located to the front boundary (being Tree 45: Banksia integrifolia and Tree 46: Melaleuca bracteata) are to be removed by compensated 4 x Syncarpia Glomulifera (Turpentine) trees which grow to over 30m in height and a spread of 6-15m, 4 x Melia Azedarach var. australasica (White Cedar) which grow to a height of 5-10m and a spread of 6-10m and 12 x Callistemon viminalis King Park Special (Weeping Bottlebrush) which grow to a height of 3-5m and a spread of 3.5-6m which will be provided as street trees. This will significantly enhance the landscaped character as viewed from the public domain;
- The proposed development will provide a landscaped buffer within the front setback area and along the street that represents a considerable visual improvement on other developments in Park Avenue. The western side of Mark Taylor Oval on Waitara Avenue has 9 storey buildings that form the backdrop of the public recreation area and the amended proposal will be lower than these building and compatible with the height of surrounding buildings as detailed in Contention 1. The amended proposal will therefore not have any significant impact on the curtilage of the heritage item or views to or from the heritage item over and above what is anticipated by the planning controls.
- The COS areas is discussed in Contention 7 (above), however it should be noted that Part 3D-1 of the ADG is dependent on site area rather than number of apartments and provide a variety of passive and active areas for the occupants.
- Anywhere planters or planting on structures is undertaken, the amended Landscape Plan will ensure the species and size or landscaping is appropriate for its location and constraints.
- The amended Architectural Plans and Landscape Plans details the size, soil depth and location of planting and planter box structures to be provided on the podium or Level 4 which are part of the strata allocation for each apartment. In accordance with the Planning Principles of the LEC, landscaping is not relied upon to mitigate bulk and scale, rather the location of the planter box structure and setbacks of the upper levels assist in mitigating the perception of bulk and scale. Whilst the landscaping will assist in softening the appearance Council may impose a condition requiring a maintenance procedure for the landscaping for upper level planters.
- The paved areas comprise of porous paving which will assist in water and gaseous exchanges.

The amended proposal satisfies the requirements of the ADG and HDCP 2013 in relation to the proposed landscaping. The amended proposal represents a superior outcome to the original scheme before the Court and satisfies the desired outcomes or objectives of the relevant requirements under ADG or HDCP 2013.

3.11 CONTENTION 11 - PUBLIC INTEREST

The development application should be refused because the approval of the proposed development is not in the public interest having regard to the contentions raised above, and the concerns raised by residents in relation to the proposed development.

PLANNING COMMENT

The satisfaction of Contentions 1-10 will ensure that the amended proposal will be in the public interest. The proposed development the construction of new residential flat buildings which are permissible with development consent and is ideally located in a highly accessible location close to services and public transport. The amended proposal represents an appropriate form of development that is entirely compatible with surrounding properties and is either compliant or presents a reasonable alternative solution to satisfy the objectives of the relevant planning control. Importantly, the amended proposal does not have any adverse impacts on the amenity of surrounding properties. The amended proposal is considered to be in the public interest.



3.12 CONTENTION 12 - ACOUSTIC REPORT

The architectural plans were not supported by an acoustic report to ascertain any potential acoustic impacts and noise disturbance for future units within the subject unit complex as a result of the existing approved child care centre adjoining the eastern boundary at No.41-43 Balmoral Street, Waitara which is approved for 88 children.

PLANNING COMMENT

An Acoustic Report has been prepared by Acouras Consultants and is provided with the amended proposal.

3.13 CONTENTION 13 - ACCESS REPORT

An amended access report has not been submitted in relation to the most recent design amendments to the proposed development.

PLANNING COMMENT

An Access Report has been prepared by BCA Logic and is provided with the amended proposal.

3.14 CONTENTION 14 - LANDSCAPE REQUIREMENTS

The landscape plan should be amended to clearly indicate any public overhead powerlines that will be undergrounded and to remove any trees and shrubs from within the overland flow path as these were not included in the flood modelling.

PLANNING COMMENT

An Amended Landscape Plan has been prepared by Site Design Studios and is provided with the amended proposal. Council may wish to impose a condition of consent to secure the undergrounding of powerlines in Park Avenue.

3.15 CONTENTION 15 - WASTE MANAGEMENT

The development application should be refused because the proposed waste management facilities are insufficient and unacceptable. The following deficiencies are capable of being addressed by amendments being made to the plans:

- (a) *An additional Bulky waste storage area is to be provided at the basement level near the lift cores of Buildings A or C on basement level 1, providing no less than a total of 32m² bulky waste storage area for the site.*
- (b) *The bin carting path from each bin collection room to the truck parked on the street must be no less than 2m wide.*
- (c) *The bin carting path from each bin collection room to the truck parked on the street must be amended to have a gradient no steeper than 1:30 and must be smooth hard surface (no drain grates etc).*
- (d) *Most of the garbage and recycling chutes have offsets (distance between chute and bin) that are not operationally feasible (that is, the chute is not sufficiently vertical to fulfil its intended function). The plans must be amended such that all chute systems (chute plus volume handling equipment installed*



under it) are operationally feasible and are able to be installed to the supplier's standard technical specifications.

- (e) *The Waste Management Plan must be amended to include the following automatic volume handling equipment in the chute systems:*
- i) *Buildings C, D, E garbage chutes and Building D recycling chute require a 3 x 660L bin linear tracks, carousel or equivalent; and*
 - ii) *Buildings A1, A2, B1, B2 garbage chutes and Buildings A1, A2, B1, B2, C, E recycling chutes all require at least 2x660L bin linear tracks, carousel or equivalent.*
- (f) *A suitable lockable storage space must be provided on basement level 1 for the motorised bin carting equipment.*

PLANNING COMMENT

In terms of Waste Management, the following points are noted:

- A 32sqm bulky waste room is provided at Basement Level 1
- A bin tug will be used to cart bins from the waste storage areas on Basement Level 1 to the waste collection point. The bin tug will be parked at Basement Level 1 (adjacent to Waste Room 2) and will utilise driveways which are greater than 2m wide.
- Basement Level 1 is flat and the only gradient on the bin carting path will be the ramps to the bin collection point. Given the use of a bin tug, the gradients for the bin carting path up a driveway are irrelevant.
- The amended Waste Management Plan prepared by Elephants Foot will detail that the waste shuts are operationally functional and will be installed to the manufacturers specifications. This can be secured by a condition of consent.
- The bin tug parking space is not separately locked. This can be secured by a condition of consent.



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