

<b>JRPP No:</b>	2010SYE072
<b>DA No:</b>	10/DA-348
<b>PROPOSED DEVELOPMENT:</b>	Demolition of existing structures and construction of a ten (10) storey commercial/residential development with three (3) basement levels - 13-17 Woodville Street Hurstville
<b>APPLICANT:</b>	Jones Sonter Partnership
<b>REPORT BY:</b>	Tina Christy, Manager - Development Assessment, Hurstville Council

## Assessment Report and Recommendation

<b>APPLICANT</b>	Jones Sonter Partnership
<b>PROPOSAL</b>	Demolition of existing- new 10 (ten) storey mixed use development with basement parking.
<b>ZONING</b>	Zone no.3(b) – City Centre Business Zone
<b>APPLICABLE INSTRUMENTS</b> <b>PLANNING</b>	SEPP No.55 – Remediation of Land, SEPP No. 65 - Design Quality in Residential Buildings, SEPP (Building Sustainability Index: BASIX) 2004, Draft SEPP (Competition) 2010, Hurstville Local Environmental Plan 1994, Draft Hurstville LEP (Amendment No. 70) - City Centre Commercial Core Zone, Development Control Plan No 2 – City Centre – Section 4.2 – The Controls (Site 15B), Section 5.1 – Design Guidelines for Buildings, Public Domain and Open Space, Section 6.1 – Car Parking, Section 6.3 – Access and Mobility, Section 6.4 – Crime Prevention Through Environmental Design, Section 6.5 – Energy Efficiency, Section 6.9 – Waste Management, Section 6.10 – Development of a Heritage item or in the Vicinity of a Heritage Item.
<b>HURSTVILLE ENVIRONMENTAL PLAN 1994</b> <b>LOCAL PLAN 1994</b> <b>INTERPRETATION OF USE</b>	Residential component - “Residential Flat Building” Commercial component – “ business premises” or “office premises” Retail component – “Shop”
<b>OWNER/S</b>	Illawarra Catholic Club
<b>EXISTING DEVELOPMENT</b>	Previously Illawarra Catholic Club, currently vacant.
<b>COST OF DEVELOPMENT</b>	\$16,145,442.00
<b>REASON FOR REFERRAL TO JRPP</b>	Capital Investment Value exceeds \$10,000,000.00
<b>REPORT AUTHOR/S</b>	Manager Development Assessment, Tina Christy
<b>FILE NO</b>	10/DA-348

<b>HAS A DISCLOSURE OF POLITICAL DONATIONS OR GIFTS BEEN MADE?</b>	No
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## **EXECUTIVE SUMMARY**

1. The application seeks approval to demolish the existing structures and construct a ten (10) storey mixed use building with three (3) levels of basement car parking.
2. The proposal exceeds the maximum height limit for developments including a residential component, by 3 storeys under the provisions of Council's DCP No. 2 – Hurstville City Centre and does not comply with setbacks under the same controls.
3. The proposal does not comply with the publicly exhibited Draft Hurstville Local Environmental Plan 1994 (Amendment No. 70) – City Centre Commercial Core Zone, which would, if made, prohibit residential development.
4. The proposal is considered to have poor pedestrian access to the main lobbies and creates an unsafe environment for future intended users. It does not comply with the provisions of SEPP 65 in relation to Crime Prevention Through Environmental Design.
5. The proposal was publicly exhibited in accordance with statutory requirements and received three (3) objections, which are addressed in the report.
6. The proposal is not considered to be in the public interest.

## **RECOMMENDATION**

THAT the application be refused for the following reasons:

1. Pursuant to Sections 79C(1)(a)(ii) and 79C(1)(e), the proposal is considered to not be in the public interest, due to the certainty and imminence of the making of the Draft Amendment 70 to the Hurstville Local Environmental Plan 1994. It would undermine the proposed planning scheme to allow a use that would be prohibited, and inconsistent with, the zoning and objectives under the proposed local environmental plan.
2. Pursuant to Section 79C(1)(c), the site is not considered to be suitable for the proposed development, due to the certainty and imminence of the making of the Draft Amendment 70 to the Hurstville Local Environmental Plan 1994.
3. Pursuant to Section 79C(1)(a)(iii), the proposal does not comply with the provisions of Development Control Plan No 2 – Hurstville City Centre, in relation to height and setbacks.
4. Pursuant to Section 79C(1)(a)(i), the proposal does not comply with the provisions of SEPP 65 in particular with respect to Crime Prevention Through Environmental Design, building layout and internal amenity of the residential units.

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## DESCRIPTION OF THE PROPOSAL

The proposal seeks approval for the demolition of the existing buildings on the site at 13 – 17 Woodville St, Hurstville to allow for the proposed construction of a ten (10) storey mixed use development with a total of seventy-four (74) residential units eight of which are designed as adaptable housing. A retail/commercial component of 404sqm (being 1 x 350sqm and 1 x 54sqm) is proposed on the ground floor, with basement parking for a total of 108 vehicles. The unit mix is a variety of :

- 1 bedroom + study (6),
- 2 bedroom (11),
- 2 bedroom + study (37),
- 3 bedroom (8),
- 3 bedroom + study (7),
- 4 bedroom (1), and
- 4 bedroom + study (4).

The development will comprise specifically of the following:

### Basement Levels:

- 74 residential car parking spaces (basement levels 2 and 3),
- 19 residential visitor car parking spaces (basement levels 1 and 2),
- 15 commercial/retail car parking spaces (basement level 1).

The basement levels will also contain residential storage areas, lifts and fire stairs, plant room and 10 accessible car parking spaces (included in the above mentioned figures).

Ground Floor: Commercial/retail component of 404sqm, loading/unloading area, plant rooms, waste facilities (separate retail and residential), foyer, lifts (3 in total) and stair access to other floors. Individual entry to 2 residential units, Pedestrian and vehicular access to the site will be from the ground level off Woodville Street;

Level 1 (Podium): 11 residential units, lift lobbies and fire stairs;

Level 2: 9 residential units (including ground floor of a maisonette), lift lobbies and fire stairs, 3 private roof terraces, and roof top landscaped planters;

Levels 3 & 5: 8 residential units (plus upper floor of a maisonette), lift lobbies and fire stairs;

Levels 4&6: 9 residential units (including ground floor of a maisonette), lift lobbies and fire stairs;

Level 7: 8 residential units (plus upper floor of a maisonette), lift lobbies and fire stairs;

Level 8: 6 residential units, lift lobbies and fire stairs, and 6 individual entries and stairs to the units on level 9 above.

Level 9: 6 residential units.

All pedestrian and vehicular access to the site is via Woodville Street, with the vehicular access at the north eastern end of the site. A loading dock area to serve both commercial/retail tenancies and the residential tower is proposed in the northern corner of the building. The loading dock is capable of accommodating up to and including an 8.8m long medium rigid vehicle.

## **BACKGROUND**

19 November 2007 – approval granted for the demolition of the existing 3 storey club building and the construction of a 15 storey retail/commercial building with basement parking. (In accordance with the DCP No.2 – Hurstville City Centre controls for commercial/retail use only.

10 June – 16 July 2010 – Draft LEP Amendment 70 is publicly exhibited in accordance with the requirements of the Environmental Planning and assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000.

7 September 2010 – this current development application was submitted to Council.

15 September 2010 to – Exhibition period of application with three (3) submissions  
29 September 2010 received.

29 September 2010 – Hurstville City Council resolved “to proceed with Draft Hurstville Local Environmental Plan 1994 (Amendment No. 70) in respect of the Commercial Only Core land within Hurstville City Centre and forward the Section 69 report to the Minister.”

7 October 2010 - Application presented to Southern Sydney Group Councils’ Urban Design Review Panel.

1 November 2010 - Southern Sydney Group Councils’ Urban Design Review Panel comments received.

11 November 2010 - JRPP Briefing.

## **DESCRIPTION OF THE SITE AND LOCALITY**

The subject site is located at 13 – 17 Woodville Street, Hurstville; which is located on the south eastern side of Woodville Street near the corner of Crofts Avenue, Hurstville. It is an irregular shaped allotment with a frontage of 53.96m to Woodville st, an eastern side boundary of 44.67m, western side boundary of 36.175m and a split southern boundary of 26.845m and 21.145m. The site has a total area of 2092sqm. There is a slight cross-fall to the south eastern (rear) of the site and there is no vegetation existing.

Currently a part2/part 3 storey building exists, which was formerly the Illawarra Catholic Club. This building is currently vacant.

Adjoining the site to the west is a 5 storey building known as "Victory House" which is listed as a heritage item under the Hurstville Local Environmental Plan 1994. Adjoining the site to the east is a 3 storey commercial building. To the rear of the site is a part 5 and part 7 storey building sknown as "Club Central" and a part 2 and part 3 storey building occupied by "ANZ" bank. On the opposite side of Woodville Street is a 14 storey commercial/residential building known as "MacMahon Plaza" with an arcade through to MacMahon Street, and other 3-6 story commercial buildings. The area surrounding the subject site is characterised by multi-storey buildings.

## **COMPLIANCE AND ASSESSMENT**

The development has been inspected and assessed under the relevant Section 79C (1) "Matters for Consideration" of the Environmental Planning and Assessment Act 1979.

### **1. Environmental Planning Instruments**

#### Hurstville Local Environmental Plan

The land is zoned 3(b) – City Centre Business Zone under the provisions of the Hurstville Local Environmental Plan (LEP) 1994 and the proposed use as a mixed use building is not defined in the LEP, however it is a permissible use, given that it is not listed as a prohibited use in the zone. The components of the building are listed being the residential units defined as a "Residential Flat Building", the retail areas defined as "Shops", and the commercial component defined as "business premises" or "office premises".

#### Clause 14 – Tree preservation orders

There are currently no trees on site which warrant an assessment under this Clause.

#### Clause 15 – Services

Pursuant to Clause 15, water supply, sewerage and drainage infrastructure is required to be available to the land. It is considered the above services can be provided to the proposed development on the land. Council's Manager Development Advice has advised of no objection to the proposed drainage of the site, subject to imposed conditions of consent such as on-site detention system, the underground basement be required to pump out any storm water and that all other storm water to be drained by gravity to the street.

#### Clause 22 – Excavation, filling of land

Under this clause, adequate regard is to be given to any potential impacts to existing drainage patterns and soil stability in the locality regarding excavation of the site for three (3) levels of basement. Should the application be approved, appropriate conditions relating to soil stability and stabilisation of adjoining buildings can be imposed which will satisfy this requirement.

#### Clause 25A – Advertising and signage.

No outdoor advertising or signage is proposed as part of the application.

#### Clause 33 – Development in the vicinity of a heritage item.

The site is adjacent to a free-standing commercial building “Victory House” at 8 Crofts Avenue, which is listed as heritage item in Hurstville Local Environmental Plan 1994. *“The building was constructed from 1949 to 1952 and is one of two buildings in the Town Centre designed by prominent architect John R Brogan. It is one of four significant functionalist buildings in the Hurstville Town Centre, a group of Regional significance and possible State significance. The significance of the building is now increased due to its rarity by the recent demolition of the second Functionalist building by Brogan, Crosswalk Towers.”*, (as advised by K-Design Architecture, Planning and Heritage Consultants).

A Statement of Heritage Impact prepared by NBRIS + Partners dated August 2010 was submitted with the application. Both, this statement and the referral from Council’s Heritage Advisor both consider that the proposed development will not have adverse impacts on the adjoining heritage item.

#### State Environmental Planning Policy (SEPP) (Building Sustainability Index: BASIX) 2004.

In accordance with this policy, all new residential dwellings and those seeking alterations and additions as identified under this policy require a BASIX certificate that measures the Building Sustainability Index to ensure dwellings are designed to use less potable water and are responsible for fewer greenhouse gas emissions by setting energy and water reduction targets for house and units.

The application is supported by a satisfactory BASIX certificate that satisfies the requirements for new dwellings under this policy.

#### State Environmental Planning Policy No 55 – Remediation of Land

Under the provisions of Clause 7 of SEPP No. 55, the consent authority must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated. If the land is found to be contaminated, the consent authority must be satisfied that the land is suitable in its contaminated state or can and will be remediated in order for it to be suitable for the purpose for which the development is proposed.

The site has been occupied by the existing building for many years and there is no information available that suggests that the site may be potentially contaminated. On this basis, no preliminary testing has been conducted.

However, if the application was approved, appropriate conditions should be imposed detailing what is to occur if in the event that during excavation contamination was found. This would require contamination studies and the submission of, and approval of, a Remediation Action Plan to deal with the contamination.

#### State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Flat Buildings

The subject planning instrument is applicable as the proposed development satisfies the definition of a residential flat building as prescribed under the SEPP. Further to the design quality principles and referral to the Urban Design Review Panel, Clause 30(2) of SEPP 65 also requires residential flat development to be designed in accordance with the Department of Planning’s publication entitled Residential Flat Design Code.

There are a number of guidelines and rules of thumb contained in the Residential Flat Design Code which accompanies SEPP 65 that are applicable to the proposed development. These provide a meaningful and quantifiable assessment of the merits and deficiencies of the

proposal, when assessed against SEPP 65 and in turn inform whether the design quality principles contained in SEPP 65 are addressed.

The following table outlines compliance with the Residential Flat Design Code, where applicable, and the referral received from the Design Review Panel is discussed in detail later in this report:

STANDARD	OBJECTIVE	PROVIDED	COMPLIANCE
<b>PART 1 – LOCAL CONTEXT</b>			
<b>BUILDING HEIGHT</b>	Ensure future dev't responds to desired future scale and character of street & local area	Developments with residential components max 7 storeys	No (1)
<b>BUILDING DEPTH</b>	Max. 18m (glass line to glass line)	Max glass line to glass line is 19m	No (2)
<b>BUILDING SEPARATION</b>	5 to 8 storeys /12m to 25m in height. -18m habitable rooms/balconies to habitable rooms/balconies -13m, habitable rooms/balconies to non-habitable rooms -9m, non-habitable rooms to non-habitable rooms.	This building does not adjoin other residential buildings, which this control is primarily for. DCP No. 2 requires a 3m setback to the adjoining heritage building, which this complies with for the heritage building, but not to the rear as per DCP No. 2.	Yes (3)
<b>SIDE AND REAR SETBACKS</b>	Minimise impact on light, air, sun, privacy, views and outlook for neighbouring properties.	Proposal maintains 3m western side setback and 2.7m – 7.4m setback to southern boundary from the residential portion.	Yes
<b>FLOOR SPACE RATIO (FSR)</b>	To ensure that the development is in keeping with the optimum capacity of the site and the local area. FSR is not specified in the Design Code.	Complies with max FSR of 4:1 for development that includes residential component.	Yes
<b>PART 2 – SITE DESIGN</b>			
<b>DEEP SOIL ZONES</b>	A minimum of 25% of the open space area of a site should be a deep soil zone, more is desirable. Exceptions may be	Basement is excavated to boundaries except the rear southern boundary, which provides some deep	Yes (if the application was approved, appropriate conditions regarding shade and wind tolerant species in confined spaces would

	made in urban areas where sites are built out.	soil landscaping. The basement is setback some 3m – 7.4m from this southern boundary. Considering the site is surrounded by buildings and in a built-up area, this provision is acceptable.	be appropriate).
<b>OPEN SPACE</b>	Communal open space should be generally between 25% of the site area. (523sq m).  Min private open space for apartment at ground level/podium is 25sqm.	Approx 26% with rear garden and podium garden areas on roof top of Level 1.  N/A as all residential is located on level 1 or higher.	Yes
<b>BUILDING ENTRY</b>	Create entrance which provides a desirable residential identity for development, orient visitor and contribute positively to streetscape and building design.	Unacceptable design. Residential entry is at back of building, with no clear orientation to the street.	No (4)
<b>PEDESTRIAN ACCESS</b>	Promote residential flat development that is well connected to street and contributes to accessibility.  Barrier free access to 20% of units	Unacceptable access is provided to the residential units. It is not connected to the street, and is located at the back of the building.  Access to units is considered to have barriers due to blind corners and location at rear. Once inside the lobbies, access to the units is barrier free.	No (4)  No (4)
<b>VEHICLE ACCESS</b>	Limit width of driveways to 6 metres.  Integrate adequate	6.5m wide driveway in north-eastern corner, 6m at the street.  Carparking and	No (5)  Yes.



	carparking and servicing access without compromising street character, landscape or pedestrian amenity and safety.	servicing access is in one area and does not compromise the street character or pedestrian amenity and safety.	
<b>PART 3 – BUILDING DESIGN</b>			
<b>APARTMENT LAYOUT</b>	<p>Max. depth from window of single aspect apartment 8.0m</p> <p>The back of a kitchen should be no more than 8 metres from a window.</p> <p>Width of cross-over apartments more than 15 metres deep should be a minimum of 4 metres.</p>	<p>Max depth is significantly greater than 8.0m</p> <p>Some units 9m.</p> <p>All apartments min 4m deep</p>	<p>No (6)</p> <p>No (6)</p> <p>Complies</p>
<b>APARTMENT MIX</b>	To provide a diversity of apartment types, which cater for different household requirements now and in the future.	The proposal incorporates a diversity of mixture in the size of the units, however 50% are 2 bedroom + study.	Yes
<b>BALCONIES</b>	Primary balconies to be a minimum of 2 metres in depth.	All units have primary balcony or a courtyard and all are greater than 2m in depth.	Yes
<b>INTERNAL CIRCULATION</b>	Maximum of 8 units to be accessible from a double loaded corridor.	Units are accessible from various entries and corridors.	Yes
<b>STORAGE</b>	<p>To provide adequate storage for every day household items within easy access of the apartment</p> <p>1br : 6 cu.m</p> <p>2br :8 cu.m</p>	Not clear from the plans for each individual unit, but this could be conditioned to comply.	Yes (can be conditioned)

	3br:10 cu.m		
<b>DAYLIGHT ACCESS</b>	Min 70% of units receive min 3 hrs of solar access	97% will receive 3hrs solar access between noon and 3pm mid winter. The remaining will receive 2.5hrs.	Yes
	Max 10% units southerly aspect	100% units NOT southerly aspect	Yes.
<b>NATURAL VENTILATION</b>	60% of residential units should be naturally cross ventilated.	74% are dual aspect.	Yes
	25% of kitchens should have access to natural ventilation.	100% kitchens have access to natural ventilation	Yes

The following non-compliances with the Residential Flat Design Code are discussed below:

#### *1) Building Height*

The proposal does not comply with the primary development control of height as it does not respond to the desired future scale and character of the street and local area for developments incorporating residential components. This will be discussed in more detail later in this report.

#### *2) Building Depth*

Six (6) of the units on the Podium level achieve a 19m building depth from glass line to glass line, and this is to an internal courtyard with light and ventilation from above, however no external viewing except to the sky. This is considered unacceptable for a new development. There is no reason why this proposal cannot comply with this requirement, and the design of these units should allow for external viewing.

#### *3) Building Separation*

The building is adjoined by commercial/retail uses and this principle is primarily for separation from residential uses. The proposal does achieve 3m to the western elevations to have regard to the adjoining heritage building.

#### *4) Building Entry*

The proposal does not comply with this critical site design criteria for site access. The residential entry to the building, for all units, is located at the rear of the site; with no orientation to the street. It is considered unsafe and un-inviting to residents and visitors alike. Whilst the commercial/retail component is oriented to the street, the residential component (which is more likely to have pedestrian use at night) is hidden at the back of the building.

#### *5) Vehicle Access*

The proposal has a driveway which is 500mm wider than encouraged. In this instance, given that it is the only driveway for the complex and it provides access for loading/ waste facilities

and parking; the width of the driveway is considered appropriate. It is located in the corner of the development, leaving the rest of the frontage for active streetscape.

However, a better design would be to have the loading dock separate from the residential and general commercial/retail parking; for ease of use. Although the one driveway encourages an active streetscape; it creates conflict within the basement which could be overcome.

#### *6) Apartment Layout*

A number of units do not comply with the maximum depth of 8m from a window. The Residential Flat Design Code recommends single aspect apartments should be limited to a maximum depth of 8m from a window and where a greater depth is proposed, it must be demonstrated how satisfactory solar access and natural ventilation is achieved. The variation is only minor and the section of these apartments that is located more than 8m from a window is often the kitchen. Accordingly, the depth of all primary living areas and all bedrooms within these apartments are considered to comply with the recommended depth. Furthermore, the solar access diagrams submitted with the application indicate a large percentage of all units in the building will receive direct solar access for 3 hours or more between 9am and 3pm in mid-winter.

Clause 50 of the Environmental Planning and Assessment Regulation 2000 requires that an application that relates to a residential flat building be accompanied by a Design Verification Statement from a qualified designer stating that the design quality principles as set out in Part 2 of the SEPP 65 are achieved for the development. The Design Verification Statement submitted with the application states that the residential development was designed by Kim Charles Jones a registered architect and that it was designed in accordance with the Design Quality Principles of SEPP 65.

Whilst full compliance with all of the provisions of SEPP 65 is desirable, it is accepted that this cannot always be achieved. However, this proposal in its current form has a number of unacceptable deficiencies that arise from within the site itself, rather than from site constraints. This is largely due to the poor internal design of the units and the way they relate to the street.

## **2. Draft Environmental Planning Instruments**

Hurstville Local Environmental Plan 1994 (Draft Amendment No. 70 – City Centre Commercial Core Zone) – Determinative weight to be given to a Draft Amendment to Hurstville Local Environmental Plan.

Draft LEP Amendment 70 proposes to amend Hurstville Local Environmental Plan 1994 by, among other things, inserting a new zone to be known as Zone No. 3 (d) (City Centre Commercial Core Zone) and inserting the following after the matter relating to Zone No. 3 (C) in the Table to Clause 8 of Hurstville Local Environmental Plan 1994:

Zone No. 3(d) (City Centre Commercial Core Zone)

The objectives of this zone are:

*(a) to provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community;*

- (b) to encourage appropriate employment opportunities in accessible locations;
- (c) to maximise public transport patronage and encourage walking and cycling;
- (d) to strengthen the role of Hurstville City Centre as a major retail and commercial centre in the south sub-region; and
- (e) to provide a consolidated commercial core to the Hurstville City Centre focused on the Hurstville Railway Station and proposed Bus Interchange and where residential development is prohibited.

### **1 Without development consent**

*Exempt development; public utility undertakings other than gas holders or generating works.*

### **2 Only with development consent**

*Any purpose other than a purpose included in item 1 or 3.*

### **3 Prohibited**

*Amusement centre; animal establishment; aquaculture; automotive use; bed and breakfast accommodation; boarding house; bulky goods salesroom or showroom; caravan park; dual occupancy; dwelling; dwelling house; gas holders and generating works; group home; hazardous industry; hazardous storage establishment; home activity; industry; institution; light industry; materials recycling yard; multiple dwellings; offensive industry; offensive storage establishment; panel beating workshop; permanent group home; plant nursery; plant and equipment hire establishment; residential flat building; residential office; sex services premises; transitional group homes; transport depot; veterinary establishment; warehouse or distribution centre.*

Draft LEP Amendment 70 proposes to include the subject land within Zone 3 (d). Hence, if the Draft LEP Amendment is made, then the proposed development would be prohibited because residential flat buildings are to be prohibited on land within Zone 3 (d) City Centre Commercial Core Zone.

The Draft LEP Amendment 70 was publicly exhibited from 10 June to 16 July 2010 in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000.

Council's Strategic Planning report ECM022-10 (Annexure 1) details the planning rationale, the extent of public consultation, the consideration of submissions (including submissions by the owner of the subject site), and the justification for the proposed Draft LEP Amendment 70.

At the Extraordinary Hurstville Council Meeting held on 29 September 2010, Council passed the following resolution:

*"THAT Council resolve to proceed with Draft Hurstville Local Environmental Plan 1994 (Amendment No.70) in respect of the Commercial Only Core land within Hurstville City Centre and forward the Section 69 report to the Minister."*

A report in respect of Draft LEP Amendment 70 has been prepared and forwarded to the Minister in accordance with the requirements of the former section 69 of the Environmental Planning and Assessment Act 1979.

Council has received drafting advice from Parliamentary Counsel in relation to the Draft Amendment 70, and is now waiting for the Draft Amendment to be made.

Therefore, the question arises how certain and imminent is the Draft Amendment 70 in being made and what weight should be given to this draft in the assessment and determination of the proposed development.

In *Home Site Pty Limited v Waverley Council* [2009] NSWLEC 1354 [11 and 13], Commissioner Bly states:

*“11 In July 2009 the local environmental plan making provisions in Part 3 Division 4 of the EPA Act where (sic) the subject of significant amendments. Amendments were also made to Part 4 Division 2 of the EPA Act including s79C that deals with matters for consideration in determining development applications was amended so as to refer to a “proposed instrument” rather than a “draft environmental planning instrument”.*

*13 On the basis that a draft local environmental plan may not be a “proposed instrument”, the subject draft LEP is not, as such, a relevant matter for consideration under s79C. Despite this the respondent accepts as do I that the draft LEP is, in the public interest, a relevant matter for consideration in dealing with the development application the subject of this appeal.”*

After ascertaining that the Draft LEP is a relevant matter for consideration under s79C, Commissioner Bly further discusses the concept of certainty and imminence in relation to the weight to be given to draft local environmental plans.

Paragraphs 25 - 27 of the same appeal state:

*25 The principles associated with the concept of certainty and imminence in relation to the weight to be given to draft local environmental plans when considering development applications were considered by Pearlman CJ. In Architects Hayward and Bakker Pty Ltd v North Sydney Council (2000) NSWLEC 138 [33]:*

*“Certainty and imminence of the making of a draft environmental planning instrument have long been applied in this Court as benchmarks for the attribution of weight in the consideration of a development application.”*

*26 In that case her Honour considered the fact that the draft LEP had been exhibited twice and that resultant submissions were being examined with a view to forwarding the draft LEP to the Minister for making. She concluded that there was no doubt that the draft LEP “...will eventually be made, and to that extent it is certain and imminent...” notwithstanding that its precise final form was not certain. Relevantly she concluded in relation to the draft LEP that:*

*“...the planning approach which it adopts must in my opinion be regarded as certain to be brought into force in the reasonably foreseeable future. Hence I place significant weight upon its provisions...”*

*27 Adopting a similar approach I am satisfied that this draft LEP, having followed the processing requirements of the EPA Act, ... should... be given determining weight on the basis of its “high level” of certainty and imminence. There are a*

*number of important, relevant matters that contribute to this level of certainty (as to its contents) and imminence (as to its making):*

- *The draft LEP has been the subject of various supporting environmental and strategic studies and has gone through extensive drafting processes*
- *It has been issued with s65 certificates and been the subject of two public exhibitions over a period of some two years.*
- *There have been extensive negotiations between the Council and the Department and recommended changes have been incorporated. There have never been any concerns about this site in particular...*
- *The draft LEP has been adopted by the council and forwarded to the Department with a s68 report that recommends its making by the Minister.*
- *There is no suggestion that the Department has any residual concerns or requires any further changes to it or that it will recommend to the Minister anything other than that the plan be made."*

With regards to the Draft Amendment 70, it has been the subject of various supporting environmental and strategic studies. The draft amendment is consistent with the strategic planning approach for the commercial core area of Hurstville, the Draft Centres Policy in Planning for Retail and Commercial Development (Department of Planning – April 2009), the NSW State Government's Metropolitan Strategy (Centres and Corridors Strategy), the draft South Subregional Strategy and the Hurstville City Centre Masterplan 2004.

The draft amendment was placed on public exhibition, prior to this development application being lodged.

The draft amendment has been adopted by the council and forwarded to the Department with a s68 report that recommends its making by the Minister. Further, there is no suggestion that the Department has any residual concerns or requires any further changes to it or that it will recommend to the Minister anything other than that the plan be made.

Therefore, it is considered, in accordance with relevant case law, that significant weight should be given to the Draft Amendment 70 due to the certainty and imminence in the making of the amendment.

The proposal is considered to be unacceptable in its current form due to residential component; when the clear and unambiguous intention of the proposed use of this land is for commercial only use, with any residential component prohibited under the proposed new zoning. The proposal is not considered to be in the public interest as it will be inconsistent with the zoning and objectives under the proposed local environmental plan and would undermine the proposed planning scheme. As such this forms one of the reasons for refusal.

#### Draft State Environmental Planning Policy (Competition) 2010

The aims of this policy are to:

- a) Promote economic growth and competition, and
- b) Remove anti-competitive barriers in environmental planning and assessment.

The policy includes criteria to remove anti-competitive barriers to commercial development, being retail premises, business premises, and/or office premises.

This policy is not relevant to this application, as the intended specific use of each commercial suite is unknown at this stage. Hence, the commercial viability, potential loss of trade, etc is irrelevant. The use of commercial/retail premises is permissible on this site and is encouraged in the current controls and the intended proposed controls. The existing facilities and services are adequate to support this proposal in general.

### **Any other matters prescribed by the Regulations**

The Regulations prescribe the following matters for consideration for development in the Hurstville Council area:

Safety standards for demolition and compliance with AS 2601 - 2001 apply to the demolition of any buildings affected by the proposal.

### **3. Development Control Plans**

#### DEVELOPMENT CONTROL PLAN NO 2 – LGA WIDE – SECTION 4.2 THE CONTROLS

<b>Section 4.2 the controls (Site 15B)</b>	<b>Proposal</b>	<b>Complies</b>
Use: GF commercial/ residential Upper floors – Commercial or residential	GF – commercial /retail Upper floors - residential	Yes Yes
Height: 2/3 storeys – podium over whole site plus  1 storey + 4 storey Residential to Woodville St. 5 storeys Residential at right angles to Woodville St parallel to Crofts Ave	10 storeys overall – being 1 commercial/retail + 9 residential.  Variation sought to podium as it does not extend to all of site.  Variation sought to height (3 storeys above maximum)	No (1)
FSR; 4.0:1 – commercial/residential	4.0:1	Yes
Street setbacks: No	GF - Nil to 5.8m FF – nil to 2m	No (2)
Site setbacks: From west boundary to form light well with adjacent building	2.2m to west and provides 2.7m - > 7.4m to rear.	No (2)
Awnings: Cantilevered to Woodville St	None proposed as awning from pedestrian colonnade	Yes
Balconies: Min 1/unit, 8sqm in size 2.0m min dimension	Min 1/unit, larger than 8sqm >2.0m min dimension	Yes Yes
Vehicles Access: Woodville St	Woodville St	Yes
Car Parking: Residential: 1/100sqm = 74 required,	Residential – 74	Yes

Visitors: 1/ 4 units = 19 required Retail: 1/27.5sqm = 13 required	Visitors – 19	Yes
	Retail – 15	Yes

## 1. Height

The proposal exceeds the maximum height permissible for a development with a residential component by 3 storeys. Should the application propose commercial uses only, then the maximum height permissible for this site is 14 storeys including a 3 storey podium. These amended controls to Council's DCP were effective 8 March 2007 and are for commercial/retail only development.

The intention of this reduced maximum height for residential development is to reduce the scale of a residential type development within the Hurstville City Core area, with the focus to be on commercial/retail in this immediate area. The buildings on either side are a similar scale and are used for commercial/retail/club purposes. Although the building across the road is taller and does include residential; it is situated outside the Draft City Centre Commercial Core Zone.

## 2. Street Setback and site setback.

The objective of the nil street setback is to emphasise the front façade of the building, strongly define the space of the street, clearly define the public and private domains and provide continuous pedestrian amenity along the street frontage. (Section 5.1.1 – Design Guidelines for Buildings – Street Alignment) This proposal achieves this, and although doesn't technically comply with the nil setback for the whole street frontage, is considered acceptable.

The site setback is to allow for a greater setback to the south and west, particularly near the heritage building. The setback to the south complies for the most part with a portion encroaching into the 3m. The western elevation has no justification for the encroachment and considering it is to give sufficient separation to the heritage building adjoining, could be redesigned to comply. This would also open up the entryway to the units and possibly make it less undesirable.

### DEVELOPMENT CONTROL PLAN NO 2 – SECTION 5.1 DESIGN GUIDELINES FOR BUILDINGS, PUBLIC DOMAIN AND OPEN SPACE

Design Guidelines	Proposed	Compliance
5.1.1 – Street alignment: Buildings to be sited on street frontage.	Building is predominantly sited on street frontage.	Yes
Buildings to provide pedestrian amenity in form of active street frontages, building entrances, and awnings.	An active street frontage is proposed with the commercial/retail use.	Yes
Buildings set back from street are to address the street with major facades, entrances, low fences, substantial planting, etc.	Suitable planting has been provided. Suitable entrances to the commercial/retail areas.	Yes
5.1.3 – Frontage articulation:	Variety of articulation and	Yes



Into separate building frontages and bays, using shop front separations, attached columns and steps in façade Changes of texture and colour should complement	changes in texture and colour	
5.1.7 – Roof Design Lift over-runs and plant equipment should be concealed Penthouses are encouraged to create interesting skylines using setback upper floors	Lift over-runs and plant equipment are concealed Penthouses aren't setback, but use of elevated roof gardens achieves same	Yes  Yes

The proposal generally complies with these design guidelines. Those guidelines that are included in other sections of this report have not been repeated here, such as parking, balcony design, awning design, safety and security.

#### DEVELOPMENT CONTROL PLAN NO 2 – SECTION 6.1: CAR PARKING

The parking rates specified for Block 15B – Design Controls have been complied with. The proposal also complies with the general provisions of this Section relating to Australian standards for circulation spaces, sizes of spaces, etc.

#### DEVELOPMENT CONTROL PLAN NO 2 – SECTION 6.3: ACCESS AND MOBILITY

The development guidelines require that 1 adaptable dwelling for the first eight units be provided and then 1 for every 10 units after that, or part thereof. This equates to a total of eight (8) adaptable dwellings, which are provided in the proposal.

##### Residential

One space per 20 spaces or part thereof to be provided, where parking areas have more than 20 spaces but less than 50 spaces for residential developments. Given the proposed 74 residential units, four (4) spaces are required, whilst eight (8) have been provided with the proposal and an additional one (1) for the visitor component.

##### Retail

One space per 20 spaces or part thereof, where parking areas have more than 20 spaces but less than 50 spaces for retail uses. Given that only 15 spaces are provided for the retail component, then technically none are required for the retail component. However, one (1) has been provided.

Therefore, it can be seen that this proposal complies with the objectives of this section.

#### DEVELOPMENT CONTROL PLAN NO 2 – SECTION 6.4 CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN

The proposal is deemed to satisfy the requirements of Development Control Plan No 2 - Crime Prevention through Environmental Design (CPTED) by addressing CPTED principles. These are discussed below.

	Design requirements	Proposal	Compliance (yes, no, N/A)
<b>Fencing</b>	<ul style="list-style-type: none"> <li>Front max 1m, unless open type</li> </ul>	No fencing is proposed	Yes
<b>Blind</b>	<ul style="list-style-type: none"> <li>Direct pathways with permeable</li> </ul>	Commercial/retail	No(1)

<b>corners</b>	<ul style="list-style-type: none"> <li>barriers</li> <li>Mirrors around corners</li> <li>Glass/steel panels in stairwells</li> </ul>	<p>area avoided blind corners, direct pathways to the commercial/retail is proposed.</p> <p>The entrances to the residential component has blind corners given the access is at the rear.</p>	
<b>Communal/ public areas</b>	<ul style="list-style-type: none"> <li>Habitable rooms adjacent to public viewing areas</li> <li>Good visibility to stairwells, entries, elevators</li> </ul>	Habitable rooms face on to street. Good views from living areas to the street	Yes
<b>Entrances</b>	<ul style="list-style-type: none"> <li>Max one entry point per 6-8 dwellings</li> <li>User can see into building before entering</li> <li>Entrance clearly recognisable</li> </ul>	<p>&lt;6 per one entry point.</p> <p>- Entrances to residential component is at rear of site, with narrow entryways in centre of site and along western elevation</p>	Yes No (1)
<b>Site and building layout</b>	<ul style="list-style-type: none"> <li>Main entrance orientated towards street, and not from rear lanes</li> <li>Habitable rooms at front of dwelling</li> </ul>	<p>- Main Entrance to residential component at rear of site, with 2 lifts having no secure lobby associated with them.</p> <p>- Habitable rooms at front.</p>	No (1)  Yes
<b>Landscaping</b>	<ul style="list-style-type: none"> <li>Low hedges and shrubs or high canopied vegetation</li> <li>No continuous barrier of dense growth</li> <li>Ground cover or 2m clean trunks around children's play areas, car parks and pedestrian pathways</li> <li>Prickly plants used as barriers</li> <li>Avoid vegetation that conceals building entrances</li> <li>Large trees next to second storey windows or balconies</li> </ul>	<p>Landscaping proposed along western elevation, adjoining main entrance to 2 x residential lifts at rear.</p> <p>Rear of site is densely vegetated.</p>	Yes (2)
<b>Lighting</b>	<ul style="list-style-type: none"> <li>Use of diffused and/or movement sensitive lights</li> <li>Access/egress routes illuminated</li> <li>No glare or dark shadows produced</li> <li>No lighting spillage onto neighbouring properties</li> </ul>	Could be conditioned,	Yes

	<ul style="list-style-type: none"> <li>• Users can identify a face 15 metres away</li> <li>• Use of energy efficient lamps/fittings/switches</li> </ul>		
<b>Building identification</b>	<ul style="list-style-type: none"> <li>• Each individual dwelling numbered</li> <li>• Unit numbers provided on each level</li> <li>• Building entries state unit numbers accessed from that entry</li> </ul>	To be conditioned	Yes
<b>Security</b>	<ul style="list-style-type: none"> <li>• Intercom, code or card locks for building and car park entries</li> <li>• Door and window locks comply with AS 220</li> <li>• Security access to basement parking via main building</li> <li>• External storage areas well secured and lit</li> </ul>	No details of these. Assumed the entry to rear residential lifts is secured. Could be conditioned if approved.	Yes
<b>Maintenance</b>	<ul style="list-style-type: none"> <li>• Provision for the speedy removal of graffiti and repair/cleaning of damaged property</li> <li>• Provision of information advising where to go for help and how to report maintenance or vandalism</li> </ul>	To be conditioned	Yes

#### 1.Site Building layout, entrances to the residential component and blind corners.

The proposal is considered unacceptable in the design of the building layout and residential entrances from a safety point of view. All residential units are accessed via 1 of 3 lifts, with 2 of those lifts having their only entry points at the rear of the site. The access to these is via a narrow walkway on the western side of the site, some 25.5m long, adjacent to a solid wall and dense landscaping. Or alternatively access appears to be obtained through a 1m wide fire access corridor, which is of a dog-leg shape and some 21m long in walking distance.

The central lift is accessed through the centre of the site, but again is situated at the rear of the building. The walkway to this varies in width from 3.5m to 1.5m over a distance of 16m, and between 2 solid walls.

For a new development these entrances to the residential component pose severe safety issues, and there is no reason why they need to be designed as such. A more skilful design could be achieved with better access to the residential component, whilst keeping them separate from the commercial/retail entrances.

#### 2. Landscaping

The landscaping adjoining the residential walkway along the western elevation has a variety of plants ranging in height from shrubs, 4m and 8m. This has been used as a buffer from the adjoining building however is for a long distance of 25.5m from the front boundary to the rear entry gate and adjacent to a solid wall. The residential walkway is only some 2.5m wide and this raises concerns for safety.

The dense landscaping at the rear of the site, has less of an impact on safety, as by this stage persons have entered through a security gate, the walkway area is 4m wide (thus opening up and not being so concealing to pedestrians), and it is separated by a water

feature. This rear section appears more “open” and safer to a pedestrian as it is not so enclosed and is within a secure access area.

#### DEVELOPMENT CONTROL PLAN NO 2 – SECTION 6.5 - ENERGY EFFICIENCY

This has been discussed in detail previously in this report. BASIX Certificate meets target scores and the extent of shadow is considered appropriate for this density living.

#### DEVELOPMENT CONTROL PLAN NO 2 – SECTION 6.9 – WASTE MANAGEMENT

The proposal provides for a separate residential garbage area to the retail garbage area, and both areas are considered appropriate for this type of development.

#### DEVELOPMENT CONTROL PLAN NO 2 – SECTION 6.10 – DEVELOPMENT OF A HERITAGE ITEM OR IN THE VICINITY OF A HERITAGE ITEM

This has been discussed in detail previously in this report as this section refers to the requirements of Council’s LEP.

#### Hurstville Section 94 Contribution Plans

Council’s Section 94 plans applies to the proposal. Conditions requiring relevant contributions would be included, if the application was recommended for approval.

### **4. Impacts**

#### **Natural Environment**

Although the proposal includes a large amount of excavation, this is not uncommon in the Hurstville CBD area. It is considered the proposal is unlikely to adversely impact on existing drainage patterns and soil stability in the locality. The site currently has no vegetation and with the proposed landscaping and deep soil area, this would be an improvement on the natural environment.

It is considered therefore, unlikely the proposal will have significant adverse impacts on the natural environment.

#### **Built Environment**

As previously stated, the building layout and design has little regard to the provisions of Crime Prevention Through Environmental Design. There are concerns in relation to the safety of the intended residential users and their visitors.

The internal configuration of the units, appears to be poor, with a number of the units having long distances between windows. Some of the units on the podium level, have internal courtyards with no views externally except to the sky or through narrow bedroom balconies to the rear. This is considered unacceptable for a new design within the Hurstville CBD, particularly in an area which the intended proposed use is to not include residential at all.

The proposal does not comply with the objectives and provisions of the Draft Amendment 70 to Council’s LEP and is considered to set a precedence for this type of development.

## **Social & Economic Impacts**

The proposal is likely to generate short-term employment during its construction phase and add to new local housing stock in the Hurstville City Centre. Given that it's in the proposed commercial core zone, the proposal does not achieve the expected increased economic impacts to the city centre, which a fully compliant commercial/retail development would. This is contrary to the objectives of the commercial core and will set a negative precedent in the area.

## **Suitability of the Site**

The site, being situated within the draft city centre commercial core zone, is not suitable for the intended use. The size of the site is suitable, however, the proposal is considered inconsistent with the zoning and objective of the proposed intended uses within this immediate area.

## **5. REFERRALS, SUBMISSIONS AND THE PUBLIC INTEREST**

### **Resident**

Adjoining residents were notified by letter and given fourteen (14) days in which to view the plans in addition the proposal was also publicly exhibited during this time to allow any comments on the proposal. As a result, three (3) submissions were received with the proposal, with the issues raised discussed below:

#### Loss of Privacy

Comment:

No particulars were provided as to who the loss of privacy relates to or from what aspect of the proposal. The design is such that all units face either to the street with some having small (1.5m) secondary balconies facing the rear. These balconies at the closest are 2m to the rear boundary and overview other commercial buildings. The impact on privacy to adjoining buildings from this development is considered minimal, with any privacy impacts being onto the subject building and courtyards/balconies themselves.

#### Loss of solar access

Comment:

The extent of overshadowing is not considered unusual for development within the Hurstville City Centre. Since adjoining developments are commercial uses, there is no real impact on those uses. There is some concern as to the shadow achieved for each individual unit, however overall the proposal is considered acceptable.

#### Non compliance with LEP or DCP

Comment:

This issue has been discussed in detail in this report and is considered valid with regards to the Draft Amendment 70 to Hurstville Local Environmental Plan, which intends to prohibit this type of development.

Further, the proposal does not comply with the height controls of Council's DCP. Given that the design raises concerns to the amenity of the units and the building layout, there is no real justification to this height departure, as it is not considered of such a good design to warrant a variation.

### Over development – excessive bulk and scale

#### Comment:

The proposal complies with the maximum floor space ratio, and although is excessive in height; overall the scale is considered appropriate for this type of development within the Hurstville CBD.

### Traffic generation

#### Comment:

The proposal provides sufficient parking on site, and adequate manoeuvring areas within the development; hence the traffic generation is considered acceptable for this type of development. Referral received from the RTA raised no objections to the proposal.

## **PUBLIC INTEREST**

### **Internal - Council Referrals**

#### Manager Development Advice

Council's Development Engineer raised no objections to the proposal however, did state that any approval may require extension of Council's pipeline along Woodville St, new kerb levels and that there is an existing steep road shoulder outside the subject site. However, these could be overcome with appropriate conditions, should the application be approved.

#### Senior Health and Building Surveyor

No objections were raised by the Senior Health and Building Surveyor subject to recommended conditions of consent, if the proposal was approved.

### **External Referrals**

#### Roads and Traffic Authority

Comments received from the RTA included standard conditions of consent, should the application be approved. However it was stated that the "...*development application does not make reference to the changes to the local road network associated with the proposed Hurstville bus interchange located within Woodville Street (on approach to Forest Road). Council should consider requesting that the traffic report be amended to take into account the above-mentioned changes to the local road network in proximity to the subject site.*"

#### Urban Design Review Panel

The design was discussed at the Design Review Panel on 7 October 2010. Below is a copy of the comments received:

### **Generally**

*The application seeks approval to demolish the existing structures and construct a ten (10) storey*

*Commercial / residential development containing ground floor commercial/retail area and seventy four (74) residential units over nine (9) storeys with three (3) basement levels of car parking. Eight (8) residential units within the development have been designated as adaptable housing. Pedestrian and vehicular entry to the site is via Woodville Street.*

### **1. Context**

*The subject site is located on the south eastern side of Woodville Street near the corner of Crofts*

*Ave, Hurstville. The site has a frontage of 53.96m to Woodville Street and a site area of 2092sqm.*

*Adjoining the site to the west is a five storey building known as "Victory House" which is listed as a heritage item under the Hurstville Local Environmental Plan.*

*Adjoining the site to the east is a three storey commercial building. To the rear of the site is a part 5 and part 7 storey building known as "Club Central" and a 2 and 3 storey building occupied by "ANZ" bank.*

*On the opposite side of Woodville Street is a 14 storey commercial/residential building known as*

*"MacMahon Plaza".*

*The area surrounding the subject site is characterised by multi storey commercial/residential developments.*

*The surrounding area has experienced comprehensive redevelopment and will form part of the high density Hurstville Town centre.*

### **2. Scale**

*The scale of the proposal is consistent with the scale of redevelopment of adjacent sites that are*

*either planned or likely to occur in the mid term.*

### **3. Built Form**

*The proposal creates a podium form by locating some residential units above the retail ground*

*level with the bulk of the building set back from the main Woodville street frontage by approximately 12m.*

*As a result the rear of the building is close to the irregular rear boundary varying from a maximum of approximately 9m to a minimum of 2.7 metres at one point which is less than the required minimum of 3m. The minor encroachment is not an issue, the overall location of the building bulk is an issue.*

*Although the panel commends the applicant for an attempt to develop an innovative built form,*

*this has not been resolved adequately and has significant impact on the amenity of a number of*

*the units. This is partly due to the depth of the building which is up to 22m including balconies.*

### **4. Density**

*The density is appropriate for the area.*

## **5. Resource, Energy and Water Efficiency**

*Subject to BASIX requirements. The panel commends the applicant for achieved a high proportion of cross-ventilated apartments, although some have poor solar access as noted elsewhere.*

## **6. Landscape**

*The proposal includes the creation of a “wintergarden” at ground level at the rear of the site and a landscaped entry area to the south west.*

*There is an area of approximately 150sqm of deep soil planting in the eastern section of the site.*

*The area of landscaping could be significantly increased if the built form were modified and the car parking area reduced by making the layout more efficient.*

*The landscaped areas will receive very little direct sunlight if any so the selection of species that are able to survive in these conditions will be critical.*

## **7. Amenity**

*The main concerns are:*

- *The design in its current form provides poor amenity in the entry area which is circuitous*
- *The courtyards of units 1.1 1.2 1.3 1.4 1.6 1.7 1.8 1.9 are significantly overshadowed by the combination of balconies above and rear walls and planters of units 1.11 1.5 and 1.12. The extent of the balconies above is not shown on the drawings. These units will receive very little direct sunlight to their living areas.*
- *The overshadowed courtyards provide the only outlook and access to light and air for these units.*
- *The applicant has included a large number of “studies” in the design. These are indistinguishable in size from most of the bedrooms; and are likely to be used as habitable rooms.*
- *Although the setting back of the building may work in relation to the street, this strategy means most of the rear balconies are close to the rear of the site and reduce the potential for landscaping at ground level.*

## **8. Safety and Security**

*The external circulation along the south west of the building is circuitous and although the side alleyway could be lit, the security gate should be closer to the street. Even if this were done public spaces in a residential block with 74 units should provide a greater level of safety by means of overlooking etc. the rear entry area as designed certainly does not.*



*The central foyer space that provides access to the commercial suites has blank walls and is unattractive and potentially unsafe. The line of enclosure should be closer to the street.*

## **9. Social Dimensions**

*There are no common recreational facilities in the current proposal.*

## **10. Aesthetics**

*The aesthetics of the building are appropriate for its location, and the panel commends the interesting composition and use of a variety of materials.*

### **Recommendations:**

*The Panel does not support approval of the proposal in its current form.*

*A comprehensive re-design of the ground level and organization of the entry to the building for the residents and commercial and retail tenants is required.*

*The separation of residential and commercial components should be resolved as part of the redesign.*

*The Panel recommends that the applicant should:*

- Re-organise the ground level circulation to provide direct access from the residential lobbys to the street frontage*
- Reduce the depth of some of the units to eliminate some of the internal study areas that are likely to be used as habitable rooms*
- Provide adequate sightlines for the car park exit and ensure vehicle turning for exit and entry is adequate*
- Ensure all units receive 3 hours of sunshine to the living rooms mid winter*
- Better define the public and private domains at ground level.*
- Separate office and residential functions, including garbage, access and toilet facilities.*

*The Panel recommends that Council:*

- Could consider a small reduction in car parking requirements if this allows significant improvements in manoeuvrability and building efficiencies. Council has a parking contributions scheme for the town centre and the applicant should be encouraged to take this up for visitor parking, retail visitor parking and commercial/retail parking in that order of priority.*
- Council could reconsider the built form controls that require the creation of a podium form*

**Comments:**

The panel believe that the amenity of the units is poor in relation to the entry area, extent of overshadowing and depth of the buildings. Although the density is appropriate for the area, and the aesthetics of the building were commended; the built form and configuration of the units is poor, particularly the unsafe entry to the units being at the rear with long blank walls. "It is unattractive and potentially unsafe." In the recommendation, the panel suggested that a comprehensive re-design of the ground level and organisation of the entry to the building for the residents and commercial and retail tenants is required.

For the consideration of an approval of residential use in this area, where it is proposed to prohibit residential development; then the design should be of sufficient merit to ensure a safe, effective and attractive entry to the residents, which is clearly differentiated from the commercial and retail. The lobbies to the units should be clearly visible from the street and the units themselves should have good internal amenity. The panel believes that this current design does not achieve this and this forms reasons for refusal of this application in its current form.

#### Heritage Advisor:

As the proposal is situated next to a heritage item, the proposal was referred to a heritage consultant for comment. Below is a copy of those comments received:

#### **The Heritage Item**

*The free- standing 5-storey commercial building "Victory House" at 8 Crofts Avenue is identified as a Heritage Item in the Hurstville Local Environmental Plan 1994. The building was constructed from 1949 to 1952. This building is one of two buildings in the Town Centre designed by prominent architect John R Brogan. It is one of four significant functionalist buildings in the Hurstville Town Centre, a group of Regional significance and possible State significance. The significance of the building is now increased due to its rarity by the recent demolition of the second Functionalist building by Brogan, Crosswalk Towers.*

#### **The Proposed Development**

*I have examined the information provided with the application for the proposed development, 10/DA-348. The documentation comprises a set of drawings DA0.01 – DA6.02 prepared by Jones Sonter architecture + urbanism dated July and August 2010. The exterior colour and finishes schedule are drawings DA4.01 – 04. A ring-bound "Statement of Environmental Effects" prepared by Andrew Robinson Planning Services Pty Ltd was also submitted comprising reports including a Statement of Heritage Impact prepared by NBRS + Partners dated August 2010.*

*I have also inspected the site.*

*The proposed development involves the demolition of the existing Illawarra Catholic Club building at 13-17 Woodville Street, which has a 2-storey frontage to Woodville Street. The proposal is for the construction of a new building on the site, being a 3-storey podium) the roof terrace reads as a storey) with frontage to Woodville Street, and a tower of an additional 7 storeys above the podium. The total height of the proposed building is 10 storeys above street level. The proposal also includes excavation for the construction of 3 levels of basement parking.*

*It is noted that a development for a new building on the site was previously submitted in 2007. This proposal is assessed independently of the earlier approval.*

### **The DCP provisions**

*The proposed development is located on the site identified as Block 15B in DCP 4. In 2006, I provided recommendations to the proposed amendments to the DCP with respect to this site and the impact of the proposed development presented at that time on the adjacent Heritage Item. The recommendations have been generally transferred across to DCP 2. My original recommendations were as follows:*

- 1. A 3 metre side setback is to be provided at 6 metres above ground level (R.L. to Woodville Street) along the west boundary of the site, from southern-most extremity of the blank wall of the Heritage Item, being approximately 9 metres from Woodville Street, to be confirmed by survey, to the rear boundary of the site. The setback is to coincide with the light-well of the Heritage Item.*
- 2. An increased height building envelope for a tower is acceptable, provided the scale and detailing of the tower take into consideration the impact of the tower on the significance of the Heritage Item. It is recommended that the building envelope for Block 15B be amended to suit a specific agreed design that will reflect the final development.*
- 3. The final design of the development take into consideration the protection of the Heritage Item during construction, including the stabilisation of the Heritage Item during the excavation works for any basement parking.*

*The intent of the setback control to the side boundary is to retain the light and ventilation access currently required by the adjoining Heritage Item, where the windows of the heritage Item occur, to retain the significance of the Heritage Item and to maintain current levels of amenity and enable its continued use.*

*The maximum height limit of 7 storeys to the Woodville Street elevation was proposed in the amendment to the DCP, and I agreed that was the extremity of the building envelope that will not overshadow or overpower the adjacent Heritage Item of 5 storeys, provided the design details of the building adequately address scale and massing of the new development to reduce the impact of the new development on the Heritage Item.*

### **Consideration of proposed new building**

*The proposed new building is a 10 storey structure, comprising of a 3 storey podium to the Woodville Street frontage, and a tower of 7 storeys. The proposal also includes excavation for the construction of 3 levels of basement parking. The proposal complies with the podium requirement, resulting in a lower and more street-friendly scale. The proposal also complies with the light well set-backs.*

*The tower is higher than recommended in the DCP, however the shadow diagrams appear acceptable given that the proposed building is to the north-east of the Heritage Item and that some overshadowing is inevitable.*

*The impact of the façade of the proposed 3 storey podium on the Woodville Street streetscape adjacent to the Heritage Item is minimal, offering no enhancement or design improvement to an already mundane streetscape. I consider that the proposed design is no worse than the building it replaces. The articulation of the façade is poor and does not relate to the streetscape, nor does it integrate with the Heritage Item. However, as it does not detract from the heritage Item, it is acceptable.*

*The setback of the podium along the western side boundary was set at 3 metres in the DCP. The proposed setback complies, and therefore will not result in an overly adverse reduction of natural light and ventilation to the light-well of the Heritage Item.*

*The proposed tower is also of poor design and offers no value to the streetscape. However, the setback of the tower makes it acceptable adjacent to the Heritage Item. There is a concern that additional height of the tower will increase the overshadowing of the Heritage Item which will affect the natural sunlight to the light-well. However it is debatable whether the height of the tower will have any greater overshadowing impact to the light-well than a building of only 7 storeys (1 storey higher than the Heritage Item) so the impact is acceptable.*

*The possible damage to the Heritage Item by the proposed excavation for the three levels of underground car park is of great concern, and the protection of the Heritage Item will be reinforced by condition of consent.*

### **Consideration of impact of proposal on Heritage Items in the Vicinity**

*A number of Heritage Items are in the vicinity of the proposed development. They are the Fire Station at 27 MacMahon Street and the mansion "Kenilworth" at 14 MacMahon Street, the Presbyterian Church at 1 MacMahon Street and "Hurstville Hotel" at 350 Forest Road. The proposed tower will possibly be seen from these Heritage Items and the full proposed building will be seen from the Hurstville Hotel.*

*The proposed development has minimal impact on the streetscape and on the Heritage Items in the vicinity. It therefore is acceptable.*

### **Recommendation**

*I consider that the proposed development at 13-17 Woodville Street Hurstville will have an acceptable impact on the adjacent Heritage Item, being Victory House at 8 Crofts Avenue Hurstville, provided that the following condition of consent is complied with:*

- 1. Prior to the commencement of any works, the applicant is to provide to Council, and Council is to approve, details of the stabilisation of Heritage item Victory House at 8 Crofts Avenue Hurstville during the works, including all measures to ensure the Heritage Item will not be harmed by the works. The applicant is to undertake a comprehensive dilapidation report of the Heritage Item Victory House at 8 Crofts Avenue Hurstville prior to the commencement of works, and must rectify any damage to the Heritage Item evident within a 12 month period of completion of the building works. (Reason: Prevent harm to Heritage Item)*

Comment:

No objections were raised in relation to the proposal and its relationship to the adjoining heritage item. Should the application be approved, then a comprehensive dilapidation report of the heritage item should be included as a condition of any consent.

## **7. CONCLUSION**

The application has been assessed against the relevant planning policies and controls. The assessment has found that the application is not consistent with the objectives of the Draft Amendment 70 to Hurstville Local Environmental Plan 1994; which is certain and imminent to be made in the near future. Notwithstanding this, the proposal does not comply with the current DCP No. 2 with regards to height, setbacks and crime prevention through environmental design criteria. The building layout and internal unit amenity are considered poor, and a more skillful design could be achieved which improves these outcomes whilst still complying with the objectives of the current DCP and LEP.

Overall, the proposal is considered not in the public interest and should be refused for the reasons recommended below.

## RECOMMENDATION

That pursuant to Section 80(1)(b) of the Environmental Planning and Assessment Act, 1979, as amended, the **Joint Regional Planning Panel** refuse development consent to Development Application 10/DA-80 for the ten storey mixed use development on Lot1 DP 717379 and known as 13 – 17 Woodville St for the following reasons:

1. Pursuant to Sections 79C(1)(a)(ii) and 79C(1)(e), the proposal is considered to not be in the public interest, due to the certainty and imminence of the making of the Draft Amendment 70 to the Hurstville Local Environmental Plan 1994. It would undermine the proposed planning scheme to allow a use that would be prohibited, and inconsistent with, the zoning and objectives under the proposed local environmental plan.
2. Pursuant to Section 79C(1)(c), the site is not considered to be suitable for the proposed development, due to the certainty and imminence of the making of the Draft Amendment 70 to the Hurstville Local Environmental Plan 1994.
3. Pursuant to Section 79C(1)(a)(iii), the proposal does not comply with the provisions of Development Control Plan No 2 – Hurstville City Centre, in relation to height and setbacks.
4. Pursuant to Section 79C(1)(a)(i), the proposal does not comply with the provisions of SEPP 65 in particular with respect to Crime Prevention Through Environmental Design, building layout and internal amenity of the residential units.