

**JOINT REGIONAL PLANNING PANEL**  
**(Sydney East Region)**

<b>JRPP No</b>	2011SYE018
<b>DA Number</b>	11/DA-21
<b>Local Government Area</b>	Hurstville City Council
<b>Proposed Development</b>	Remediation of the site and construction of a mixed retail/commercial/residential development comprising three (3) buildings containing basement car parking area, ground floor retail, first floor commercial and two hundred and eighty four (284) residential units. A draft Voluntary Planning Agreement has also been submitted with the application.
<b>Street Address</b>	93 Forest Road Hurstville
<b>Applicant/Owner</b>	Applicant: Milestone (Aust) Pty Ltd Owner: East Quarter Hurstville Pty Ltd
<b>Number of Submissions</b>	One (1) submission received in support of the application
<b>Recommendation</b>	Refusal
<b>Report by</b>	Paula Bizimis Senior Development Assessment Officer

## Assessment Report and Recommendation

<b>ZONING</b>	3(b) City Centre Business 5(a) Special Uses
<b>APPLICABLE PLANNING INSTRUMENTS</b>	<ul style="list-style-type: none"> <li>• Hurstville Local Environmental Plan 1994</li> <li>• Environmental Planning and Assessment Act</li> <li>• State Environmental Planning Policy (Infrastructure) 2007</li> <li>• State Environmental Planning Policy No 55 - Remediation of Land</li> <li>• State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development</li> <li>• State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>• Draft State Environmental Planning Policy (Competition) 2010</li> <li>• Hurstville Development Control Plan No 2 – Hurstville City Centre: Sections 2.2 Neighbour Notification and Advertising of Development Applications, Section 4.2 The Controls (Block ), Section 5.1 Design Guidelines, Section 5.2 The Public Domain, 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 9.1 Development of a Heritage Item or in the Vicinity of a Heritage Item,</li> </ul>
<b>HURSTVILLE LOCAL ENVIRONMENTAL PLAN 1994 INTERPRETATION OF USE</b>	“Shop”, “Office”, and “Residential Flat Building”
<b>EXISTING DEVELOPMENT</b>	Vacant site
<b>COST OF DEVELOPMENT</b>	\$80,300,00
<b>REASON FOR REFERRAL TO JRPP</b>	Cost of work >\$10M
<b>FILE NO</b>	11/DA-21
<b>HAS A DISCLOSURE OF POLITICAL DONATIONS OR GIFTS BEEN MADE?</b>	No

## **EXECUTIVE SUMMARY**

1. The application seeks permission for the remediation of the site and construction of a mixed retail/commercial/residential development comprising three (3) buildings containing basement car parking area, ground floor retail, first floor commercial and two hundred and eighty four (284) residential units. A draft Voluntary Planning Agreement (VPA) has also been submitted with the application.
2. The proposed development has been assessed against the requirements of the relevant planning instruments and development control plans and does not comply with floor space ratio, height, and private open space. The applicant seeks a variation to these requirements. The variations are discussed in the report.
3. The application was notified/advertised on two occasions (once when the application was lodged, and once when a replacement application was lodged) in accordance with Council's requirements and one (1) submission in support of the application was received in reply.

## **DESCRIPTION OF THE PROPOSAL**

The application seeks approval for the remediation of the site and construction of a mixed retail/commercial/residential development comprising three (3) buildings (known as Buildings A, B and C) containing basement car parking area, ground floor retail, first floor commercial and two hundred and eighty four (284) residential units. A draft Voluntary Planning Agreement (VPA) has also been submitted with the application. The development application replaces Stage 2 of the current three (3) stage development consent granted to the site. Specifically, the proposed development will contain the following:

### **Basement Level 3**

- 131 car spaces for the residential component of the development including 10 disability accessible car spaces for the adaptable residential units
- 8 lifts
- Storage areas
- Stairs

It is noted that all vehicular movements to and from Stage 2 will be via the vehicular entry/exit points as approved by the current three (3) stage development consent granted to the site.

### **Basement Level 2**

- 178 car spaces for the residential component of the development including 20 disability accessible car spaces for the adaptable residential units
- 8 lifts
- Storage areas
- Stairs

### **Basement Level 1**

- 159 car spaces for the residential and retail/commercial component of the development including 14 disability accessible car spaces
- 10 lifts
- Storage areas

- Stairs

#### Ground floor of site

5 at grade car spaces

#### Building A

Building A is a 12 storey building which will contain the following:

##### *Ground level*

- Three (3) retail tenancies with a gross leasable floor area of 622.2sqm.
- Residential foyer with lift and stair access
- Retail lobby
- Toilets
- Waste rooms
- Store room

##### *Levels 1 to 12 (there is no level 4)*

- 49 x 1 bedroom units
- 73 x 2 bedroom units (11 x 2 bedroom units are two storey)
- 1 x 3 bedroom units

#### Building B

Building B is a 12 storey building which will contain the following:

##### *Ground level*

- One (1) retail tenancy with a gross leasable floor area of 774.7sqm.
- Residential foyer with lift and stair access
- Toilets
- Waste rooms
- Plant room

##### *Level 1*

- Commercial floor space with a gross floor area of 1197.5sqm
- 2 lifts and stair access
- Toilets

##### *Level 2 to 12 (there is no level 4)*

- 41 x 1 bedroom units
- 40 x 2 bedroom units (9 x 2 bedroom units are two storey)
- 2 x 3 bedroom units

#### Building E

Building E is an 18 storey building which will contain the following:

##### *Ground level*

- One (1) retail tenancy with a gross leasable floor area of 321.5sqm.
- Residential foyer with lift and stair access
- Waste rooms
- Storage rooms

#### *Level 1*

- Commercial floor area with a gross floor area of 527.3sqm
- 2 lifts and stair access
- Toilets

#### *Level 2 to 19 (there is no level 4 or 14)*

- 15 x 1 bedroom units
- 47 x 2 bedroom units
- 16 x 3 bedroom units

#### Public Plaza

The proposed development includes a public plaza of approximately 1800sqm towards the centre of the site. The public plaza is intended to be an active and public space surrounded by ground level retail activities on three sides. The fourth side of the plaza is the frontage to Forest Road. The main feature of the plaza is the mounted lawn which contains trees and a reflective pool. The pool will incorporate a public artwork interpreting the history of the site. The grassed mound is raised above the general slab level to allow for appropriate soil depths for the grass and trees. The edge of the mound will provide seating and a ramp and stairs to the upper level of the mound.

The plaza contains four paths which slice through the grassed mound to provide a connection across the space. The plaza provides a pedestrian link between Hurstville and Allawah train stations and through the site to Kemp Field.

#### Draft Voluntary Planning Agreement

On the 25 May 2011 the applicant lodged a draft VPA to accompany the proposed development. When the original consent was granted to the subject site for a three (3) stage development, two (2) deeds were prepared for the subject site. The deeds were subject to deeds of novation to East Quarter Hurstville Pty Ltd. The statutory planning agreement process was not available at the time the deeds were entered into. The draft VPA will formalise the existing deeds and provide a further offer relating to the allocation of commercial space. The amended explanatory note accompanying the draft VPA summarises the proposed offer as follows:

*The draft Planning Agreement requires the Developer to provide the following landscaping and associated works, monetary contributions and allocate commercial space:*

- (a) *Landscaping and associated works outside and around the subject land including:*
  - *landscaping works to the land owned by Council between the southern alignment of Forest Road and Durham Streets and the northern boundary of the subject land.*
  - *undergrounding of overhead power and telecommunications cables between the southern alignment of Forest Road and Durham Street and the northern boundary of the subject land.*
  - *works such as footpaths, street furniture and planting and undergrounding of overhead power and telecommunications cables.*
- (b) *Landscaping and associated works at Kemp Field including:*

- *the removal of the redundant tennis courts and the provision of tree planting and planter beds and landscaping.*
  - *the enhancement of the existing amenities block or the construction of a new amenities block including safety lighting.*
  - *the provision of new footpaths, park furniture, regrading of existing park surfaces and tree planting at the northern end of the park to integrate with the works described in the enumerated two preceding points.*
  - *the provision of a new footpath between the subject land and Allawah Railway Station through Kempt Field to accommodate pedestrian traffic.*
  - *the provision of several shelters for weather protection for pedestrians and additional lighting to facilitate pedestrian safety in conjunction with the footpath described in the enumerated point immediately above.*
  - *the provision of connections between Kempt Field and the subject land for pedestrian and bicycle traffic.*
- (c) *Monetary contribution in the sum of \$174,988.43 to Hurstville Public School for the purposes of facilitating and funding the School Upgrading Works.*
- (d) *Allocation of commercial space to a non-profit community organisation for:*
- (i) *a period of three years, during which period the Developer will fully subsidise the commercial rent payable in connection with the allocated space for that period; plus*
  - (ii) *a further period of one year (if the organisation so elects), during which period the Developer will subsidise the organisation 50% of the commercial rent payable in connection with the allocated space for that period (with the organisation to pay 50% of the commercial rent payable for that period); plus*
  - (iii) *a further period of one year (if the organisation so elects), during which period the Developer will subsidise the organisation 50% of the commercial rent payable in connection with the allocated space for that period (with the organisation to pay 50% of the commercial rent payable for that period).*

*The estimated value of the works, monetary contributions and subsidies provided by the Developer are \$1,349,574.64 to a maximum of \$1,529,574.64, subject to CPI increases.*

*The draft Planning Agreement provides that the obligations of the Developer under the draft Planning Agreement will not be taken into consideration in determining the section 94 contributions in connection with the Development Application. The obligations of the Developer are over and above those contributions imposed under section 94, section 94A and section 94EF of the Environmental Planning and Assessment Act 1979 in connection with the proposed development.*

*The draft Planning Agreement will not come into effect until and unless consent is granted to the Development Application.*

## **BACKGROUND**

- 17 June 2004 Council approved a three (3) stage mixed use/retail/commercial development comprising seven (7) buildings and basement parking including remediation of the site. This application is known as 03/DA-1046. Stage 1 (Buildings C and D) of the development has been completed and occupied. Stage 2 of the development contained Buildings A, B and C and the public plaza of the development. Stage 3 has not commenced (Buildings X and F).
- 14 July 2005 Section 96 Application (known as Rev01) was approved to allow the staged construction of the development and to modify Buildings C and D.
- 26 September 2006 Section 96 Application (known as Rev02) approved to delete approved commercial floor area for gymnasium, remove levels of basement parking, and amend facades.
- 25 May 2007 Section 96 Application (known as Rev04) was approved to increase heights of Buildings C and D (Stage 1), amend window design, facade alterations.
- 12 February 2009 Section 96 Application (known as Rev10) was approved to alter facades of Buildings C and D. No increase in height or floor space was approved as part of this application.
- This proposal has been the subject of eight (8) other Section 96 Applications that relate to conditions of consent (eg payment of bonds, timing of Section 94 contributions) that did not make any physical alterations to the development.
- 13 September 2010 Section 96 Application (known as REV13) was refused for the modification of the development as it relates to Stage 2 only which included an increase of unit numbers, increase to the size of building, redistribution of floor space and redesign of the public plaza.
- 3 December 2010 The applicant lodged an appeal in the NSW Land and Environment Court to the refusal of the above Section 96 application. The appeal was dismissed by the Court as it was the Commissioner's finding that the proposed development, the subject of the application, was not substantially the same development to that approved by the consent.
- 31 January 2011 The subject development application (11/DA-21) was lodged with Hurstville City Council for a new development for Stage 2 of the approved development. The application sought permission for the remediation of the site and the construction of a mixed retail/residential development containing seven (7) retail tenancies, 292 residential units, and basement car parking within Buildings A, B and E and public plaza.
- 29 March 2011 A replacement application was lodged for the above development application. The replacement application is the subject of this report. The replacement application seeks permission for the remediation of

the site and the construction of a mixed retail/commercial/residential development containing seven (7) retail tenancies, commercial floor area to Buildings B and E, 284 residential units and basement car parking with Buildings A, B and E, and public plaza. The proposed development proposes an additional 2 storeys to Buildings A, B and C, and additional 100 residential units and approximately 3000sqm less commercial floor area than that approved for Stage 2 in the original consent.

25 May 2011

A draft Voluntary Planning Agreement (VPA) was submitted to accompany the replacement application. The contents of the draft VPA are detailed in the section of this report entitled "Description of the Development". At the writing of this report, the Council had not made any resolutions in relation to the VPA.

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

The subject site is located on the southern side of Forest Road near the corner of Hill Street, Hurstville. The subject site has an irregular shape with a frontage to Forest Road of 225.5m and a site area of 2.84 hectares. The site has its northern boundary to Forest Road and a southern boundary to the Illawarra Railway Line. To the east of the site is Kempt Field. Directly to the west of the site is an approved development site (thirteen (13) storey mixed use development) which is yet to commence construction and the now empty former Hill Street Tavern. Beyond Kempt Field and approximately 500 metres to the east are single dwelling houses and on the southern side of the Illawarra Railway Line is mixed development comprising single dwellings and older style residential flat buildings.

The majority of the subject site is vacant except for the western portion of the site which contains Stage 1 of the approved development. Stage 1 comprises Buildings C and D of the approved development which are multi storey buildings containing ground floor retail uses with residential above.

The proposed development, being Stage 2 of the subject site is located at the centre of the site and comprises approximately a third of the subject site in site area.

## **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 subject site is zoned 3(b) City Centre Business and 5(a) Special Uses. The 5(a) Special Uses zone applies to a small portion of the site in the south western corner which is part of Stage 1 of the development. As such it does not affect the proposed development, the subject of this application. The proposed development being the remediation of the site and the construction of a mixed use development comprising retail, commercial and residential development is permissible in the 3(b) City Centre Business zone with the consent of Council.



The objectives of the 3(b) City Centre Business zone are as follows:

- (a) *to designate sufficient areas of land to meet the projected needs of the Hurstville Town Centre as a multi-functional regional centre,*
- (b) *to facilitate development of land within the Hurstville Town Centre for commercial, retail, residential and community purposes,*
- (c) *to provide a single business zone for the Hurstville Town Centre as a sub-regional centre,*
- (d) *to facilitate the implementation of a development control plan for the Hurstville Town Centre:*
  - (i) *by introducing appropriate floor space ratio controls,*
  - (ii) *by encouraging an economically viable retail core which is centrally located and in close proximity to public transport,*
  - (iii) *by enhancing employment opportunities and to service the needs of the local and regional community,*
  - (iv) *by encouraging and facilitating the use of public transport,*
  - (v) *by providing and enhancing pedestrian and public open space areas for shoppers and workers,*
  - (vi) *by maintaining and improving the environmental and aesthetic quality of the Hurstville Town Centre and its surrounds,*
  - (vii) *by ensuring adequate and accessible off-street car parking, and*
- (e) *to improve traffic flow in and around the Hurstville Town Centre.*

It is considered that the proposed development is not consistent with Objective (d)(i) and (vi) of the zone for the following reasons:

- The proposed development does not facilitate the implementation of the relevant development control plan for the Hurstville Town Centre as it does not reflect the *appropriate floor space ratio controls*. The Council has identified through Hurstville Development Control Plan No 2 that the appropriate floor space ratio control for the subject site is 1:1. The proposed development seeks a floor space ratio of 3.6:1 (which results in 2.71:1 for the entire site) which is not consistent with the requirement of DCP 2.
- The proposed development does not comply with the floor space ratio and height requirements of DCP 2. The proposed development is a maximum 18 storeys with a floor space ratio of 3.6:1. This results in the scale of the development being much larger than that anticipated by DCP 2. DCP 2 identifies a maximum floor space ratio of 1:1 and height of 4 storeys for the subject site. As such it is considered that the proposed development is not *maintaining and improving the environmental and aesthetic quality of the Hurstville Town Centre and its surrounds* as envisaged by DCP 2. The requirements of DCP 2 would achieve a smaller scale development.

As detailed later in this report, the Design Review Panel does not support the height and density of the proposed development as it *does not create a uniform urban form along Forest Road and Durham Street* and a reduced height would give a *better scale to the open space created between Buildings, B and E and would give a better relationship to existing and future buildings on the other side of Forest Road and Durham Street*.

The other relevant sections of the Local Environmental Plan that relate to the proposed development are as follows:

#### Clause 15 – Services

The proposed development will have facilities for the supply of water and for the removal or disposal of sewage and drainage in accordance with the requirements of the Local Environmental Plan.

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

The proposed development includes excavation of the site to provide the three (3) proposed basement car parking areas. The excavation of the site is considered to be acceptable and is unlikely to result in a disruption of or detrimental effect on existing drainage patterns and soil stability in the locality. The proposed excavation is consistent with the development proposed on the subject land.

#### Clause 22B – Remediation of contaminated land

Clause 22B states:

- (1) *This clause applies to any development on contaminated land.*
- (2) *Consent must not be granted for development to which this clause applies unless the consent authority is satisfied:*
  - (a) *that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
  - (b) *if the land requires remediation to be made suitable for that purpose, that the land will be remediated before the land is used for that purpose.*
- (3) *Nothing in this clause affects the application of State Environmental Planning Policy No 55—Remediation of Land to land to which this plan applies.*

The proposed development includes the remediation of the site for the purposes of the proposed development. This is discussed in detail in the section of the report entitled “State Environmental Planning Policy No 55 – Remediation of Land”.

#### Clause 33 - Development in the Vicinity of a Heritage Item

Clause 33 states:

- (1) *Before granting consent to development in the vicinity of a heritage item, the consent authority must assess the impact of the proposed development on the heritage significance of the heritage item.*
- (2) *This clause extends to development:*
  - (a) *that may have an impact on the setting of a heritage item, for example, by affecting a significant view to or from the item or by overshadowing, or*
  - (b) *that may undermine or otherwise cause physical damage to a heritage item, or*
  - (c) *that will otherwise have any adverse impact on a heritage item or of any heritage significance of the item.*
- (3) *The consent authority may refuse to grant any such consent unless it has considered a heritage impact statement that will help it assess the impact of the proposed development on the heritage significance, visual curtilage and setting of the heritage item.*
- (4) *The heritage impact statement should include details of the size, shape and scale of, setbacks for, and the materials to be used in, any proposed buildings or works and*

*details of any modification that would reduce the impact of the proposed development on the heritage significance of the heritage item.*

#### Comment

The subject site is in the vicinity of several buildings which are identified as heritage items under the Hurstville Local Environmental Plan, namely, 112 Forest Road which is directly opposite the subject site, 136-136A Forest Road, and 140-142 Forest Road, Hurstville.

The applicant has submitted a statement in relation to the impact the proposed development will have on the heritage items. This was referred to Council's Heritage Advisor who has advised that although she is concerned that the overdevelopment of the site, in comparison to the surrounding area, will create a push to develop the site of the heritage item to increase financial return, the development of the site is already substantially approved with the completion of Stage 1 and therefore the proposed variation on the existing approval is deemed acceptable. As such her conclusion is that the proposed development, as submitted, will have no additional detrimental impact on the heritage items in the vicinity.

#### Environmental Planning and Assessment Act in relation to draft Voluntary Planning Agreement (VPA)

Section 79C(1)(a)(iiia) of the Environment Planning and Assessment Act (EPA Act) requires the consent authority to take into consideration any planning agreement that has been entered into under section 93F of the EPA Act or any draft planning agreement that a developer has offered to enter into under section 93F of the EPA Act.

Similar to any draft Environmental Planning Instrument, the weight to be given to the VPA becomes greater as the making of the VPA becomes more certain and imminent.

At the writing of this report, the Council had not made any resolutions regarding the draft VPA. As such, the making of the VPA is not certain and imminent. Notwithstanding this, the contents of the VPA have been considered in the assessment of the proposed development for the purposes of discussing the variations proposed to the floor space ratio and height of the development. This is discussed in detail in the report under the heading "Development Control Plans".

#### State Environmental Planning Policy (Infrastructure) 2007 RailCorp

The subject site adjoins the railway line and as such the concurrence of RailCorp is required. The application was referred to RailCorp who has granted its concurrence to the development subject to conditions of consent being attached to any consent granted.

#### Sydney Regional Development Advisory Committee (SRDAC) and Roads and Traffic Authority (RTA)

The proposed development is identified as being a Traffic Generating Development under the provisions of the SEPP and as such the comments of the SRDAC and the RTA are required. The SRDAC and RTA have advised that no objection is raised to the proposed development subject to the following recommendations/comments:

- The RTA recommends that a comprehensive traffic report be undertaken for any subsequent Stage 3 development application.

- It is noted that no bicycle parking facilities are shown on the development plans. Consideration should be given to providing bicycle parking facilities for the retail/residential component of the site, either within the development or close to it, as well as end trip facilities such as showers, changing rooms, etc to encourage bicycle use for travelling to and from the development.

The applicant was advised of the above comments prior to the submission of the replacement application. It is noted that bicycle parking and associated facilities have not been provided in the plans accompanying the replacement application. Notwithstanding this, bicycle parking and associated facilities can be provided on site and in particular in the basement levels with a redesign of these levels.

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

The applicant has submitted a statement prepared by DLA Environmental (dated 12 November 2010) regarding the contamination of the site. The statement concludes that the subject land is suitable for its proposed intended use and there is no environmental or geotechnical reason that could inhibit the future development of the property. In reaching that conclusion, DLA Environmental reviewed other documentation relating to the site including the Remediation Action Plan prepared by Golder Associates Pty Ltd (dated 14 December 2004, Reference 03623097/024-M) which included recommendations to be adopted in remediating the site.

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

BASIX Certificates have been submitted for the proposed development. The Certificates show that the proposed development will achieve the minimum target scores required.

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

The replacement application was referred to the Design Review Panel (DRP) for comment. The DRP provided its comments to which the applicant was given an opportunity to respond. The comments of the DRP, applicant's response, and assessment officer's comment are provided below:

#### **Design Review Panel Recommendation**

##### *General comments*

- (i) *Units generally to have required minimum of 8 square metres balcony.*
- (ii) *Buildings A and B to be limited to 7 storeys high especially on Forest Road. There may be an argument to step the two buildings up towards the south to some degree as well as setting back any additional levels. However this would only be considered appropriate for say one or two levels.*
- (iii) *That the density of the proposal be reduced as noted above so as to reduce the height of the built forms and to allow for better planning of units in Blocks A and B.*

#### **Block A**

1. *The height of Building A should be reduced to a maximum height of seven storeys.*
2. *The form of Building A should be linked with the form of Building X to provide continuity of streetscape expression and avoid the sub-standard space created by the current proposal between these buildings.*

3. *Layout should be improved to reduce reliance on internal bathrooms and kitchens and the extent of single aspect units lacking cross ventilation.*

*The Panel still considers that the building should be reduced in height to seven storeys, see above. That one unit at least on each typical level be deleted so as to improve the planning of units as noted above, in particular providing larger living areas to units with more than one bedroom and also provide corridor with some natural light and ventilation.*

#### **Block B**

1. *The height of Building B should be reduced to a maximum of 7 storeys.*
2. *Consideration could be given to linking the urban form of Building B more closely with that of Building C.*
3. *Layout should be improved to reduce reliance on internal bathrooms and kitchens and the extent of single aspect units lacking cross ventilation.*

*The Panel still considers that the building should be reduced in height to 7 storeys, see above. That the units be replanned with one unit deleted at each end of the building on the typical levels so as the units have better amenity as noted above.*

#### **Block E**

*It is recommended that consideration be given to further integration of the tower building at lower levels with Building D.*

*It is considered that the revised landscaping overcomes this to some extent and is not considered an issue at this stage.*

### **Applicant's Response to Design Review Panel Recommendations**

#### **Proposed Development (Replacement Application)**

*We request your consideration to the following:*

- *The current proposal is consistent with the merit based conclusions of the LEC judgment dated 3 December 2010 in relation to overall building bulk and scale.*
- *The overall height of Building A is unchanged from the development proposal considered by the LEC and remains at RL 99.40.*
- *The overall height of Building B is also unchanged from the development proposal considered by the LEC and also remains at RL99.40. the introduction of commercial space to Level 1 has increased the Level 3 podium slab by 600mm when compared to the development proposal considered by the LEC.*

#### **Panel Recommendation**

*We provide further clarification on the specific issues raised within the Panel's recommendation below.*

**Balcony size;** *the majority of units meet the 8sqm requirement. The Panel (7 April 2011) acknowledged that the revised landscaping and public domain at the ground level is of a high standard. The majority of balcony units satisfy the minimum DCP area and dimension requirements. Building E is fully compliant. Of the total 206 units within Buildings A and B, 24% of these units have primary balconies off living areas less than 8sqm in area. It is important to note that some of these units have two balconies. The primary balconies generally average over 7sqm and are considered to be suitably sized to provide good quality amenity and useability outcomes for future occupants of these one bedroom units. The site*

*itself provides significant high quality open space with the provision of the urban square and Wedge Park, providing both passive and active recreational opportunities.*

**Scale /Built Form Buildings A and B;** *The proposed building height of Buildings A and B has been the subject of a detailed urban design analysis. The heights proposed at 12 storeys are considered to be appropriate in scale given the proportions of the urban space provided with a 1:1 height to width ratio achieved, which is considered a 'rule of thumb' for an appropriate urban built form relationship. The height of Buildings A and B are also appropriate for their relationship with Building E. We note that the Panel suggested 7 storeys for these buildings in 2004. However, Council Officers Assessment Report dated 26 May 2004 in assessing the Panel recommendations accepted the urban design argument above and this was endorsed by Council's approval.*

*We also note that a very thorough assessment of the design and scale merits of the proposal was carried out during the LEC process after rigorous debate between the two expert urban designers and architects. In her judgement Commissioner Morris said:*

*Paragraph 40 – "...I consider the increase in height of Building A, B and E ranging for 1.45m to 2.4m is appropriate for the site. Similarly, I find the changes to the building envelopes to be acceptable. "*

*Paragraph 44 – "I do not consider that the changes to the elevations of Building A and B undermine the context of the public domain nor diminish the architectural composition of the approved development."*

*We note the Panel comment (7 April 2011 page 4) which states: In relation to the square the issue is the overshadowing as well as the scale to the square. We confirm that this analysis is incorrect. The shadow diagrams indicate that it is the Level 3 podium of Buildings A and B which contribute the most shadowing of the urban square. In this regard the original 2004 approved a Level 3 RL in both Buildings A and B of RL 72.60. We note that the Replacement Application DA provides for Level 3 RLs for Buildings A and B of RL 70.80 and RL 71.40 respectively. The reduction in the podium heights demonstrates improved solar access to the urban square when compared to the original 2004 DA.*

**Density;** *The high density nature of the proposal is suitable for a large unconstrained site where environmental impacts can be appropriately managed. A total of 284 residential units are proposed and this directly responds to the market demand for units in this location and will be a notable contributor to achieving the State Government's housing goal for the South Subregion by providing 284 additional dwellings for Stage 2. The scale and nature of housing with secondary retail and commercial uses are considered appropriate for the site, which is in the core support area at the fringe of the CBD. The proposal in context of the redevelopment for all Stages 1, 2 and 3 is generally consistent with the proposed FSR of 2.5:1 of draft LEP 2010 (in its current form). The proposed FSR within the Replacement Application for the total development site is 2.7:1.*

**Amenity for Buildings A and B;** *The proposed planning achieves a good level of compliance with SEPP 65 for Buildings A and B. Cross ventilation for the single sided units in Buildings A and B by expert analysis will achieve adequate ventilation as they are located on upper floors and include maximum depths, generally 7m-8m. Steve King's findings were in his initial report for the 2004 DA and remain so, that these apartments do in fact achieve acceptable ventilation by a swirling motion of air entering one side of the unit and moving through to the other (Refer to Steve King Expert Opinion dated 22 March 2011 and his initial report for the 2004 DA). Within the proposal for Stage 2, 23% of units provide natural*

*ventilation to kitchens which is in general compliance with the 25% 'rules of thumb' of the Residential Flat Design Code. Internal planning has given priority to living areas and bedrooms of the units achieving a high level of natural daylight and solar penetration. 81% of units within Stage 2 will receive winter solar access which exceeds the solar access requirements of SEPP 65. To ensure adequate amenity is provided within public corridors where access to natural light is limited, the public corridors will be painted in light warm colours and be lit with warm colour lamps. This outcome is generally consistent with the 2004 DA approval layout and is considered acceptable*

### **Assessment Officer's Comment**

- The issues raised by the Design Review Panel are generally agreed with. In particular, the variation sought to the height, density (floor space ratio), and private open space areas of the development are not supported. Detailed comments on these issues are provided in the report under the heading "Development Control Plans".
- With regards to the internal layout of units, the comments of the Design review Panel are considered valid. The internal floor area of the two and three bedroom units in particular, are modest and compromised in terms of the living room area provided to them. For example, SEPP 65 identifies an ideal internal floor area of 89sqm for two bedroom cross through apartments. Some two bedroom cross through apartments in the development have a floor area of approximately 82sqm. In this situation, the additional 7sqm would improve the internal amenity of these units.
- The applicant makes reference to the decision of the Land and Environment Court and that the scale of the development was deemed acceptable by the Commission. The appeal to which reference is made was regarding a section 96 application to the original consent granted for the entire site. The application sought permission to modify Stage 2 of the approved development by, amongst others, increasing the height of Buildings A, B, and E, removing the commercial floor area, and modifying the ground level plaza and parking access. The appeal was dismissed on the basis that the development, as modified, was not substantially the same development as that to which consent was granted.  
The current proposal forms part of a new development application and as such has to be assessed on the current planning controls that apply to the site. The details and outcome of the section 96 application are not a basis for supporting the current application.
- It is noted that the original development was assessed on the basis of "existing use rights" which pertained to the site. The current development is not subject to "existing use rights" and as such the relevant planning controls apply and have to be considered in the assessment of the application.
- The applicant states that: *The proposal in context of the redevelopment for all Stages 1, 2 and 3 is generally consistent with the proposed FSR of 2.5:1 of draft LEP 2010 (in its current form). The proposed FSR within the Replacement Application for the total development site is 2.7:1.* The "draft LEP 2010" referred to is not a matter for consideration. Whilst Council did resolve to exhibit the LEP on the 24 November 2010, the LEP never proceeded to public exhibition and as such does not have any status.
- The subject development application is accompanied by a report by Steve King, Consultant Architect entitled "Summary Expert Opinion, SEPP 65 Amenity Compliance" (dated 22 March 2011). The report confirms that the architect's

assessment of natural ventilation and solar access to apartments is appropriate and as such the proposed development is consistent with the Residential Flat Design Code in terms of natural ventilation and solar access. The conclusion reached by Steve King is not disputed.

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

Draft State Environmental Planning Policy (Competition) 2010 has been considered in the assessment of this report.

## **3. Development Control Plans**

Hurstville Development Control Plan No 2 (DCP 2) applies to the subject site. The relevant sections of DCP 2 that are relevant to the application are as follows:

### Section 2.2 – Neighbour Notification and Advertising of Development Applications

The application was notified/advertised on two occasions (once when the application was lodged, and once when a replacement application was lodged) in accordance with Council's requirements. One (1) submission in support of the application was received in reply. The reasons given for supporting the application are:

- Good urban design
- Enhances the area
- Provides a community service

### Section 4.2 – The Controls for Block 27 Site B

The proposed development complies with the requirements of Section 4.2 as follows:

<b>Block 27 Site B Controls</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Complies</b>
Use	As per LEP	Proposed uses are permissible in the zone	Yes
Height	4 storeys (to be negotiated depending on use)	Building A = 12 storeys Building B = 12 storeys Building E = 18 storeys	No (1)
Floor Space Ratio	1:1 (to be negotiated depending on use)	3.6:1 for Stage 2 (2.71:1 for entire site Stages 1, 2 and 3)	No (2)
Street setback	No	Varying front setback with green strip fronting Forest Rd	Acceptable
Awnings	No requirement	Awnings provided to ground floor retail tenancies	Acceptable



Balconies	-To rear of site	-Balconies provided to front of site	No (3)
	-Minimum 1 per unit 8sqm	-88 units (31%) do not have balconies with minimum 8sqm	No (3)
	-2m minimum dimension	-2m minimum dimensions	Yes
	-Can extend 450mm beyond the envelope	-Balconies extend 450mm beyond the envelope	No (3)
	-French balconies on Forest Road	-Balconies provided to Forest Road are not “french balconies”	No (3)
Vehicular Access	Forest Road	Forest Road, Durham Street, and Hill Street as per existing development consent for the site	Acceptable
Car Parking Spaces	Commercial – 1 car space/55sqm (1724.8sqm) = 32 spaces  Retail – 1 car space/27.5sqm (1718.4sqm) = 63 spaces  Residential – 1 car space/100sqm (26794.3sqm) = 268spaces  Visitor – 1 car space/4 units (284 units) = 71 spaces  Carwash bay = 1 space (can be a visitor space)  Total required = 434 car spaces	Provided = 473 car spaces (Not all car spaces have been designated as per their use such as retail, commercial etc, however, they can be appropriately allocated on site)	Yes (4)

(1) Floor Space Ratio

(2) Height

The proposed development does not comply with the floor space ratio and height requirements of DCP 2 as detailed in the above table. The applicant (town planning consultant) has provided the following justification in support of the application:

**Applicant’s Justification:**

*The height and FSR controls outlined in DCP No 2 are acknowledged. These controls are numerical development standards within a DCP, which can be varied based on merit.*

*Important considerations in determining the suitability of the height and FSR of the proposed development are whether the proposed built form outcome is:*

- *consistent with strategic planning policy for the locality;*
- *appropriate for the site context;*

- *compatible with surrounding development;*
- *consistent with the desired future intent for the locality; and*
- *able to achieve best practice and provide positive urban design outcomes for the city centre from the gateway site.*

*The proposed development provides an appropriate overall height and floor space ratio which is consistent with the design excellence outcomes achieved by the winning architectural design by Kann Finch Group and overseen by the Government Architect. The proposed built form outcome achieves compliance with each of the above design considerations and this is discussed in further detail below.*

*In relation to the components of the mixed use scheme the following commentary is provided:*

- *The high density nature of the proposal is suitable for a large unconstrained site where environmental impacts can be appropriately managed. A total of 284 residential units are proposed and this directly responds to the market demand for units in this location and will be a notable contributor to achieving the State Government's housing goal for the South Subregion by providing 284 additional dwellings for Stage 2. The scale and nature of housing with secondary retail and commercial uses are considered appropriate for the site, which is in the core support area at the fringe of the CBD.*
- *At the lower levels of each building, secondary retail uses are proposed. At the lower levels of Buildings B and E secondary commercial floor space is proposed above the retail uses. The quantum and design of the retail and commercial floor space responds to current employment and market characteristics and will provide a lively mixed use development providing a range of residential, commercial/employment, retail, leisure and open space uses on the site. The proposed development provides a mixed use scheme which is commercially viable and its delivery to the community will serve the public interest. The retail and commercial land uses appropriately reflect secondary land uses and together with the proposed high density housing, will provide a diverse and dynamic mixed use development.*
- *The uses within the proposed development are considered to be consistent with the relevant strategic planning framework and recent commercial floor space analysis carried out by Council and Urbis. This analysis concludes (as does Council's analysis) that there is insufficient demand to support significant additional office development in Hurstville and that likely future demand will be from local users seeking commercial tenancies of about 100-120 square metres rather than larger floor plates. (Refer to Economic Report at Appendix 12 for further details).*
- *Council has intended a mix of uses on the site through the 3(b) City Centre Business Zone and this is clearly achieved by the proposed development.*

*There has been extensive master planning and urban design analysis to inform the redevelopment of the site as part of the previous approved 2004 DA. The proposed development is consistent with the urban design criteria and endorsed design excellence outcomes and provides a planning and design outcome that goes well beyond what is normally required by Council for development proposals. This previous master planning and design work has been further embellished and updated by the more recent strategic policy documents and reports including Hurstville City Centre Concept Masterplan 2004, Draft South Subregional Strategy 2007, Metropolitan Plan for Sydney 2036, Review of Office Based Activities Locating Out of Centre (Hill PDA) July 2005, Hurstville City Centre Forecasting Study (SGS Economics and Planning 2007) and Review of Amended Masterplan (SGS Economics and Planning 2010). The proposed development achieves a high level of*

*compliance with the actions, principles and recommendations of these strategic policies and reports. In addition the LEC court judgment dated 3 December 2011 acknowledged the appropriateness of the proposed height and scale of the proposed development (identical to that proposed in this replacement application). The Design Review Panel (3 June 2010) during its analysis of the modified S96 proposal (April 2010) also supported the building envelope and height (similar to that proposed).*

*The proposed height and FSR for Stage 2 are deemed appropriate for the site having regard to the context of the site's position at the eastern entry to Hurstville Centre, the island nature of the site, the site's close proximity to two railway stations and minimal environmental impacts of the proposal for the other buildings on the site and overall locality. Importantly, the proposal accords with the key design principles for the redevelopment of the site which has been the result of a competitive design process and extensive analysis by Council and the State Government.*

*Further, we consider the proposed height and floor space ratio provides a high quality and desired planning and design outcome as follows:*

- *In relation to proposed FSR, the surrounding area provides a range of 3:1 to 6:1 and the proposed density is able to appropriately manage environmental impacts relating to traffic, solar access, and privacy for the site itself and surrounding properties.*
- *In relation to building heights, the proposed heights are consistent with heights achieved at the western gateway of Hurstville Centre. A taller marker building is warranted at the axis on the Forest Road alignment. Views into the site on approach from Forest Road is an important function of the required heights as well as being required to take advantage of views and opportunities for increased density for a large site along the railway line. The proposed heights of Building A, B and E present an articulated form of an appropriate scale when viewed from the public urban square on the site, the CBD and from northern elevations from Forest Road.*
- *Provision of a high quality architectural design which demonstrates design excellence and provides significant community assets including the public urban square, open space and design improvement to the subject site and adjoining public footways. Further the proposed development will incorporate the adjoining Kempt Field resource into the urban structure of Hurstville (Stage 3)*
- *The exceedance of height and FSR from that encouraged by DCP No 2 is also offset by the provision of a Voluntary Planning Agreement (or existing deeds between the land owner and Council) being made in recognition of the impacts of the proposed development on the locality and the need for additional infrastructure works and facilities to address these impacts, relevant to the nature of the proposed development*

**Assessment Officer's Comment:**

The variation to the height and floor space ratio requirement of DCP 2 is not supported for the following reasons:

- DCP 2 identifies the appropriate floor space ratio (FSR) and height for the subject site as being 1:1 and 4 storeys, respectively. The FSR and height requirements reflect the scale of development deemed to be appropriate for the subject site. The proposed development proposes an FSR of 3.6:1 and up to 18 storeys which significantly exceeds the requirements. As such the proposed development does not reflect what is anticipated for the site in terms of bulk and scale.

- The applicant has submitted that the proposed development is consistent with the original development approved for the entire site which was granted consent in 2004. At the time the site enjoyed “existing use rights” and the proposed development was assessed accordingly. The proposed development, the subject of this report, is subject to a new development application which is subject to the current planning controls. As such the existing development consents granted to the site do not form a basis for supporting the current proposed development.

For the purposes of responding to the points raised by the applicant with regards to the approved development, it is noted that the proposed development is higher and has a higher floor space ratio than that previously approved. The proposed development proposes an additional 2 storeys to Buildings A and B and E. 100 additional residential units are proposed to the development, and although approximately 3000sqm of commercial floor space has been deleted from Stage 2, the proposed FSR is higher than that previously approved (2.71:1 proposed, 2.63:1 approved over the entire site). Although the development has benefited from the existing use rights that applied to the site at the time the original consent was granted, the proposed development seeks to go further with the proposed development, irrespective of the planning controls that apply to the site.

- The provision of a 12 storey and 18 storey development is not supported in terms of its relationship to the existing and future desired character of the area. In the context of the existing character of the area the proposed development would be higher and denser than adjoining developments. This includes Stage 1 of the site which has been completed and comprises a 6 storey building fronting Forest Road and a 12 storey building behind. The approved Building X (part of Stage 3) which fronts Forest Road and adjoins Kemp Field is approved at 10 storeys. The sites on the opposite side of Forest Road are primarily 2 storey buildings. The provision of two, 12 storey buildings at the front of the site facing Forest Road, as proposed, would be imposing in the context of the existing adjoining developments and the streetscape.

In the context of the future desired character of the area, the planning controls for the sites in the vicinity of the subject site identify a maximum height less than that proposed. In particular the sites on the opposite side of Forest Road have a maximum height of 6 storeys. Given that some of these sites contain heritage items (primarily relating to the heritage value of their facades) it is likely that the immediate street frontage would maintain the two storey height of the heritage façade to Forest Road with the additional storeys located behind the façade. The site immediately adjoining the site to the west on Forest Road on the corner of Hill Street, has a ten storey height limit at the corner, with a four storey height limit immediately adjoining Stage 1 of the subject site. Given these controls, it is concluded that Council’s DCP controls for the subject site and those sites in the vicinity of the subject site do not intend for developments to be as high as that proposed. The proposed 12 storey height proposed at the Forest Road frontage would not be consistent with the future desired character of the area. This is reinforced by the recommendations of the Design Review Panel which does not support the height of the development at the street frontage. The Panel’s comments are provided in the report above.

Further to the above, the subject site is located on the fringe of the Hurstville City Centre, being the last site to the east of Forest Road to be zoned City Centre Business. It is not unusual for fringe sites to have a lower height and FSR than those sites located in the immediate centre of the city. This allows for a transition between the

denser city centre to the lower densities of residential zones. As such, even though the subject site is at a “gateway” location it is still on the periphery of the city centre where the commercial zone has a closer relationship with the smaller scale developments of the residential zones, in this case, the residential zone adjoining Kemp Field and to the north east of the site. A smaller scale development consistent with the DCP requirements is considered to be more appropriate for the site than that proposed.

- Council has not made any resolutions with regards to the draft VPA which accompanies the development application and as such the VPA is not certain and imminent. Notwithstanding this, the draft VPA is discussed in this report, as if it were made, for the purposes of clarifying the assessment officer’s position on it.

The draft VPA proposes to formalise the existing deeds of novation entered into with the original consent for the site, with the addition of an offer of 527sqm of commercial floor space in Building E being available rent free for a period of 3 years to a community based not-for-profit organisation, with subsidised rent for an additional period of up to 2 years. The rent free commercial floor space relates specifically to the current development application and is considered to be a “public benefit”.

DCP 2 states that the height and the FSR controls for the subject site “to be negotiated depending on use”. There are no details or parameters given regarding what is to be negotiated. It is therefore assumed that the height and FSR can be negotiated should the proposed development incorporate a use that is deemed to be of public benefit. The applicant, through the VPA, is proposing the public benefit of rent free commercial floor space in Building E. The provision of this space is commendable and would assist a non profit organisation in establishing itself on the site however, the offer is limited to, at most, 5 years. Therefore the public benefit is not ongoing and is not considered to benefit the community in the long term, given that the development on the site would have a life span of many decades. The provision of 527sqm of rent free commercial floor area is not considered to be commensurate with the floor area proposed in excess of the DCP requirements. The additional floor area proposed by the development above the 1:1 FSR requirement is 2.6:1 (21,838.2sqm).

It is usual that the floor area relating to a public benefit is given as “bonus” floor area above the maximum requirements. For example, the development can achieve an FSR of 1:1 with the commercial floor area which comprises the public benefit being “bonus” floor area. In this instance, the proposed additional floor area which the developer will gain is substantially greater than any public benefit gained by the commercial office area.

In the context of the approved development, the proposed development provides approximately 3000sqm less commercial floor area than that originally approved for Stage 2. The provision of 4,500sqm of commercial floor area to Stage 2 was considered to benefit the community by providing commercial floor area which would be an employment generator. When compared to the proposed development, the public benefit of the proposed 527sqm is diminished.

(3) Balconies

The balconies to the residential units of the proposed development do not meet the requirements of DCP 2 with regards to:

- Balconies are not exclusively provided to the rear of the site
- Balconies provided to Forest Road are not “french balconies”
- Balconies extend 450mm beyond the envelope of the building
- 88 units (31%) do not have balconies with minimum 8sqm

The first three points above relate to the design of balconies and in particular their relationship with Forest Road and the envelope of the building. The design of the proposed balconies does not meet these requirements however it is considered that they are acceptable for the following reasons:

- The design of the balconies forms part of the overall design concept of the development and as such they are well integrated into the design of the development and present well to Forest Road and the other elevations of the development. The fact that the balconies extend beyond 450mm beyond the envelope of the building is not to the detriment of the design.
- Given the scale of the development, it is not practical or appropriate that the balconies face the rear of the site only. Crime prevention principles encourage the provision of balconies to all elevations so to allow for passive surveillance of the site. The provision of “french balconies” to the Forest Road façade would not be consistent with the contemporary design of the development which is appropriate to the site.

With regards to the last point which relates to the size of the balconies, the applicant (town planning consultant) has submitted the following statement in response to this non compliance:

*The majority of balcony units satisfy the minimum DCP area and dimension requirements. Building E is fully compliant. Of the total 206 units within Buildings A and B, 24% of these units have primary balconies off living areas less than 8sqm in area. Some of these units have two balconies. The primary balconies average 7sqm and are considered to be suitably sized to provide good quality amenity and usability outcomes for future occupants of these one bedroom units. The site itself provides significant high quality open space with the provision of the both passive and active recreational opportunities. The balconies along Forest Road are designed to maximize amenity and complement the overall design of the development.*

88 or 31% of the proposed residential units do not have a balcony which is 8sqm minimum. Some balconies are approximately 6.25sqm and relate to two bedroom units. The provision of balconies with less than 8sqm is not supported for the following reasons:

- The DCP requirement of a minimum 8sqm balcony is considered to be the appropriate size for a functional private open space area which forms an extension to the living area of the dwelling which in turn, increases the amenity of the dwelling. The provision of a smaller balcony compromises its function and the dwelling’s amenity. Function and amenity are particularly important for high density developments, such as that proposed, as the balcony forms the only private open space area available to residents.
- Although a public plaza is provided to the development, this is not a substitute for functional private open space which can be used exclusively at any time by the

resident. The public plaza, as the name implies, is available to everyone including the public and as such does not form a private open space area for residents.

- There is no reason why the proposed development could not be designed such that a balcony with a minimum 8sqm is provided to each dwelling.

#### (4) Car parking spaces

The proposed development provides 39 car parking spaces in excess of the requirements. The definition of *gross floor area* under the Hurstville Local Environmental Plan is:

***gross floor area*** means the sum of the areas of each floor of a building where the area of each floor is taken to be the area within the internal face of the external enclosing walls as measured at a height of 1,400 millimetres above each floor level, excluding:

- (a) columns, fin walls, shading devices, awnings and any other elements, projections or works outside the general lines of the outer face of the external wall,
- (b) lift towers, cooling towers, machinery and plant rooms and ancillary storage space and air-conditioning ducts,
- (c) ***car parking needed to meet any requirements of the council and any internal vehicular or pedestrian access to that parking,***
- (d) *space for the loading and unloading of goods, and*
- (e) *internal public arcades and thoroughfares, terraces and balconies and the like.*

Under the definition of gross floor area the additional car parking spaces are included in the gross floor area calculation. As such the additional 39 car parking spaces result in approximately 600sqm of gross floor area. It is considered that the additional floor area, as it relates to the additional car parking spaces can be supported for the following reasons:

- The additional floor area is in a basement level and does not add to the external bulk and scale of the building.
- Given that the proposed development has 3 basement levels, the additional floor area does not have implications on the ground level in terms of deep soil planting. The landscaping of the site has been designed around the ground floor slab with mounted areas to accommodate deep soil levels.
- The additional car spaces will allow residents and their visitors to have additional on site car parking without reducing on street car parking.

### Section 5.1 – Design Guidelines

The design of the proposed development in terms of architectural merit is consistent with the requirements of Section 5.1.

### Section 5.2 – The Public Domain

The proposed development has been assessed against the relevant public domain requirements of Section 5.2 and is consistent with these requirements.

### Section 6.1 Car Parking

The proposed development meets the requirements of Section 6.1 as follows:

Section 6.1	Requirement	Proposal	Complies
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Residential car spaces: 1 car space/100sqm (26794.3sqm)	268 car spaces	309 car spaces	Yes
Residential visitor car spaces: 1 car space/4 dwellings (284 dwellings proposed)	71 car spaces	No designated visitor car spaces shown	No (1)
Car washing bay for residential component (can also be a visitor space)	1 car washing bay	Not shown but can be provided in a visitors space	No (1)
Retail: 1 car space/27.5sqm (1718.4sqm)	63 car spaces	164 car spaces for retail/commercial component (including 5 at grade car spaces)	Yes
Commercial: 1 car space/55sqm (1724.8sqm)	32 car spaces	As above	Yes
<b>Total car spaces for development:</b>	434 including 1 car washing bay	473	Yes

(1) Allocation of car spaces

The proposed development provides car parking spaces in excess of the requirements as previously discussed in the report. The plans submitted with the application however, do not allocate all car spaces in accordance with their intended use such as retail, commercial and residential visitor spaces. The car parking spaces however, can be allocated accordingly and as such no objection is raised to the car parking layout.

Section 6.3 – Access and Mobility

The proposed development complies with the requirements of Section 6.3 as follows:

<b>Access and Mobility Requirements</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Complies</b>
Adaptable Housing	29 adaptable dwellings required to be provided, designed in accordance with the AS 4299. Access to the adaptable dwelling and relevant car spaces to be in accordance with AS 1428.2	35 adaptable dwellings provided within the development with appropriate access to the dwelling and the relevant car spaces	Yes
Car parking for adaptable dwellings	One space required for each adaptable dwelling	One car space can be provided for each adaptable dwelling	Yes (1)
Commercial/Business Premises	Access in accordance with AS1428.2 and AS1735 (Lifts, escalators and moving walkways where required under the BCA.	Access can be provided as per the requirements.	Yes



Car parking for commercial/business premises	2% of parking spaces where 50 or more parking spaces provided in accordance with AS 2890 (9 accessible spaces required based on required 434 car spaces.	Car spaces can be provided as per the requirements.	Yes (1)
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(1) Disability accessible car spaces

The requirements relating to the design of disability accessible car spaces changed on the 1 May 2011 and apply to the proposed development. The new requirements in particular, require larger areas around a disability accessible car space. The development as lodged, did not comply with these requirements. The applicant was advised of the new requirements but has not adopted them in the replacement application. As such the proposed development does not comply with the requirements relating to disability accessible car spaces.

The new requirements can be adopted in the proposed development however it will require a redesign of the car parking areas and will result in a loss of some car spaces. Given that the proposed development has provided car parking in excess of the minimum requirements, the new requirements may be achieved.

Section 6.4 – Crime Prevention through Environmental Design

The proposed development complies with the requirements of Section 6.4 as follows:

<b>CPTED</b>	<b>Requirement</b>	<b>Proposal</b>	<b>Complies</b>
Fencing	Allows natural surveillance to street	No fence proposed	Yes
Blind Corners	To be avoided	No blind corners evident	Yes
Communal Areas	Provide opportunities for natural surveillance	Natural surveillance to communal areas	Yes
Entrances	Clearly visible and not confusing	Entrances are clearly visible	Yes
Landscaping	-Avoid dense medium height shrubs -Allow spacing for low growing dense vegetation -Low ground cover or high canopy trees around car parks and pathways -Vegetation used as a barrier for unauthorised access	Appropriate landscaping provided as per landscape plan submitted	Yes
Lighting	-Access/egress points illuminated -Diffused/movement sensitive lighting provided externally -No light spill towards neighbours -Hiding places illuminated -Lighting is energy efficient	Appropriate lighting can be provided by applicant	Yes
Building Identification	-Clearly numbered buildings -Entrances numbered -Unit numbers provided at entry	Appropriate house numbering can be provided	Yes
Security	-Main entrances to multi-unit development utilise intercom and code/card locks for main entrance/car park	Appropriate security measures have been incorporated into the development	Yes

Ownership	Use of fencing, landscaping, colour and finishes to imply ownership	Appropriate features provided in the development to imply ownership	Yes
Maintenance	Use materials that reduce the opportunity for vandalism	Appropriate materials used	Yes
Mixed Land Uses	Provide appropriate mixed uses within buildings to increase opportunity for natural surveillance	Appropriate mixed land uses provided	Yes
Spaces	Spaces are clearly defined	Spaces are clearly defined	Yes
Public facilities	Locate public facilities in areas of high activity	Public plaza is appropriately located	Yes
Shop front	Allow natural surveillance	Shop front allows natural surveillance	Yes
Building materials	Use of materials which reduce intruder access	Appropriate material used	Yes
Hours of operation	Adequate security for extended trading hours	Hours of operation not specified as development consent required for use of retail/commercial tenancies	N/A
Car Parking areas	Adequate lighting, security, security grilles, signage, relationship to car park to site and building layout	Basement car parking is appropriately located and secured	Yes
Open spaces/parks	Provide planting that maximises visibility and minimises opportunities for intruders to hide	Appropriate open space areas provided	Yes

#### Section 6.5 – Energy Efficiency

A BASIX Certificate has been provided for the proposed development. The development meets the target scores required for residential development. The proposed development will also allow for the principal ground level private open space of adjoining developments to receive at least 3 hours solar access between 9am and 3pm on June 21.

#### Section 6.9 – Waste Management

The waste management facilities provided for the development appear to be appropriate and in accordance with the requirements of Section 6.9. Detailed requirements relating to the provision of waste facilities can be reinforced through conditions of consent.

#### Section 9.1 – Development of a heritage item or in the vicinity of a heritage item

Council's Heritage Advisor has raised no objection to the proposed development in terms of its impact on the heritage items in the vicinity of the subject site.

### **4. Impacts and the Public Interest**

#### Natural Environment

The proposed development is unlikely to have an adverse impact on the natural environment. The site does not contain any vegetation and as such no existing trees that will be compromised by the development. The provision of landscaping to the site will enhance the

site and be an addition to the natural environment. The application seeks permission to remediate the site which is supported.

#### Built Environment

The proposal is considered to not be consistent with the future desired character of the area. The proposed development does not meet the requirements of DCP 2 in terms of floor space ratio, height and private open space area. In particular the scale of the development is not considered to be consistent with what is anticipated by the DCP. The development is considered to be an overdevelopment of the site and as such will have an adverse impact on the built environment.

#### Social Impact

The proposed development proposes a floor space ratio in excess of the requirements, with the additional floor area being primarily residential units. This results in a dense residential environment which may result in social impacts relating to existing facilities and services particularly as the number of residential dwellings has not been anticipated by the DCP. The draft VPA accompanying the application proposes the public benefit of rent free commercial floor area for a period of up to 5 years. The public benefit proposed is not considered to be commensurate with the additional floor area gained as the public benefit is not long term.

#### Economic Impact

The proposed development includes the provision of retail and commercial floor space which will introduce economic and employment opportunities in the area. This is considered to be of benefit to the area.

#### Suitability of the Site

The subject site is considered to be suitable for a mixed use development and has no apparent constraints which preclude it from being development for this purpose. Notwithstanding this, the proposed development is considered to be an overdevelopment of the site and not consistent with the intended scale of development anticipated by the relevant development control plan.

#### Public Interest

The proposed development does not comply with the requirements adopted for the site in terms of floor space ratio, height and private open space. The application seeks to vary these requirements significantly. As such the proposed development is not considered to be consistent with the scale of development anticipated by the DCP requirements. The public benefit proposed by the draft Voluntary Planning Agreement is not considered to be proportionate to the additional floor area gained by the development. Accordingly the proposed development is not considered to be in the public interest.

## **5. REFERRALS**

### **Council Referrals**

#### Manager - Development Advice

Council's Manager – Development Advice has examined the proposed development and raised no objection subject to conditions of consent being attached to any consent granted.

Senior Environmental Health and Building Surveyor

Council's Environmental Health and Building Surveyor has examined the application and raised no objection subject to conditions of consent being attached to any consent granted.

Senior Traffic Engineer

Council's Senior Traffic Engineer has raised no objection to the proposed development.

Manager Environmental Services

Council's Manager Environmental Services has raised no objection to the proposed waste facilities for the development.

Heritage Adviser

Council's Heritage Advisor has advised that the proposed development as submitted will have no additional detrimental impact on the heritage item in the vicinity of the site and no conditions of consent relating to heritage are proposed.

**External Referrals**

Sydney Regional Development Advisory Committee (SRDAC) and Roads and Traffic Authority (RTA)

The SRDAC and RTA have raised no objection subject to conditions of consent being attached to any consent granted.

Energy Australia

Energy Australia raised no objection to the development subject to conditions of consent being attached to any consent granted.

RailCorp

RailCorp raised no objection to the development subject to conditions of consent being attached to any consent granted.

Design Review Panel (DRP)

The comments of the Design Review Panel have been addressed in the report in the section entitled "State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development".

**6. CONCLUSION**

The proposed development seeks permission to remediate the site and construct a mixed use development containing ground floor retail area, first floor commercial area, 284 residential units, and 3 basement levels of car parking. A draft Voluntary Planning Agreement (VPA) accompanies the application. The proposed development has been assessed against the requirements of the relevant planning instruments and development control plans and does not comply with regards to floor space ratio, height, and private open space. The applicant has provided justification for the proposed variations which includes, amongst others, consideration of previous consents and applications relating to the site, the design outcomes achieved by the development, and consideration of the draft VPA which accompanies the application.

The variations proposed to the DCP requirements can not be supported as it is considered that the proposed development is not consistent with the bulk and scale intended by the DCP and the future desired character of the area. Although the Council has not made any resolutions regarding the draft VPA, it is considered that the proposed additional floor space proposed by the development outweighs any public benefit provided by the VPA. Accordingly, the application is recommended for refusal for the reasons detailed below.

## **RECOMMENDATION**

THAT pursuant to Section 80(1)(b) of the Environmental Planning and Assessment Act, 1979, as amended, the Joint Regional Planning Panel refuses development consent to Development Application 11/DA-21 for the remediation of the site and construction of a mixed retail/commercial/residential development comprising three (3) buildings containing basement car parking area, ground floor retail, first floor commercial and two hundred and eighty four (284) residential units on Lot 2 DP 270611 and known as 93 Forest Road, Hurstville, for the following reasons:

1. Pursuant to the provisions of Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposal is not supported as it does not comply with the requirements of Hurstville Development Control Plan No.2 with regards to floor space ratio, height and private open space area.
2. Pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development is unsatisfactory in terms of its standard of design and would adversely impact upon the amenity of future residents of the development in terms of the private open space area and internal floor area afforded to them.
3. Pursuant to the provisions of Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979, it is considered that the proposed development does not satisfy objective (d) of the 3(b) City Centre Business zone as contained in the Hurstville Local Environmental Plan.
4. The proposed development is unsatisfactory, pursuant to the provisions of Section 79C(1)(b) of the Environmental Planning and Assessment Act 1979, providing an undesirable and unacceptable impact on the streetscape and adverse impact on the surrounding built environment.
5. Having regard to the previous reasons noted above, pursuant to the provisions of Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, approval of the development application is not in the public interest.