

<b>JRPP No.</b>	<b>2013SYW033</b>
<b>Development Application No.</b>	<b>DA-189/2013</b>
<b>Proposed Development</b>	<b>Construction of a residential flat building containing a total of 113 residential units with basement car parking and site landscaping</b>
<b>Property Description</b>	<b>Lots 1-5 DP 35236, No.34-40 Hume Highway and 1 Browne Parade (Additional frontage to Browne Parade and George Street) WARWICK FARM</b>
<b>Applicant</b>	<b>New Mangrove Pty Ltd</b>
<b>Land Owner</b>	<b>New Mangrove Pty Ltd</b>
<b>Cost of Work</b>	<b>\$24.9 Million</b>
<b>Recommendation</b>	<b>Approval, subject to conditions</b>



## 1. EXECUTIVE SUMMARY

### 1.1 Reasons for the Report

Pursuant to the requirements of Schedule 4A of the Environmental Planning and Assessment Act 1979, the proposed development is referred to the Sydney West Joint Regional Planning

Panel (JRPP) for consideration and determination as the Development Application has a Capital Investment Value over \$20 million.

This report summarises the key issues in consideration of the proposal in accordance with the provisions of Section 79C of the Environmental Planning and Assessment Act 1979

## 1.2 The Proposal

Council is in receipt of a Development Application seeking consent for the erection of a part twelve and part fourteen storey residential flat building comprising 113 units (23 x 1 bedroom units, 74 x 2 bedroom units, and 16 x 3 bedroom units), 3 levels of basement car parking containing 133 off street car parking spaces (121 resident and 12 visitor spaces), 7 motorcycles and bicycle parking for 63 bicycles and associated landscaping and fencing.

## 1.3 The Site

The subject site is known as Lots 1-5 DP 35236, 34-40 Hume Highway Warwick Farm. It has an area of 2,760m<sup>2</sup> of which 175.5m<sup>2</sup> is affected by future road widening.

## 1.4 Background

The site is identified as a 'key site' under Clause 7.5 of Liverpool Local Environmental Plan 2008 (LEP 2008).

The Development Application was considered by Council's Design Review Panel (DRP), which represented the culmination of a design competition process that was required by Clause 7.5(4) of the LEP 2008.

On 2 May 2013, Council Officers presented the proposed development to the Sydney West Joint Regional Planning Panel (JRPP) to provide a briefing on the Development Application. During this review, the JRPP raised the interpretation of floor space in the recent court judgment made in *Haralambis Management Pty Ltd v Council of the City of Sydney [2013] NSWLEC 1009*.

The contention noted in the judgment centred on whether the floor area associated with balconies is to be included in the floor space area calculation. With respect to the subject Development Application, the floor space ratio of 3.85:1 was effectively accepted in consideration by the design jury and Council's Design Review Panel.

If the findings in the Haralambis Case are to be applied, the gross floor area is taken to also include those balconies enclosed by the glass louvres (an additional 955m<sup>2</sup>). In this case, the proposal would have an FSR of 4.2:1 and exceed the maximum allowable FSR by approximately 9%.

The matter was referred to the Department of Planning and Infrastructure for confirmation that design excellence was maintained to the proposed development. Written correspondence was provided from the Director-General on 4 July 2013 that who advised that *"the development is the same as the one I considered and gave concurrence to on 8 December 2013 (sic). I can confirm that design excellence is not affected by the technical non-compliance with the FSR control."*

In this regard, design excellence has been granted to the proposed development.

### **1.5 Key Issues**

Design Excellence and floor space ratio are canvassed in this report. These matters have been satisfactorily resolved.

### **1.6 Variation to Controls**

The assessment has identified a number of non-compliances in respect of the following policies:

#### Residential Flat Design Code

- Building Height;
- Side and rear setbacks;
- Floor Space Ratio; and
- Deep Soil Zones.

#### Liverpool LEP 2008

- Floor Space Ratio.

#### Liverpool DCP 2008

- Street and Boundary Setbacks;
- Street frontage Height; and
- Site Cover.

The proposal is compliant in all respects with LEP 2008 apart from the floor space ratio. As discussed in the report, the identified variations are considered acceptable and do not warrant a refusal of the application.

### **1.7 Exhibition of the Proposal**

The proposed development was advertised from 20 March 2013 to 9 April 2013 in accordance with Liverpool Development Control Plan 2008, Part 1.1 General Controls for all Development. No submissions were received by Council.

### **1.8 Conclusion**

The proposal represents a revised design, which is the result of meetings with Council's Design Review Panel (DRP) in 2012. The DRP recommended the redesign of a number of aspects of the proposal in relation to design excellence. The site is identified as a 'key site' within Liverpool Local Environmental Plan 2008 (LLEP 2008) of which, design excellence provisions contained within the plan are a mandatory considerations for the proposed development.

The application is accompanied with a variation to the maximum allowable floor space ratio of 3.85:1 (including a 10% bonus under Clause 4.6 of LEP 2008). The application submits that the proposal complies with the maximum allowable FSR, however if the interpretation of gross floor area is taken to include those balconies enclosed by the glass louvres, then the proposal exceeds the maximum allowable FSR by approximately 9% (4.2:1).

The proposal has been the subject to an architectural design competition and is considered to exhibit design excellence with concurrence provided by the Director-General. The Director-General has also confirmed that design excellence is not affected by the technical non-compliance with the floor space ratio control.

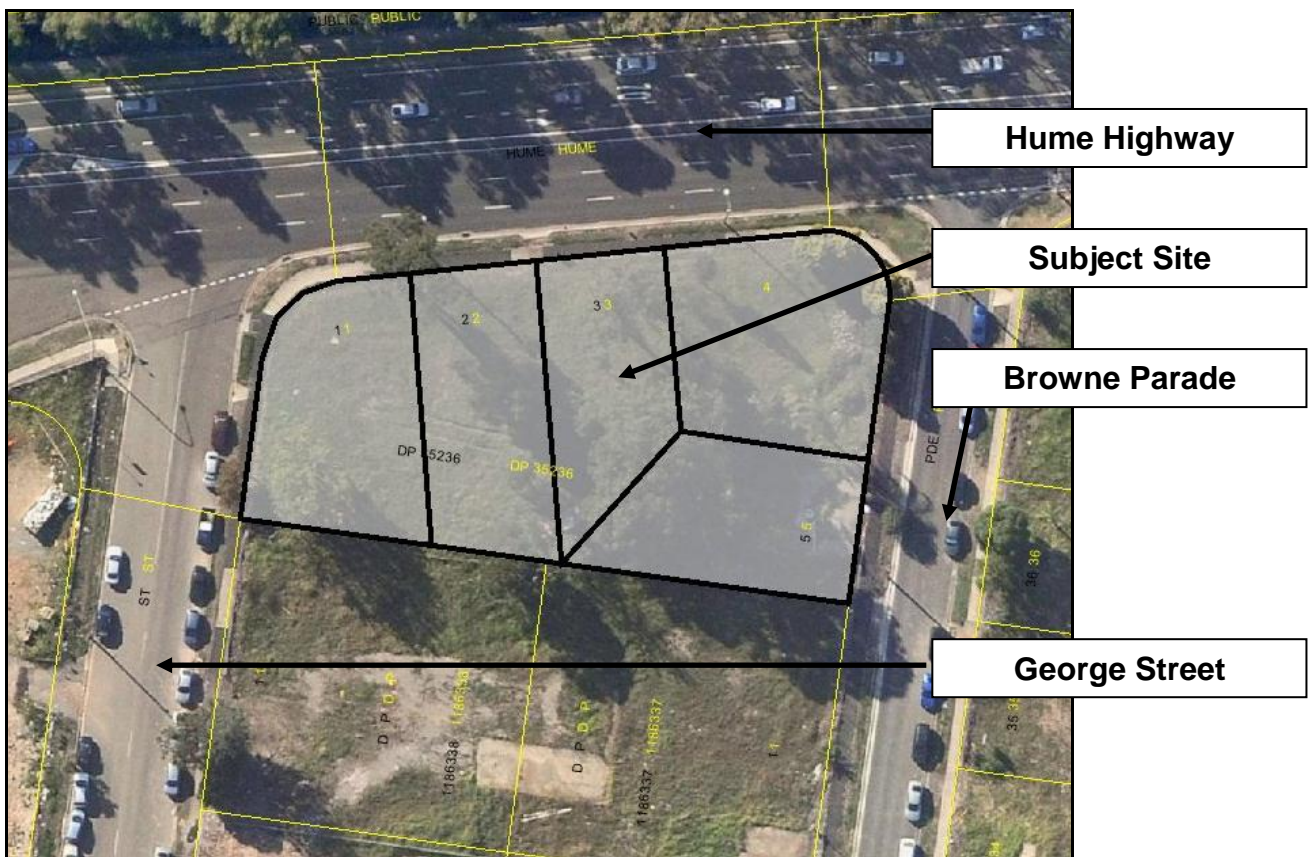
The applicant contends that the removal of the glass louvres would thwart the design excellence exhibited by the development as designed and result in a demonstrably worse environmental outcome for future occupants of the building.

In Council's opinion, the retention of the louvres is a key design element in the proposal and the inclusion of the balcony areas in floor space ratio calculations does not result in additional bulk and scale or adverse amenity impacts, consequently the design as submitted is supported and approval is recommended.

## 2. SITE DESCRIPTION AND LOCALITY

### 2.1 The Site

The subject site is known as Lots 1-5 DP 35236, Nos 34 – 40 Hume Highway and 1 Browne Parade Warwick Farm and has three (3) street frontages. The subject site is identified in Figure 1 below:



**Figure 2: The subject site**

It is an irregular shaped allotment with a site area of 2,760m<sup>2</sup>. The site area calculations include the area affected by road widening, however there are no structures over the affected land and all setbacks are based from the future alignment.

The principal street frontage is the Hume Highway (approximately 70 metres) with secondary street frontages to Browne Parade (approximately 40 metres) and George Street (approximately 25 metres). The southern (rear) boundary is approximately 74 metres. All vehicular access to the development is via George Street to the west. The site is relatively level with a gentle topography.

The site is situated within the high-density residential area of Liverpool City Centre at the northern boundary where the city centre meets the Hume Highway and changes to lower medium-density residential to the northern side of the Hume Highway. The site is currently vacant (evidence of demolition) and contains a number of trees and shrubs.



Photographs of the site and surrounds are provided as follows:



**Figure 3: View from George Street and the Hume Highway**



**Figure 4: View from Hume Highway to the west**



**Figure 5: View from the west at George Street**





Figure 6: View from the west at George Street

## 2.2 The Locality

The site is situated to the north of the Liverpool city centre on the southern side of the Hume Highway, with Liverpool Railway Station located approximately 1 kilometre to the south-east. The main commercial and retail centre for Liverpool is located approximately 1 kilometre to the south of the site. A locality map is provided in Figure 7 below:

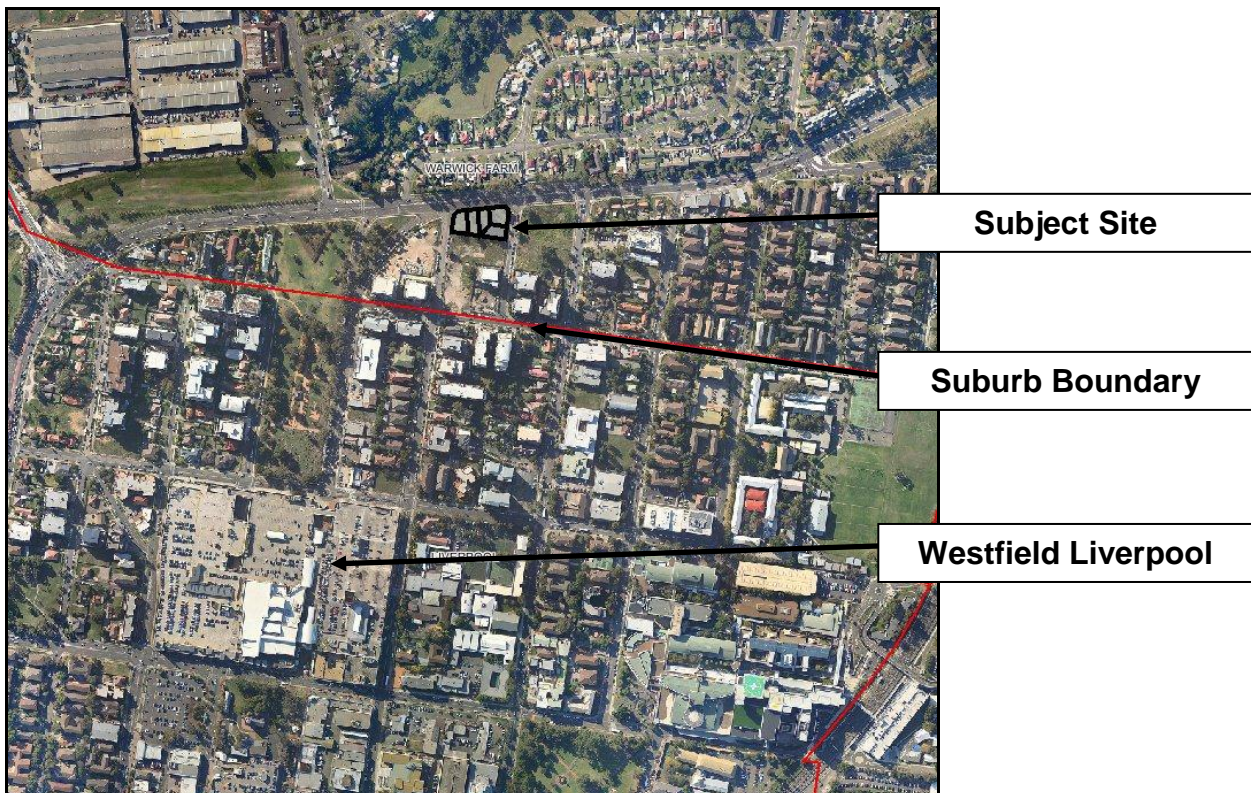


Figure 7: Locality map

At the rear or south, on the eastern side (Nos.3 - 5 Browne Parade – DA1930/2012) approval has been granted (25 March 2013) for the construction of a 9 storey residential flat building comprising a total of 36 residential units with 2 levels of basement car parking. The western side fronting George Street is vacant.

### 3. BACKGROUND

The proposal has been the subject of five (5) design iterations as part of the design competition process which was reviewed by a design jury convened according to guidelines of the Director General of the Department of Planning & Infrastructure.

In September 2012, after reviewing the third iteration of the design competition concept, the design jury confirmed that design excellence could be achieved, subject to further information and a number of specific design modifications being made. The detail of the design amendments is addressed in Section 4 of this report. The design competition process was concluded, in effect, at that time.

Of particular note, Clause 7.5(6) of the LLEP 2008 is equipped with an 'in-built' provision that enables a variation to floor space ratio (FSR) and building height if the design of the building has been subject to a design competition and received concurrence from the Director General. The subject site contains a maximum FSR of 3.5:1, however the proposed development was permitted a variation as confirmed from the Director General with a maximum FSR of 3.85:1.

On 2 May 2013, Council Officers presented the proposed development to the Sydney West Joint Regional Planning Panel (JRPP) to provide a briefing on the Development Application. During this review, the JRPP raised the interpretation of floor space in the recent court judgment made in *Haralambis Management Pty Ltd v Council of the City of Sydney [2013] NSWLEC 1009*.

The contention noted in the judgment centred on whether the floor area associated with balconies is to be included in the floor space area calculation. With respect to the subject Development Application, the floor space ratio of 3.85:1 was effectively accepted in consideration by the design jury and Council's Design Review Panel.

In briefing with the JRPP, it was queried by the panel whether the louvres proposed as part of the proposed development would effectively enclose balconies. Having regard to the *Haralambis* judgment, it was concluded that the louvres were considered 'outer walls' and accordingly, the floor areas within the balcony areas were therefore to be calculated as part of the proposed building's FSR.

Council subsequently advised the applicant of the need to address the above. A legal opinion specifically to assist in the accurate interpretation of the applicable Development Standards was sought with the follows matters to be interpreted:

- (a) *Whether the use of 'in-built' provisions enabling a 10% variation to floor space ratio prescribed in Clause 7.5(6) of the LLEP 2008 is equipped to consider the departure exclusively of Clause 4.6 of the LLEP 2008.*
- (b) *If Clause 7.5(6) is equipped exclusively to address a 10% variation to floor space ratio, is the residual variation as discussed above in excess of 10% is to be covered by Clause 4.6 of the LLEP 2008.*

Council's legal advice essentially confirms that any variation to the allowable FSR 3.85:1 would need to be supported by a written variation pursuant to Clause 4.6. This matter is discussed later in the report.

The matter was also referred to the office of the Director-General who provided advice on 4 July 2013 that *"having reviewed the proposal in the light of these issues, the development is the same as the one I considered and gave concurrence to on 8 December 2013 (sic). I can*

*confirm that design excellence is not affected by the technical non-compliance with the FSR control.” (See Attachment No.3)*

#### 4. DETAILS OF THE PROPOSAL

The development application seeks consent for the erection of a part twelve storey and part fourteen storey residential flat building comprising 113 units comprising of the following:

- Twenty three x one bedroom units (55m<sup>2</sup> to 70m<sup>2</sup>);
- Seventy four two x bedroom units (78m<sup>2</sup> to 96m<sup>2</sup>);
- Sixteen three x bedroom units (105m<sup>2</sup> to 110m<sup>2</sup>) ;
- A total of 12 apartments (9%) are identified as ‘readily adapted’ with modified layouts in accordance with AS 4299 Adaptable housing. These apartments are identified within the Access Report as Units 202, 302, 402, 502, 602, 702 (one bedroom units) and Units 210, 310, 410, 510, 610, 710 (2 bedroom units). Bathrooms to these apartments are larger and can facilitate modification for disabled access in accordance with AS 1428.1:2009. Internal corridors to all apartments are 1m wide and bedroom/living room configurations are adaptable to conform to AS 4299 requirements.
- Three basement levels containing the following:
  - 133 off street car parking spaces (121 resident and 12 visitor spaces). 2 of the visitor spaces are designated as accessible;
  - Seven motor bike spaces;
  - Bicycle storage area for 63 bikes;
  - Service bay and associated area;
  - Auxiliary rooms including: plant, switch, and resident storage rooms;
  - Garbage storage area.
- The development will be serviced by two lift cores (four x lifts) plus two main stairwells.
- Podium and deep soil landscaping and external fencing.
- The unit mix is as follows:

Level	Dwelling mix	Number of Units
<b>Level 1 (Ground):</b>	3 x 1bed + 1 x 3bed	<b>4 units.</b>
<b>Level 2:</b>	2 x 1bed + 7 x 2bed + 1 x 3bed	<b>10 units.</b>
<b>Levels 3 – 11:</b>	2 x 1bed + 7 x 2bed + 1 x 3bed (10 units/floor)	<b>90 units.</b>
<b>Level 12:</b>	2 x 2bed + 3 x 3bed	<b>5 units.</b>
<b>Level 13 (Penthouse):</b>	1 x 2bed + 1 x 3bed	<b>2 units.</b>
<b>Level 14 (Penthouse):</b>	1 x 2bed + 1 x 3bed	<b>2 units.</b>

A copy of the amended architectural plans is included in the attachment booklet. An extract of all street elevations are provided as follows:

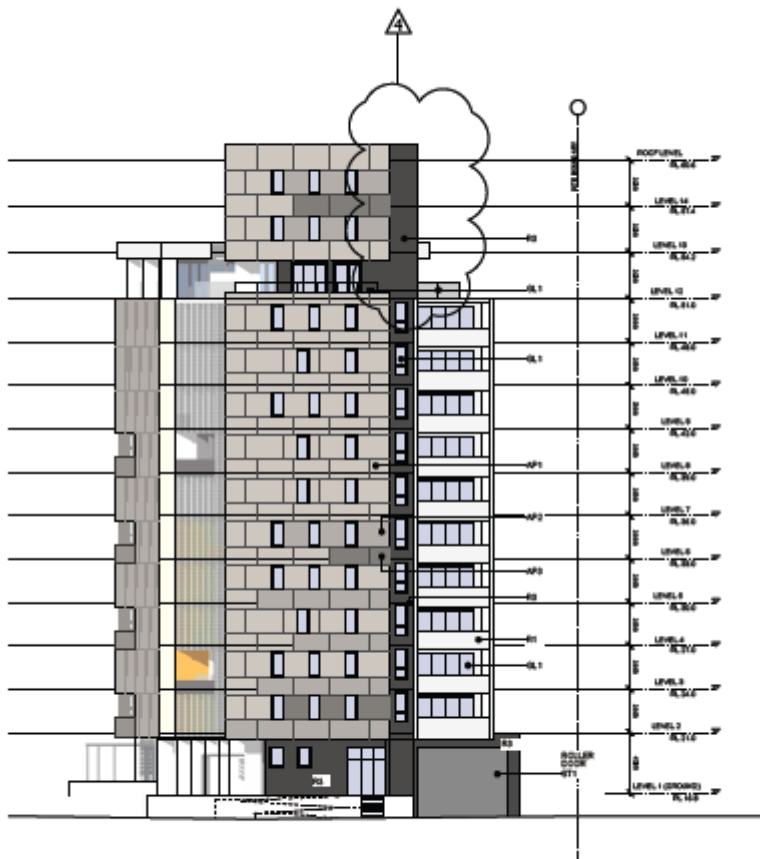


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1 SOUTH ELEVATION  
Scale: 1:200



2 WEST ELEVATION  
Scale: 1:200

## 5. DESIGN REVIEW PANEL

The proposal has been the subject of a number of design reviews by Council's design review panel (DRP). The final panel meeting was held on 4 April 2013.

At this meeting, the panel considered that the proposed development '*achieves satisfactory design quality in relation to almost all of the design excellence considerations which are specified by the LLEP 2008*'. Notwithstanding, the panel members agreed that further amendments were necessary in relation to scale and modulation of the built form '*in respect of the northern and southern elevations together with the buildings visually prominent north-eastern corner*'.

The following are the proposed amendments recommended by the panel and the applicant's response. It is noted that the applicant has undertaken modifications to 4 of the 5 principal recommendations. These changes are reflected in the plans attached to the report. Refer DWG Nos.601 – 604.

### DRP Recommendation 1

The northern elevation should be amended by extending the vertical recess (which currently appears between levels 2 and 6 in front of apartments x04) from level 6 up to level 11.

*Reasons: Moderate horizontal scale of the proposed northern facade which has a width of 65m by modulation which is visually-pronounced. Divide the northern elevation into three visually-distinct elements in order to accentuate modulation effect of the cranked glazed facade, similar to division of the southern elevation as currently-proposed*

Applicants Response – No change.

*Council's letter requests "the northern elevation should be amended by extending the vertical recess .....from Level 6 up to Level 11". This request is an aesthetic request and therefore this response is an aesthetic response. The request aims to further articulate the façade, and yet the façade is already articulated at this point, by a distinct fold in the façade and the existing slot that is currently 5 storeys high. The current slot aligns with the eastern edge of the two storey high corner element. The slot is coloured orange and currently articulates the façade. The request to "divide the northern elevation into 3 visually distinct elements" would fundamentally change the proportions of the façade and the design parti (sic) in itself, and has not been made. The current design has a horizontal proportion in the louvred balconies that is in the form of the Golden Section. This contrasts with the vertical proportion of the eastern bay near the corner of Browne Parade. The horizontal proportion is reinforced with a different balcony treatment in the top two floors of the corner element. The contrast of horizontal and vertical proportions in the facade provide a dynamism that would be lost if the facade were simply turned into 3 vertical bays, as requested. In addition, the current orange coloured recess is part of a set of recesses in the balcony façade that adequately articulate the façade in a playful composition. As a Key Site and a gateway to the town centre, this site should contain a gateway building, which the current composition creates. Council's aesthetic request would diminish the quality of the façade composition for the reasons described above.*

### DRP Recommendation 2

The north-eastern corner should be amended by applying the 'level three variation' (drawing 203- DA1) with a corner window for apartment x 08 added in at least three additional locations between levels 5 and 11.

*Reasons: Moderate vertical scale of the, visually-prominent north-eastern corner by modulating the blunt blade wall in this location. Provide an improved design treatment for this visually-prominent location so that the building would 'turn the corner' more-*

*effectively.*

Applicants Response – Amended.

*The design has been amended in response to this request. We have applied the “Level 3 variation” to 4 levels to “turn the corner” in a more effective manner.*

DRP Recommendation 3

The eastern elevation should be amended to match the composition of balconies which is depicted by perspective views: balconies between levels 9 and 11 should be arranged as a pattern of interlocking cantilevers which are not enclosed by individual frames (note that privacy screening would be required, and should incorporate light-weight materials which are consistent or compatible with the design of balustrades).

*Reasons: Moderate vertical scale of this visually-prominent elevation by varying fundamental design elements. Enhance patterning as a technique to articulate this visually-prominent elevation.*

Applicants Response – Amended.

*The design has been amended in response to this request. The eastern elevation has been amended to reflect the balconies shown in the perspective view.*

DRP Recommendation 4

The south-eastern corner should be amended to match the composition of balconies which are proposed at the south-western corner: southern edges of balconies to apartments x10 should be extended by approximately half a metre and supported by a wide blade column which stands forward of the general alignment of exterior walls in the southern elevation.

*Reasons: Contribute to moderation of horizontal scale for the visually-prominent southern elevation which is 65m wide. Enhance layering of elements and shadow-modelling as techniques to articulate this substantial planar facade which will provide a prominent backdrop to the City Centre.*

Applicants Response – Amended.

*The design has been amended in response to this request. The south-eastern corner has been amended using a similar approach to the balconies in the south-western corner. The south-western corner has been further articulated by the top two floors also being articulated in line with the corner balconies below. These amendments mean that, in the words of the DRP, the design “moderates the horizontal scale of this visually prominent southern elevation”, creates “shadow modelling” and “turns the corner” of each of the two corners.*

DRP Recommendation 5

The southern elevation should be amended by varying the vertical alignments of windows to bedrooms and living rooms, and by applying a diversity of panel wall finishes to the eastern and western modules of this elevation in order to complement composition which is currently proposed for the north-eastern and western facades.

*Reasons: Moderate horizontal scale of the visually-prominent southern elevation which is 65m wide. Incorporate improved patterning as a technique to articulate this substantial planar facade, as well as enhancing presentation of south-eastern and south-western corners of the proposed building which would provide visually-prominent backdrops to the City Centre.*



Applicants Response – Amended.

The design has been amended in response to this request. It should be noted that this is a side boundary, and the building is not a “building-in-the-round”. The southern façade will be obscured by the potential 9 to 15 storey building that is likely to be built on the adjoining site in the near future. The elevational treatment on the north-eastern and western facades are not appropriate to this façade. This elevation does not warrant having special “alucobond” panels, as suggested in Council’s letter. The southern elevation has been amended by applying a diversity of patterns and colours to the façade. The walls are patterned in neutral tones and bright colours to break down the scale of the façade. An appropriate amount of façade modulation and patterning has been provided for this side boundary façade. The corners are articulated (see 4 above). The façade is divided into 3 bays by the inset, 3m wide, glazed lobby windows. The walls of these insets are highlighted by bright colours to emphasise their presence in the wall.

## 6. STATUTORY CONSIDERATIONS

### 6.1 Zoning

The subject site is part zoned R4 High Density Residential and part zoned SP2 Infrastructure (Classified Road) pursuant to Liverpool Local Environmental Plan 2008 (LLEP 2008). The proposed development is defined as a ‘residential flat building’ which is prescribed as follows:

*“Residential flat building” means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing”*

A residential flat building is permissible with Council consent in the R4 High Density Residential zone and the development satisfies the above definition. There are no works proposed over that part of the land zoned SP2. Extracts from LLEP 2008 are provided in Figures 8 and 9 below:

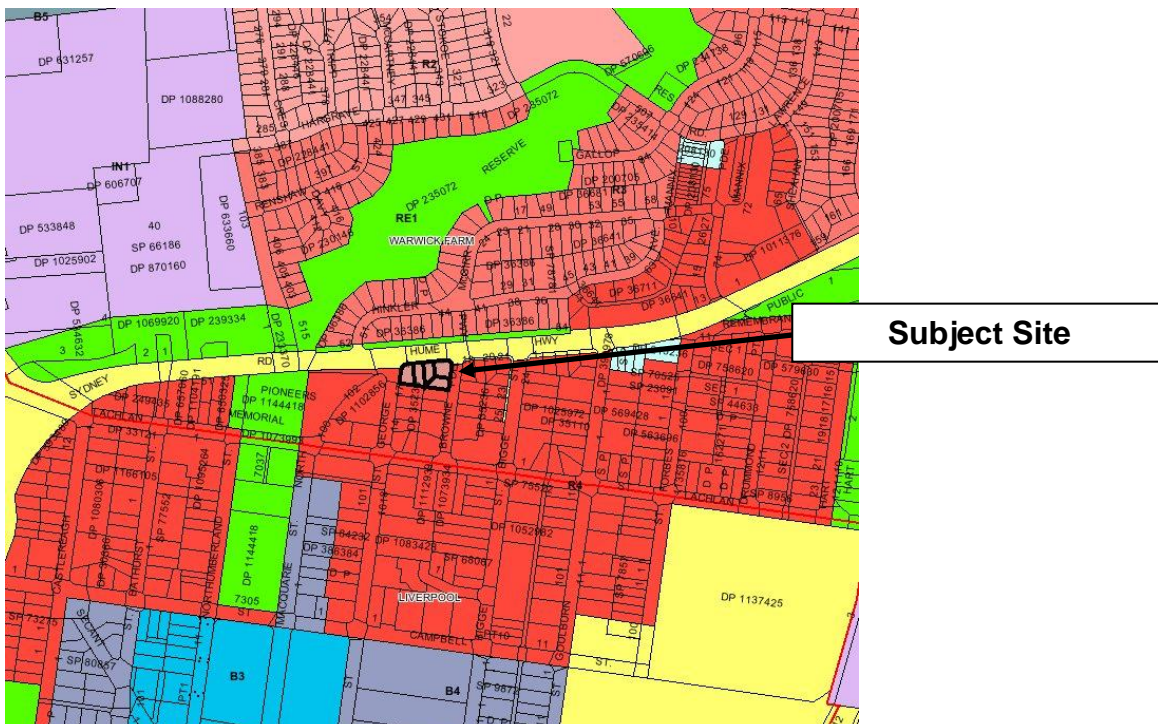


Figure 8: Extract of LEP 2008 zoning map



**Figure 9: Extract of LEP 2008 zoning map identifying the proposed road widening**

## 6.2 Matters for consideration

In addition to LEP 2008, the following Environmental Planning Instruments (EPI's), Development Control Plan and Codes or Policies are relevant to this application:

- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment;
- State Environmental Planning Policy No.55 – Remediation of Land;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development;
- Liverpool Local Environmental Plan 2008; and
- Liverpool Development Control Plan 2008 (Parts 1.1, 1.2 and 4).

The development application has been assessed in accordance with the relevant matters of consideration prescribed by Section 79C of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000. An assessment of the proposal against the relevant matters for consideration is detailed below:

## 7. ASSESSMENT

### 7.1 Section 79C(1)(a)(1) - Any Environmental Planning Instrument

#### (a) Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (GMREP No.2)

It is considered that the proposal satisfies the provisions of the GMREP No.2. Subject to appropriate sedimentation and erosion controls during construction, the development will have minimal impact on the Georges River Catchment. As such, the operation of the proposed development is unlikely to have any adverse impacts on stormwater runoff and water quality.

**(b) State Environmental Planning Policy No.55 – Remediation of Land**

The proposal involves development for residential purposes. The applicant has advised that the site has historically not been used for commercial or industrial purposes. The proposal involves significant earthworks and consequently, this matter can be addressed by way of conditions as it is considered appropriate that a contamination assessment and report be undertaken prior to the release of a Construction Certificate.

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

A BASIX certificate No.36624OM\_02 dated 17 February 2013 has been submitted.

**(d) State Environmental Planning Policy (Infrastructure) 2007**

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) applies. The site has frontage to the Hume Highway and therefore, the following provisions are relevant consideration:

Clause 101 provides:

***“101 Development with frontage to classified road***

*The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*

- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
  - (i) the design of the vehicular access to the land, or*
  - (ii) the emission of smoke or dust from the development, or*
  - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road”*

There is no direct access to the Hume Highway with vehicular access (to the basement level parking) provided from George Street only. The applicant has submitted a Traffic and Parking Assessment that addresses the impact of the proposal on the surrounding road network. The assessment makes the following conclusions:

- *a suitable and appropriate parking provision will be made in relation to the needs of the development.*
- *the traffic generation of the development will be satisfactorily accommodated on the road system.*
- *the vehicle access, internal circulation and turning arrangements will be quite satisfactory.*
- *there will not be any unacceptable road safety and traffic related environmental implications.*

The proposal as submitted is considered to meet the requirements of Clause 101.

Clause 102 provides:

***“102 Impact of road noise or vibration on non-road development***

- (3) *If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:*
- (a) *in any bedroom in the building—35 dB(A) at any time between 10 pm and 7 am,*
  - (b) *anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.”*

The applicant has submitted an acoustic assessment of road traffic noise. The calculation of the requirements for the noise reduction performance of building elements was undertaken using methodology contained in Australian Standard AS 3671:1989 *Acoustics – Road traffic noise intrusion – Building siting and construction* (AS 3671).

The assessment has been conducted to satisfy the requirements of Clause 102 with regard to road traffic noise intrusion to habitable rooms and sleeping areas of dwellings located near to major roads.

Calculations have been undertaken to determine road traffic noise levels at all facades and floor levels of the proposed development. Using AS 3671 methodology, the required reduction performance of glazing to windows and doors has been determined.

The ISEPP internal noise objectives can be achieved with the incorporation of the recommended glazing configurations outlined in Table 2 within that report. It is noted however that Table 2 assumes that external windows, including the louvres to the north-facing balconies, would be closed. If external windows are open for ventilation purposes, the internal noise objectives cannot be achieved and it is consequently recommended that *“ventilation to the requirements of the Building Code of Australia F 4.5 (b) and Australian Standard 1668.2 Table 4.2 should be provided”*.

It is considered that this matter can be adequately addressed by conditions of consent.

With respect to Clause 104 of ISEPP, the subject application was referred to the Roads and Maritime Services for the purposes of traffic generating development pursuant to Column 3 of Schedule 3. The following advice has been provided:

*“RMS has reviewed the submitted application and provides the following requirements to Council to be incorporated into the development consent:*

- a. *RMS has previously resumed and dedicated land as road along the Highway frontage of the subject property, as shown by grey colour on the attached aerial.*

*The subject property is also affected by a road widening proposal, as shown by pink colour on the attached aerial.*

*However, there are no objections to the development proposal on property grounds provided any new buildings or substantial structures are erected clear of the land required for road widening.*

*The area required for road should be identified as a separate lot in any plan of subdivision.*

- b. *The post development storm water discharge from the subject site into RMS drainage system should not exceed the pre-development discharge.”*

It is considered that these matters can be adequately addressed by conditions of consent.



**(e) State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development**

State Environmental Planning Policy No. 65 applies to the proposal, as the application incorporates a residential flat building component. Clause 30(2) of SEPP 65 requires residential flat development to be designed in accordance with the design quality principles in Part 2 of SEPP 65. The following table summarises the ten (10) design quality principles outlined in SEPP 65.

DESIGN QUALITY PRINCIPLE REQUIRED	DOES THE PROPOSAL ADDRESS THE PRINCIPLE?	HOW DOES THE PROPOSAL ADDRESS THE PRINCIPLE?
<b>PRINCIPLE 1: CONTEXT</b>	Yes	<p>The site adjoins the Liverpool commercial precinct and lies to the north of Liverpool town centre, within the Liverpool City Centre area. The area is undergoing redevelopment and the site adjoins a number of vacant development sites and a mix of buildings. The area is zoned for high density residential and consequently it is to be expected that this area will undergo transition and be redeveloped with high density residential buildings.</p> <p>The proposal responds to the intent of the LEP and draft Southwest Sub Regional Strategy, which promotes a significant increase in residential dwellings by 2030.</p> <p>It is considered that the development responds appropriately to this principle.</p>
<b>PRINCIPLE 2: SCALE</b>	Yes.	<p>The proposed height (maximum height of 47m) of the building design requires that the building take advantage of the 10% height bonus available under the LEP for buildings that display design excellence.</p> <p>The proposal adjoins another recently approved (but not yet constructed) residential flat building.</p> <p>With the exception of the FSR, the proposal is compliant with LEP 2008 however there are a number of variations to Councils DCP, relating to setbacks, street frontage height, maximum depth and site coverage.</p> <p>The scale of building means that overshadowing to the south is inevitable. The proposal provides an appropriate response by observing the required setbacks on this boundary.</p>

DESIGN QUALITY PRINCIPLE REQUIRED	DOES THE PROPOSAL ADDRESS THE PRINCIPLE?	HOW DOES THE PROPOSAL ADDRESS THE PRINCIPLE?
<b>PRINCIPLE 3: BUILT FORM</b>	Yes.	<p>The building has been designed as a tower apartment style building (with a 14-storey element on the western corner and a 12 storey built form to the eastern corner). The building is generally rectilinear in shape with generally 10 apartments on each floor arranged around two lift cores.</p> <p>The design provides building facades with large areas of glazing (glass louvres) with accent colours of aluminium panels and colour back glass along the northern (primary) facade. The other facades consist of rendered finishes punctured by inset balcony areas.</p>
<b>PRINCIPLE 4: DENSITY</b>	Yes.	<p>The proposal seeks to vary the maximum allowable floorspace ratio and height limits.</p> <p>The proposed floor space ratio (3.85:1) and maximum height are allowable under the LEP with inclusion of the 10% bonus awarded to buildings that exhibit design excellence.</p>
<b>PRINCIPLE 5: RESOURCE, ENERGY AND WATER EFFICIENCY</b>	Yes. Subject to appropriate conditions being imposed should the development application be approved.	<p>The design will need to receive the necessary BASIX certificate and addresses issues such as water reuse and energy efficiency.</p> <p>The majority of apartments are located with dual aspects facilitating solar access and natural ventilation. Acoustic levels within the apartments are able to be controlled by the use of glass louvres on the Hume Highway frontage.</p> <p>The building footprint has allowed the required areas of deep soil planting to be provided.</p> <p>The proposed development incorporates a 5m<sup>3</sup> underground water storage tank, which will harvest rainwater on the site for reuse in irrigation of landscaping. It is considered that the development responds appropriately this principle.</p>
<b>PRINCIPLE 6: LANDSCAPE</b>	Yes.	<p>A landscaping plan has been provided. Landscaping is proposed within the Hume Highway frontage to provide required community open space areas and along the rear boundary. All ground floor apartments have landscaped courtyard areas.</p>

DESIGN QUALITY PRINCIPLE REQUIRED	DOES THE PROPOSAL ADDRESS THE PRINCIPLE?	HOW DOES THE PROPOSAL ADDRESS THE PRINCIPLE?
		Deep soil planting areas are proposed along the Hume Highway frontage.
<b>PRINCIPLE 7: AMENITY</b>	Yes.	<p>There are a variety of internal layouts with approximately 2 in every 10 (20%) having internally located kitchens. The majority of the apartments are dual aspect thus facilitating natural sunlight access.</p> <p>Principle window areas of living rooms are protected by sun shade devices and balcony projections to the upper levels that provide shading in summer.</p> <p>Open space is provided as either a balcony or terrace located adjacent to the main living space.</p> <p>The acoustic comfort will sometimes require the closing of all windows, which restricts natural ventilation however this is not seen as unusual in high density buildings.</p>
<b>PRINCIPLE 8: SAFETY AND SECURITY</b>	Yes.	<p>The design provides for active and passive surveillance of the common, open space areas.</p> <p>Pedestrian access is restricted to two clearly identified access points: George Street and Browne Parade.</p> <p>Balconies are located on all elevations allowing natural surveillance of adjoining streets.</p> <p>Pedestrian access to the apartment lobby is via a secure intercom.</p> <p>Access to the basement parking is only available through a secure intercom system and the internal links are located within secure fully glazed vestibule areas.</p> <p>The applicant proposes to install lighting throughout the development and within the basement to conform to Australian Standards.</p>
<b>PRINCIPLE 9: SOCIAL DIMENSIONS</b>	Yes	There is a mix of 3 bedroom, 2 bedroom and 1 bedroom units including future adaptable units provided.

DESIGN QUALITY PRINCIPLE REQUIRED	DOES THE PROPOSAL ADDRESS THE PRINCIPLE?	HOW DOES THE PROPOSAL ADDRESS THE PRINCIPLE?
		<p>The building is serviced by two lifts with disabled access provided. Disabled access is provided to the entry foyer from George Street and Browne Parade.</p> <p>The proposal allows for high density residential living in close proximity to the commercial core increasing access to employment and transport.</p>
<b>PRINCIPLE 10: AESTHETICS</b>	Yes.	<p>The building design incorporates a number of architectural elements and utilises a range of materials and finishes.</p> <p>The external appearance has been the subject of a rigorous assessment by Council design review panel and the Department of planning and infrastructure. It is considered that in the process of achieving design excellence the development as submitted satisfies this principle.</p>

Further to the above design quality principles, 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*. The following table outlines compliance with the Residential Flat Design Code, where numerical requirements ('controls') are specified.

STANDARD	OBJECTIVE	PROVIDED	COMPLIANCE
<b>PART 1 – LOCAL CONTEXT</b>			
<b>BUILDING HEIGHT</b>	To ensure the proposed development responds to the desired scale and character of the street and local area and to allow reasonable daylight access to all development and the public domain.	The overall height is 47m which is under the maximum allowable height (45m + 4.5m (10% bonus) = 49.5m in keeping with the height controls contained within clause 4.3 of Liverpool LEP 2008.	Yes.
<b>BUILDING DEPTH</b>	In general, building depth should be between 10-18 metres.	Eastern end (Browne Parade) 23m. Remainder of building 14m – 16m.	No, Variation sought.
<b>BUILDING SEPARATION</b>	<p>The minimum setbacks between buildings are as follows</p> <p><b>Up to 4 storeys/12m in height:</b></p> <p>- 12m between</p>	Only the southern (rear) elevation has a common boundary with another development site consequently the following relate to this elevation.	No, minor variations for levels 5 – 14 when considering a 50% allocation across the subject site and adjoining



STANDARD	OBJECTIVE	PROVIDED	COMPLIANCE
	<p>Habitable rooms/balconies</p> <ul style="list-style-type: none"> <li>- 9m between Habitable balconies and Non-habitable rooms.</li> <li>- 6m between non-habitable rooms</li> </ul> <p><b>5 to 8 storeys/up to 25m in height:</b></p> <ul style="list-style-type: none"> <li>- 18m between Habitable rooms/balconies</li> <li>- 13m between Habitable/balconies and Non-habitable rooms.</li> <li>- 6m between non-habitable rooms</li> </ul> <p><b>&gt;9 storeys/&gt; 25m in height:</b></p> <ul style="list-style-type: none"> <li>- 24m between Habitable rooms/balconies</li> <li>- 18m between Habitable/balconies and Non-habitable rooms.</li> <li>- 12m between non-habitable rooms</li> </ul>	<p><b>Up to 4 storeys</b> Minimum 6.64m to boundary (applies to both habitable and non-habitable rooms, and balconies).</p> <p>U104 - Ground floor Private open space (POS) - 4.54metres boundary.</p> <p><b>Levels 5 - 8</b> Minimum 6.64m to boundary (applies to both habitable and non-habitable rooms, and balconies).</p> <p><b>Levels 9 – 11</b> - Minimum 6.64m to boundary (applies to both habitable and non-habitable rooms and balconies).</p> <p><b>Levels 12 - 14</b> Minimum 11.145m to boundary (applies to both habitable and non-habitable rooms and balconies).</p>	<p>property.</p> <p>Minimum 9m – 12m required. 6.64m – 11.145m proposed.</p>
<b>STREET SETBACKS</b>	To establish the desired spatial proportions of the street and define the street edge. To relate setbacks to the areas street hierarchy.	The site occupies three frontages and provides a common open space landscaped area fronting the Highway with variable setbacks to both George Street and Browne Parade.	Yes.
<b>SIDE AND REAR SETBACKS</b>	To minimise the impact of development on light, air, sun, privacy, views and outlook for neighbouring properties including future buildings.	George Street and Browne Parade are treated as the side boundaries. Setbacks are considered to adopt an appropriate scale having regard to the high density nature of the	Yes.

STANDARD	OBJECTIVE	PROVIDED	COMPLIANCE
		locality.  Variable 4 - 6metres on Boundaries with minor encroachments at ground level in respect of pedestrian access ramps and podium areas (private open space).	
<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.	The floor space ratio is not to exceed 3.5:1. + 10% bonus= 3.85:1 (Clause 7.5 of LEP). Proposed FSR 3.85:1, or 4.2:1 if enclosed balconies included.	No, variation sought.
<b>PART 2 – SITE DESIGN</b>			
<b>DEEP SOIL ZONES &amp; OPEN SPACE</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 made in urban areas where sites are built out.	1,537m <sup>2</sup> landscaping of which 760m <sup>2</sup> (49%) is deep soil planting.  Common open space is centrally located with access available from the ground floor lobby corridor areas.	Yes.
<b>ORIENTATION</b>	To protect the amenity of existing development and to optimize solar access to residential apartments within the development and adjacent to the development.	The building responds to future buildings to the south by demonstrating setbacks to the southern boundary that reflect 50% of the overall nominated separation between buildings.	Yes.
<b>PLANTING ON STRUCTURES</b>	To contribute to the quality and amenity of communal open space on rooftops, podiums etc.	Appropriate landscaping is proposed on the ground level and Level 3.	Yes.
<b>VISUAL PRIVACY</b>	To provide reasonable levels of visual privacy externally and internally, during the day and at night.	The proposal has a modulated facade providing varied setbacks. The building is separated	Yes.

STANDARD	OBJECTIVE	PROVIDED	COMPLIANCE
	Relates to separation distance.	from adjoining buildings by streets.  The design has responded by locating and orientating balconies to provide reasonable levels of visual privacy.	
<b>PEDESTRIAN ACCESS</b>	Identify access requirements from the street and parking areas to the residential apartments, and ensure access is accessible.	The main paths of travel are compliant with DDA Premises Standards and AS1428.1:2009. Some secondary corridors do not strictly comply however overall considered satisfactory.	Yes.
<b>VEHICLE ACCESS</b>	Limit width of driveways to 6 metres and locate vehicle entries on the secondary frontage.	Driveway 6 metres in width.	Yes.
<b>PART 3 – BUILDING DESIGN</b>			
<b>APARTMENT LAYOUT</b>	Single aspect apartments should be limited in depth to 8 metres from a window.  The back of a kitchen should be no more than 8 metres from a window.	All apartments are dual aspect.	Yes
<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 mix of 1br, 2br and 3br units.  The proposal provides for adaptable units in accordance with the relevant standards.	Yes.
<b>BALCONIES</b>	Primary balconies to be a minimum of 2 metres in depth.	Primary balconies are all an average of 2-2.7 metres in depth.	Yes.
<b>CEILING HEIGHTS</b>	2.7 metres for residential levels.	3metres between residential floor levels thus providing 300mm for floor and services.	Yes.
<b>STORAGE</b>	To provide adequate storage for every day household items within	Storage areas provided within the basement Level 1 – each unit has	Yes.

STANDARD	OBJECTIVE	PROVIDED	COMPLIANCE
	easy access of the apartment and to provide storage for sporting, leisure, fitness and hobby equipment. At least 50% of required storage should be within each apartment.	5m <sup>3</sup> plus areas within each unit (variable). Total 5m <sup>3</sup> to 11m <sup>3</sup> .	
<b>DAYLIGHT ACCESS</b>	Limit the number of single aspect apartments with a southerly aspect to a maximum of 10 percent the total units proposed.	Mix of dual and single access. The southerly aspect units have an alternate east or west dual aspect.	Yes.
<b>NATURAL VENTILATION</b>	60% of residential units should be naturally cross ventilated.  25% of kitchens should have access to natural ventilation.	70 units (69%) provided with cross ventilation.  All kitchens have access to natural ventilation	Yes.
<b>WASTE MANAGEMENT</b>	Supply Waste Management Plan in conjunction with the DA.	A Waste Management Plan has been submitted. Refer comments under DCP.	Yes.

**(f) Liverpool Local Environmental Plan 2008****(i) Permissibility**

A residential flat building is permitted with consent in the R4 High Density Residential zone. The proposed development satisfies the land use definition.

A portion of the site fronting the Hume Highway is zoned SP2 (Classified Road) and is subject to future road widening. No works as part of the proposal is located on this part of the land.

**(ii) Objectives of the zone**

The objectives of the R4 – High Density Residential are identified as follows:

- *To provide for the housing needs of the community with a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To provide for a high concentration of housing with good access to transport, services and facilities.*
- *To minimise the fragmentation of land that would prevent achievement of high density residential development.*

The proposed development would meet the objectives of the R4 zone. Specifically, the building would provide a total of 113 units with a mix of 1 -3 bedrooms and a number of adaptable units comprising of 11 apartments representing a total of 10% of all units.

The site is located in close proximity to the Liverpool City Centre and Railway Station and would not result in the fragmentation of land.

The objectives of the SP2 zone are provided as follows:

- *To provide for infrastructure and related uses.*
- *To prevent development that is not compatible with or that may detract from the provision of infrastructure.*
- *To reserve land for the provision of infrastructure.*

The proposed development would not be an impediment to the objectives of the SP2 zone.

### (iii) Principal Development Standards

The following principal development standards are applicable to the proposal:

CLAUSE	REQUIRED	PROPOSED	COMPLIANCE
Clause 4.3 Height of Building	<p>The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map</p> <p>Applicable Height limit to the portion of the site zoned R4 is nominated as "X" 45 metres.</p> <p>+ 10% bonus= 49.5m (Clause 7.5).</p>	The proposal provides a maximum height of 47m to the upper level of units.	Yes.
Clause 4.4 Floor Space Ratio	<p>The floor space ratio is not to exceed 3.5:1.</p> <p>+ 10% bonus = 3.85:1 (Clause 7.5).</p>	<p>Site area: 2,760m<sup>2</sup> (includes 175.5m<sup>2</sup> road widening).</p> <p>GFA: 10,625 m<sup>2</sup></p> <p>Proposed FSR: 3.85:1</p> <p>Comments relating to calculation of road widening is made later in this report</p>	No, variation has been sought



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CLAUSE	REQUIRED	PROPOSED	COMPLIANCE
Clause 4.6 Exceptions to Development Standards	This clause provides for a degree of flexibility in applying development standards provided a better outcome can be achieved.	Proposal exceeds the allowable 3.85:1 if the louvred balconies (955m <sup>2</sup> ) are included as GFA.	No, variation has been sought
Clause 5.9 – Preservation of Trees or Vegetation	Councils consent is required prior to the removal of any existing trees of vegetation.	17 trees are located on the site. 15 trees are proposed for removal.	Yes.
Clause 5.10 – Heritage Conservation	Council may, before granting consent to any development on land within the vicinity of land upon which a heritage item is situated, or a conservation area may require a heritage impact statement to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.	The site is located adjacent to two identified heritage items:  George St (Item 89) (Plan of Town of Liverpool (early town centre street layout–Hoddle 1827) (local significance); and  Item No. 64 (a milestone) (state significance).	Yes, refer comments from Council's Heritage Advisor
Clause 7.1 - Objectives for Development in Liverpool City Centre	Council must be satisfied that the proposed development is consistent with such of the objectives considered relevant to the development.	Objectives (a) to preserve existing street layout and reinforced rate character;	Yes.

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CLAUSE	REQUIRED	PROPOSED	COMPLIANCE
Clause 7.4 Building Separation in the Liverpool City Centre	<p>R4 High Density Residential zones.</p> <p>A 9metre separation distance required for parts of buildings between 12m and 25m in height.</p> <p>12metre separation distance required for parts of buildings between 25metres and 35metres in height.</p> <p>18metre separation distance required for parts of buildings &gt; 35metres in height.</p>	<p>There is a recent 9 storey development approved on No.3-5 Browne Parade (DA-1930/2012).</p> <p>6.64m up to Level 12 (34.2m)</p> <p>11.14m levels 13 &amp; 14 (43.8m maximum)</p> <p>These distances satisfy the required LEP separation distances if it is allocated 50/50 to the site and adjoining property.</p>	Yes
Clause 7.5 – Design Excellence In Liverpool City Centre	The objective of this clause is to deliver a high standard of architectural and urban design.	The proposal has been the subject of an architectural design competition and the Director General has issued 'design excellence'. The DG further notes that the design excellence is not affected by the technical non-compliance with the FSR control.	Yes.
7.14 – Minimum Building Street Frontage	The aim of this clause is to ensure that visually buildings have an appropriate overall horizontal proportion compared to their vertical proportion, and to ensure that car parking is appropriately dimensioned and vehicular access is reasonably spaced. 24 metres R4 zone	The site has a street frontage to Hume Highway of approx. 59metres.	Yes.
7.17 Development in flight paths	Refers to the proposed height of the building.		N/A
7.18 Development in areas subject to potential airport noise	Development in the vicinity of Bankstown Airport.	The site is not within identified ANEF contours.	Yes.

CLAUSE	REQUIRED	PROPOSED	COMPLIANCE
7.31 Earthworks	Council must consider impact of earthworks	<p>The development involves excavation to establish basement car parking.</p> <p>An Environmental Management Plan is required as a condition of development consent to address contamination. Other issues such as excavation and salinity matters can also be covered by conditions.</p>	

**(g) Clause 4.6 Variation to LLEP 2008****Clause 4.4 – Floor Space Ratio**

The primary issue of the application relates to a variation to the maximum allowable floor space ratio (FSR) - application under Clause 4.6 - exceptions to development standards of LLEP 2008. The maximum allowable FSR is 3.85:1 (which includes 10% bonus under Clause 7.5 of LEP 2008).

Should the Haralambis Case are to be applied, the gross floor area is taken to also include those balconies enclosed by the glass louvres (an additional 955m<sup>2</sup>). In this case, the proposal would have an FSR of 4.2:1 and exceed the maximum allowable FSR by approximately 9%.

The application is accompanied by a detailed submission addressing whether or not the balcony areas of the proposal ought to be included in the gross floor area (a copy of the submission is annexed to this report). The author concludes as follows:

*“In summary, enclosing walls would not achieve SEPP 65 or RFDC aims and objectives and would be rooms within a building. The use of transparent glass louvres as a device for weatherproofing and wind shielding improve the amenity of the units without the bulk associated with solid walls and provide private elevated open spaces meeting SEPP 65 and RFDC aims and objectives.  
In addition to the strict legal interpretation of the GFA excluding the balcony areas with openings of glass louvres, the aims and objectives of SEPP 65 and the RFDC are better achieved to and from the development. This leads to the brief to provide a precautionary Clause 4.6 objection.”*

The submission subsequently requests an exemption to the Floor Space Ratio (FSR) development standard, and provides responses to the following questions:

**“How is strict compliance with the development standard unreasonable or unnecessary in this particular case?”**

*The development has been the subject of architectural design competition and as the winning design been give concurrence of the Director-General.*

*The development has been subject to two design panel reviews at state and local government levels and altered at each stage to refine and exhibit design excellence.*

*The purported exceedance of the maximum FSR is driven by a tenuous argument that the balconies ought be included in GFA because of their weatherproofing by glass louvres.*

*The removal of the glass louvres or design changes to the louvres would thwart the design excellence exhibited by the development as designed and result in a demonstrably worse environmental outcome for future occupants of the building.*

*The benefits of having glass louvres on the north facing balconies in this development, in terms of environmental performance, are:*

- The Hume Highway is a heavily trafficked road, producing noise and air pollution. The levels of noise and pollution vary depending upon the time of day or night. The glass louvres provide the choice for occupants to protect themselves from noise and pollution depending upon the conditions.*
- The balconies also face north. North facing balconies benefit from permitting low winter sun into the apartments and cutting out unwanted high summer sun, by the balcony above. The glass louvres do not change this pattern of solar penetration and protection.*
- The operability of the louvres gives the choice to occupants of allowing natural breezes to cool the apartments when desired, on a hot summer day, for example.*
- On excessively windy days, and particularly on the upper levels of the tower, high wind speeds often prohibit the use of balconies. The ability to shield the balconies from wind with the operable louvres makes the balconies more useable in most weather conditions.*

*In general, the glass louvres make the balconies more useable than unscreened balconies, as they provide occupants with the choice to keep out unwanted noise, pollution or wind, and to allow in cooling summer breezes and winter sun, depending upon the time of day or season in the year*

*The benefits of having glass louvres on the north facing balconies in the development, in terms of aesthetics are :*

- The operable glass louvres are often open or closed depending upon the occupants' choice and their use of the apartment. Open louvres are darker and more articulated than closed louvres, which are smoother in appearance. The whole façade is enlivened by random patterns of open and closed louvres, adding to the articulation of the building.*
- The side walls of the balconies are strongly coloured, and these colours can be seen through the glass louvres. This gives a strong impression of depth to the façade, as one can see the colours clearly inside the balconies.*
- Some balustrades are painted concrete behind the glass louvres, adding to the coloured pattern and articulation of the façade.*
- The glass louvered balconies are distinctive – there are no other buildings with glass louvres within the precinct. It is appropriate that this building is different to others, as it was nominated as a Key Site in the Liverpool City Centre LEP, and it is a gateway site at the corner of the Hume Highway and George Street. The glass louvered balconies assist in making this prominent site distinctive.*

**How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?**

*The objects of this Act are:*

*(a) to encourage:*

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,*

*Strict compliance would result in the refusal of a development that through the extensive design excellence process, already undertaken, and through detailed design refinements at state and local government design review panel levels exhibits design excellence.*

**Would strict compliance with the standard, in this particular case, be unreasonable or unnecessary? Why?**

Applying [Wehbe v Pittwater Council \[2007\] NSWLEC 827](#): one or more of the following tests adequately justify why it is unreasonable and unnecessary to strictly comply with FSR development standards:

1. *the objectives of the standard are achieved notwithstanding noncompliance with the standard;*

**Submission:** *A better environmental outcome is achieved in terms of ESD, architectural form and appearance and in terms of internal amenity with no adverse environmental effects upon any neighbours. The FSR objectives are achieved notwithstanding the argument to include of balcony floor areas in GFA as defined by the LEP.*

2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*

**Submission:** *the FSR objectives are relevant and are achieved notwithstanding the purported breach of FSR.*

3. *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*

**Submission:** *Clause 4.4 objectives include the achievement the desired future character which specifically includes the achievement of design excellence. The objective of achieving design excellence would be defeated and thwarted and therefore compliance is unreasonable.*

4. *the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*



**Submission:** *There has been no detailed analysis of compliance or otherwise with the development standard as it applies to adjoining sites. It is noted however, that the height, shape bulk and external configuration of the proposal has been established through the design excellence process to be compatible with the new neighbouring developments and the desired future character.*

5. *compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

**Submission:** *This is not applicable. The zone is R4 high density development and this high density residential development is appropriate to the land and neighbouring land similarly zoned R4. The significant FSR and bonus are only achieved by the large amalgamated lot size i.e. clause 4.4 (2B) and (2C) of the LEP.*

The submission provides an address of those matters identified in the document “Varying development standards: a guide”, published by the NSW Department of Planning and Infrastructure (DoPI) dated August 2011.

Having regard to the above and pursuant to Clause 4.6 - Exceptions to development standards, it is considered acceptable. Accordingly the design is supported as it is consistent with the objectives of clause 4.6, namely:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

With respect to the portion of land fronting the Hume Highway which is zoned SP2 Infrastructure (Classified Road), Clause 4.5(4)(b) and Clause 4.5(7) provides that a public place (as defined in the Local Government Act 1993) is to be excluded from the site area as follows:

Clause 4.5(4)(b) provides the following:

**“(4) Exclusions from site area**

*The following land must be excluded from the site area:*

- (a) *land on which the proposed development is prohibited, whether under this Plan or any other law,*
- (b) *community land or a public place (except as provided by subclause (7)).”*

Clause 4.5(7) provides the following:

**“(7) Certain public land to be separately considered**

*For the purpose of applying a floor space ratio to any proposed development on, above or below community land or a public place, the site area must only include an area that is on, above or below that community land or public place, and is occupied or physically affected by the proposed development, and may not include any other area on which the proposed development is to be carried out.”*

A ‘public place’ under the Local Government Act 1993 is defined as follows:

- (a) *a public reserve, public bathing reserve, public baths or public swimming pool, or*
- (b) *a public road, public bridge, public wharf or public road-ferry, or*

- (c) a Crown reserve comprising land reserved for future public requirements, or  
 (d) public land or Crown land that is not:  
 (i) a Crown reserve (other than a Crown reserve that is a public place because of paragraph (a), (b) or (c)), or  
 (ii) a common, or  
 (iii) land subject to the Trustees of Schools of Arts Enabling Act 1902, or  
 (iv) land that has been sold or leased or lawfully contracted to be sold or leased, or  
 (e) land that is declared by the regulations to be a public place for the purposes of this definition.”

A comparative analysis of the floor space ratios having regard to the above scenarios are provided in the following table:

#### Comparison of Site Areas and Floor Space Ratio

	Including Road Widening (as submitted)	Excluding Road Widening ( - 175.5m <sup>2</sup> )
<b>Site Area</b>	2,760m <sup>2</sup>	2,584.5m <sup>2</sup>
<b>Allowable Floor Area – with 10% bonus (3.85:1)</b>	10,625m <sup>2</sup>	9,950.3m <sup>2</sup>
<b>Proposed FSR</b>	3.85:1	4.1:1
<b>Floor Area - Including Balconies (+955m<sup>2</sup>)</b>	11,580m <sup>2</sup>	10,905.3m <sup>2</sup>
<b>Proposed FSR</b>	4.19:1	4.21:1

The calculations used by the applicant have not considered the application of Clause 4.5(4) which excludes that area of land (175.5m<sup>2</sup>) zoned SP2 - Infrastructure (Classified Road), which is defined as ‘community land’ under Division 1 of Part 2 of Chapter 6 of the Local Government Act 1993.

As illustrated in the above table, the resultant FSR when excluding this community land is 4.2:1. Land inclusive of the road widening achieves an FSR of 4.19:1.

It is considered that the exclusion of land identified for road widening would slightly increase the FSR associated with the proposed development, notwithstanding, the subject application has been subject to a significant process involving the granting of design excellence. The proposed development remains materially the same development as considered during the design excellence process.

In this regard, the consideration of FSR should be made having regard to maintaining design excellence. As indicated in the report, it is recommended that the variation be supported both from a technical and design outcome perspective.

#### 7.2 Section 79C(1)(a)(ii) - Any Draft Environmental Planning Instrument

No draft environmental planning instruments apply to the site.

#### 7.3 Section 79C(1)(a)(iii) - Provisions of any Development Control Plan

- (a) **Liverpool Development Control Plan 2008 – Part 4 Development in Liverpool City Centre**

Liverpool Development Control Plan 2008 applies to the site. Part 1.1- General Controls for all Development; Part 1.2 - Additional General Controls for Development; and Part 4 - Development in the Liverpool City Centre of the Development Control Plan are relevant to the proposed development. An assessment of the proposal against the controls contained within Liverpool DCP 2008 are outlined in the table below:

<b>PART 1 – GENERAL CONTROLS FOR ALL DEVELOPMENT</b>		
<b>CONTROLS</b>	<b>PROVIDED</b>	<b>COMPLIES</b>
TREE PRESERVATION	17 trees are located on the site. 15 trees are proposed for removal. A apart from one eucalypt, none of the trees are considered significant.	Yes.
LANDSCAPING	The proposal provides a landscape plan and design that is fully integrated with the proposed development and includes a report that assesses the potential salinity of the site. Conditions will be imposed regarding the provision of a detailed landscape plan.	Yes.
BUSHLAND AND FAUNA HABITAT PRESERVATION	The subject site is not located within the nominated zones. It does not contain any identified areas of environmental significance.	N/A.
BUSHFIRE RISK	The subject site is not identified as bushfire prone land on Council mapping.	N/A.
WATER CYCLE MANAGEMENT	A Stormwater Drainage design has been prepared. The proposal provides for on-site detention.	Yes.
DEVELOPMENT NEAR CREEKS AND RIVERS	The subject site is not located within 50m of a water course, creek or river or within the nominated zones.	N/A.
EROSION AND SEDIMENT CONTROL	An erosion and sediment control plan has been submitted.	Yes.
FLOODING RISK	The subject site is not identified as flood liable land.	N/A.
CONTAMINATION LAND RISK	The proposal involves proposed residential development.  The proposal involves significant earthworks and consequently this matter can be addressed by way of conditions and it is considered appropriate that a contamination assessment and report be undertaken prior to the release of a construction certificate.	Yes, refer conditions.
SALINITY RISK	The site is within an area identified on Salinity mapping as 'yellow' and therefore this section applies. The proposal is considered to involve salinity risk activities.	Yes, refer conditions.

PART 1 – GENERAL CONTROLS FOR ALL DEVELOPMENT		
	<p>A level 3 Salinity Management response is required (as outlined in the Western Sydney Salinity Code of Practice).</p> <p>A Salinity Management Plan is required that addresses those matters listed in the Level 3 Salinity Response Checklist (as outlined in the Western Sydney Salinity Code of Practice).</p>	
ACID SULFATE SOILS RISK	The subject site is not identified as containing acid sulfate soils.	N/A.
WEEDS	The site are overgrown with weeds however it will be remediated as part of the development	Yes
DEMOLITION OF EXISTING DEVELOPMENT	The site is d currently vacant with the footings of a previous building existing adjacent to the Browne Parade frontage of the site. Various areas of the site are overgrown with weeds, contain mounds of dumped building and landscape materials, and general rubbish which will need to be removed.	Yes.
ON-SITE SEWERAGE DISPOSAL	The subject site does not require on-site sewerage disposal as the area has access to sewer.	N/A.
ABORIGINAL ARCHAEOLOGY	A condition of consent requires that Archaeological assessment be undertaken prior to commencement of any construction works	Yes.
HERITAGE AND ARCHAEOLOGICAL SITES	<p>The site is located adjacent to two identified heritage items;</p> <p>George St (Item 89) (Plan of Town of Liverpool (early town centre street layout–Hoddle 1827) (local significance) and Item No. 64 (a milestone) (state significance).</p> <p>Council's Heritage Advisor reviewed the proposal and concluded that the proposal would not generate a negative impact on either of the heritage listed places in the immediate vicinity of the subject site.</p>	Yes.
NOTIFICATION OF APPLICATIONS	The development application has been advertised in accordance with this component of the DCP. No submissions were received.	Yes
PART 1.2 – ADDITIONAL GENERAL CONTROLS FOR DEVELOPMENT		
CONTROLS	PROVIDED	COMPLIES
CAR PARKING & ACCESS	Controls for car parking and Access are	Yes.

PART 1 – GENERAL CONTROLS FOR ALL DEVELOPMENT		
	outlined in the Part 4 – Development in the Liverpool City Centre.	
WATER CONSERVATION	Controls for Water Conservation are outlined in the Part 4 – Development in the Liverpool City Centre.	Yes.
ENERGY CONSERVATION	Controls for Energy Conservation are outlined in the Part 4 – Development in the Liverpool City Centre.	Yes.
WASTE DISPOSAL AND RE-USE FACILITIES	Controls for Waste Disposal and re-use Facilities are outlined in the Part 4 – Development in the Liverpool City Centre.	Yes.

PART 4 – DEVELOPMENT IN THE LIVERPOOL CITY CENTRE		
CONTROLS	PROVIDED	COMPLIES
The site is located within the Liverpool City Centre, within the residential precinct.		
1. CONTROLS FOR BUILDING FORM		
<b>BUILDING TO STREET ALIGNMENT AND STREET SETBACKS</b>  1. Street building alignment and street setbacks are to comply with Figure 3 which requires: 8m setback to Hume Hwy. 4 -4.5m setback to George St and Browne Pde.	4m landscaped setback proposed to George Street and Browne Parade. Setback variation sought to Hume Highway as it nears the corner of George Street (the site narrows). The setback distance to the Hume Highway varies from 2.8m (1.4m after road widening) at the western end of the site to 9.9m at eastern end. The external facades align with the streets they front.	No. Variation sought. Refer <b>Section 6.3.1.</b>
<b>STREET FRONTAGE HEIGHTS</b>  The street frontage height of buildings must comply with the minimum and maximum heights above ground level on the street front as shown in Figure 5 which requires a street frontage height of 15-25m (5-7 storeys).	The proposal has a street frontage height to George Street of 47m (14 storeys) and to Browne Parade of 38.2m (12 storeys), which exceeds the required maximum DCP street frontage height of 25m (7 storeys).	No. Variation sought. Refer <b>Section 6.3.1.</b>
<b>BUILDING DEPTH AND BULK</b>  Maximum 500m <sup>2</sup> GFA floor plate per floor. Maximum building depth 30m.  Maximum 20% of total gross floor area of development permitted for areas above 25m in height.  Maximum building Depth - 18m (excluding balconies)	905m <sup>2</sup> proposed above level 4.  23m proposed to Browne Parade frontage.  The proposed building has a 65m length fronting Hume Highway.	No. Variation sought. Refer <b>Section 6.3.1.</b>



**PART 4 – DEVELOPMENT IN THE LIVERPOOL CITY CENTRE**

The maximum specified street frontage is not to have a building length in excess of 45m.		
Overshadowing	Shadow diagrams have been provided that indicate the site will overshadow properties to the south. Given the high density nature of the site and allowable height limit the overshadowing it is inevitable and somewhat expected. The lower levels will be impacted to a greater extent than the upper levels of any adjoining building to the South	Yes.
<b>BOUNDARY SETBACKS</b>		
The minimum building setbacks are to comply with the following:		
Hume Highway setback 8m	Setbacks from Hume Highway vary from 7metres.	No. Variation sought. Refer <b>Section 6.3.1.</b>

**PART 4 – DEVELOPMENT IN THE LIVERPOOL CITY CENTRE**

<p>Residential up to 12m in height:</p> <ul style="list-style-type: none"> <li>- Habitable rooms: 6m side and rear setback</li> <li>- Non-habitable: 3m side; 6m rear.</li> </ul> <p>Residential <u>between 12 – 25m height</u>:</p> <ul style="list-style-type: none"> <li>- Habitable room: 9m side and rear</li> <li>- Non-habitable: 4.5m side; 6m rear.</li> <li>-</li> </ul> <p>Residential <u>between 12 – 25m height</u>:</p> <ul style="list-style-type: none"> <li>- Habitable room: 9m side and rear</li> <li>- Non-habitable: 4.5m side; 6m rear.</li> </ul> <p>Residential <u>between 25 – 35m height</u>:</p> <ul style="list-style-type: none"> <li>- Habitable room: 12m side and rear</li> <li>- Non-habitable: 6m side; and rear.</li> </ul> <p>Residential <u>between 35 – 45m height</u>:</p> <ul style="list-style-type: none"> <li>- Habitable room: 12m side and rear</li> <li>- Non-habitable: 6m side; and 9m rear.</li> </ul>	<p>The issues of setbacks have been previously discussed. As three frontages address streets the applicable setback relates to the rear (or southern) boundary.</p> <p>Ground to level 12 - Greater than 6metres to rear for all levels. Browne Parade - 5metre setback to boundary. George Street - 4metre setback (variable).</p> <p>Rear setback - 6.64m up to level 12 (34.5m); and 11.14m for levels 13-14 (43.8m).</p>	<p>No. Variation sought. Refer <b>Section 6.3.1.</b></p>
<p><b>SITE COVER AND DEEP SOIL ZONES</b></p> <p><b>SITE COVER</b> The maximum site cover for development in residential zones is 50%.</p> <p><b>DEEP SOIL ZONES</b> 15% deep soil zone plantings should be provided.</p>	<p>Site area is 2760m<sup>2</sup>. Development footprint would be in excess of 50%, however design excellence has been demonstrated and is considered satisfactory.</p> <p>760m<sup>2</sup> deep soil zone provided (27.3%) with 25% (680m<sup>2</sup>) having 6metre dimension.</p>	<p>No.</p>
<p><b>LANDSCAPE DESIGN</b></p>	<p>A landscape plan has been provided. Planting proposed to ground floor areas and Level 3.</p>	<p>Yes.</p>
<p><b>3.AMENITY</b></p>		
<p><b>PEDESTRIAN AMENITY</b></p>	<p>Not a site that requires a through path be provided.</p>	<p>Yes.</p>
<p><b>STREET FRONTAGE AND ADDRESS</b> Glazed entries to residential buildings occupy less than 50% of the frontage to maximum 12m.</p>	<p>Communal open space areas provided to Hume Highway frontage with main lobby entries provided for pedestrians from both George Street and Browne Parade.</p>	<p>Yes.</p>
<p><b>FRONT FENCES</b> Front fences are to be designed to</p>	<p>Proposed 1.6m high aluminium slotted fence.</p>	<p>Yes.</p>

PART 4 – DEVELOPMENT IN THE LIVERPOOL CITY CENTRE		
not present as a solid edge to the public domain.		
<b>SAFETY AND SECURITY</b> Ensure building design allows for passive surveillance.  Maximise the number of residential front door entries at ground level.  Provide entrances which are visually prominent positions.	Common areas front the Hume Highway. Two main entry lobbies from George Street and Browne Parade.	Yes.
<b>AWNINGS</b> Weather protection to entrances are required.	Awnings provided by building above.	Yes.
<b>VEHICLE FOOTPATH CROSSINGS</b>	Main vehicle access proposed for all vehicles from George Street. Garbage collection is from within basement area, accessed from George Street.	Yes.
<b>BUILDING EXTERIOR</b>	Frontage to Hume Highway consists of rendered façade with majority of façade glass louvres.  Other frontages provide rendered surface. Colour accents provided by colour back glass and aluminium composite panels (green, yellow and orange)	Yes.
<b>PUBLIC ART</b> Large developments over 5,000sq.m. to provide public art plan.	Proposed 10,625m <sup>2</sup> GFA. A Public Art plan will be required.	Yes.
<b>4.TRAFFIC AND ACCESS</b>		
<b>PEDESTRIAN ACCESS AND MOBILITY</b>	Main building entries are visible from street frontage.  The access report states that the entrance ramps are non-compliant (current width 1050mm) and require a width of 1200mm to allow wheelchair access. This can be accommodated in the conditions.	Yes.
<b>VEHICULAR DRIVEWAY AND MANOEUVRING</b>	Driveway and parking design complies with relevant Australian Standards AS2890.1.	Yes.
<b>ON SITE PARKING</b> Car Parking For Residential	Residential parking: 23 x 1 bed =23 spaces	Yes.

**PART 4 – DEVELOPMENT IN THE LIVERPOOL CITY CENTRE**

<p>Development:</p> <ul style="list-style-type: none"> <li>- 1 space per 1 or 2 bedroom apartments;</li> <li>- 1.5 spaces per 3 bedroom;</li> <li>- 1 space per 10 units for visitors</li> </ul>	<p>74 x 2 bed= 74 spaces 16 x 3bed = 8 spaces Total 113 units = 105 residential spaces required. <b>121 residential spaces provided.</b> Visitor parking: 1/per 10 units = 11.3 (12 spaces). <b>12 visitor spaces provided including 2 accessible spaces.</b></p> <p>Disabled spaces: 2% or min. 1= 2.26 (3). 12 accessible apts. are proposed and therefore <b>12 accessible spaces are provided</b> (1 for each apartment).</p>	
1 motorcycle space per 20 car spaces	121 car spaces = 6.05 (7) motorcycle spaces required. <b>7 provided.</b>	Yes.
1 bicycle space per 200 sqm	10,625m <sup>2</sup> GFA = 53.1 (54) spaces (15% accessible to visitors). <b>68 provided.</b>	Yes.
<p>Parking for service and delivery vehicles</p> <p>1 space per 40 units</p>	<p>3 spaces required.</p> <p>One shared loading dock provided to cater to service delivery and garbage collection vehicles.</p>	Yes.
<b>5.ENVIRONMENTAL MANAGEMENT</b>		
<p>ENERGY EFFICIENCY AND CONSERVATION</p> <p>New residential development is to comply with BASIX</p>	BASIX certificate issued.	Yes.
<p>WATER CONSERVATION</p> <p>New residential development is to comply with BASIX</p>	BASIX certificate issued.	Yes.
<p>REFLECTIVITY</p> <p>Not exceed 20%.</p>	Large expanses of glass proposed. Both colour backed glass and aluminium panels proposed.	Yes
<p>WIND MITIGATION</p> <p>Controls:</p> <p>10m/s retail streets.</p> <p>13m/s major pedestrian streets, parks, public places.</p> <p>16m/s all other streets.</p> <p>Wind effects report required for</p>	A Wind effects report has been submitted. It recommends a number of mitigation measures (communal spaces and balconies) consisting of solid fencing/sliding louvres.	Yes.

PART 4 – DEVELOPMENT IN THE LIVERPOOL CITY CENTRE		
buildings 35m or higher.		
<b>NOISE</b> An 8metre setback is required to the Hume Highway. A Noise Report is required.	A Traffic Noise Assessment has been submitted. The report nominates a number of recommendations. The required noise levels can be achieved if all windows including the proposed louvre walls to the northern façade are closed and the glass is of a nominated thickness, and acoustic seals are installed. For all windows and louvres to be closed to reach acoustic levels, necessitates ventilation be provided in accordance with AS1668.2..	No. Refer comments on landscaped setbacks in Section 6.3.1.
<b>WASTE</b> A waste management plans is required.	A waste management plan has been provided. The building proposes a garbage chute that connects to basement 1 and a carousel style garbage compactor. There are two chutes, compactors and garbage rooms proposed.  Collection is proposed from the Hume Highway street frontage. Council correspondence included in the WMP indicates Council would collect either 29x240l garbage and 29x240l recycling bins twice a week, or 19 x 240l of each three times a week. The WMP indicates a caretaker will be responsible.  The collection point on the highway is preferred so that clear collection is available.  Each garbage room holds 20 bins (40 bins total). This requires garbage collection three times a week.	Yes.
<b>FLOODPLAIN AND WATER CYCLE MANAGEMENT</b>	The site is not located within a flood prone area.	Yes.
<b>6.CONTROLS FOR RESIDENTIAL DEVELOPMENT</b>		
<b>HOUSING CHOICE AND MIX</b>		
Studio and 1 bed to be not less than 10% Three or more bedrooms be not less than 10%.	Total 113 units proposed. 1 bed = 23 units (20.4%). 3 bed = 16 units (14.2%).	Yes.
Residential flat buildings 10% to be capable of being adaptable.	12 units proposed to be adaptable of 113 units = 10.6%. An access report has been provided as well as accessible car spaces.	Yes.
<b>7.CONTROLS FOR SPECIAL</b>		

PART 4 – DEVELOPMENT IN THE LIVERPOOL CITY CENTRE		
AREAS		
KEY SITES		
Development applications to demonstrate design excellence.	Design Excellence issued following architectural design competition in accordance with Director General procedures.	Yes.
Development of specific areas to be co-ordinated with adjacent properties.	The architectural plans have considered the development of the site areas to the south in terms of potential setbacks.	Yes.
Development to demonstrate compatibility with general development principles outlined in this DCP for each site.	The site is one of 3 key sites identified as the 'Northern City Centre Gateway sites'. Required to be a series of residential flat buildings.	Yes.

#### 7.4 Non-compliances

The proposal involves the following DCP non-compliances and the applicant submits the following supporting arguments.

##### (a) Boundary Setbacks and Landscaped setback to the Hume Highway

The proposed setback ranges from 2.8m (1.4m post land dedication) at the western end of the Hume Highway frontage to 9.9m (post dedication) at the eastern end of the Hume Highway frontage. The variation is considered reasonable in the circumstances as the proposal has been endorsed by the DP&I and Council's DRP as exhibiting 'design excellence'. During the review process the urban design of the proposal, architectural form, landscape setting and impacts on neighbouring properties underwent extensive evaluation and (following various meetings and design amendments) was found to be an acceptable built form outcome on the site. The architectural design competition process is an LEP driven requirement and to require strict compliance with the DCP setback controls would undermine the LEP intent and also undermine the endorsed building design as it would require substantial building amendments and ultimately disfigure the external building presentation.

##### (b) Street frontage heights

Notwithstanding the proposed variation and for the same justification provided for the setback variation to the Hume Highway, the variation is considered reasonable in the circumstances as the proposal has been endorsed by the DP&I and Council's DRP as exhibiting 'design excellence'. During the review process the urban design of the proposal, architectural form, landscape setting and impacts on neighbouring properties underwent extensive evaluation and (following various meetings and design amendments) was found to be an acceptable built form outcome on the site. The architectural design competition process is an LEP driven requirement and to require strict compliance with the DCP street frontage height controls would undermine the LEP intent and also undermine the endorsed building design as it would require substantial building amendments and ultimately disfigure the external building presentation.

##### (c) Building Depth and Bulk

The variation to the above DCP requirement is warranted in the circumstances for the reasons outlined to the setback and street frontage height variations listed previously.



**(d) Site coverage**

The variations have been supported through the awarding of design excellence as part of the review process. Given the above it is considered that the argument proposed by the applicant can be supported in this particular instance.

**7.5 Section 79C(1)(a)(iia) - Any Planning Agreement or any Draft Planning Agreement**

No planning agreement relates to the site or proposed development.

**7.6 Section 79C(1)(a)(iv) - The Regulations**

There are no matters prescribed by the Regulations that apply to this development.

**7.7 Any Coastal zone management plan**

Not relevant to this application

**7.8 Section 79C(1)(b) - The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**Natural and Built Environment

The development is considered beneficial as it promotes high density residential development within the city centre. The proposed density, whilst technically exceeding the floor space ratio allowed under the LEP 2008 is responsive to the 'key site' designation of the site and its location within the city of Liverpool.

As outlined within the report the proposed development is unlikely to impact on the amenity of adjoining properties and the residential locality. It is considered that the proposed development is consistent with desired future character of the area.

Social and Economic Impacts

The site is located within the Liverpool city centre and consequently has good access to public bus and rail transport services and pedestrian access to Liverpool CBD. It is considered the proposal will provide positive social and economic impact to the Liverpool city centre.

**7.9 Section 79C(1)(c) - The suitability of the site for the development**

The subject site is identified as a "key site" within the Liverpool city centre and is zoned for high density residential development up to a maximum 45 m height. Despite some numerical non-compliances, the proposal is considered to satisfy the relevant controls for site selection as outlined in both LLEP 2008 and DCP 2008.

**7.10 Section 79C(1)(d) - Any submissions made in relation to the development****(a) Internal Referrals**

The following comments have been received from Council's Internal Departments

DEPARTMENTS	COMMENTS
Building	No objections subject to conditions.
Heritage	No objections subject to conditions.
Engineering	No objections subject to conditions.
Landscaping	No objections subject to conditions.
Environmental Health	No objections subject to conditions.

Traffic	No objections subject to conditions.
Access Committee	No objections subject to conditions.
CBD Place Manager	No objections.

**(b) External Referrals**

DEPARTMENTS	COMMENTS
Design Review Panel	Refer to comments provided earlier in the Section 5 of the report.
NSW Police – Safer by Design	No response received.
Roads and Maritime Services	No objection subject to conditions as previously nominated in Section 6(d) of the report.

**(c) Community Consultation**

The proposed development was advertised (for twenty one (21) days between 20 March 2013 – 9 April 2013) in accordance with Liverpool Development Control Plan 2008, Part 1.1 General Controls for all Development. No submissions were received by Council.

**7.11 Section 79C(1)(e) - The public interest**

The proposal has been through an extensive design review including a design excellence competition and despite there being a number of numerical non-compliances it is considered that the development responds appropriately to the site constraints and provides appropriate amenity to future occupants. No submissions were received during the exhibition period and the preceding assessment does not identify any issues that would result in any long-term adverse impacts. Having considered the matter the proposal is deemed suitable for the site and is in the public interest

**8. CONCLUSION**

The proposed development is permissible with consent in the R4 – High Density Residential zone and has been awarded design excellence by the Department of Planning and Infrastructure. While the proposal results in some numerical variations to the NSW Residential Flat Design Code, Liverpool LEP 2008 and DCP 2008, the building meets all necessary design objectives.

A formal application under clause 4.6 of LEP 2008 to the allowable Floor Space Ratio has been submitted and reviewed. The justification for the variation as provided by the applicant has been supported on the basis it is considered consistent with the objectives of clause 4.6 in that it provides an appropriate degree of flexibility whilst achieving a better design outcome.

Approval of the application is therefore recommended subject to condition.

**9. RECOMMENDATION**

- (a) That the report for Development Application DA-189/2013 for the construction of a residential flat building containing a total of 113 residential units with basement car parking and site landscaping at Lots 1-5 DP 35236, No.34-40 Hume Highway and 1 Browne Parade WARWICK FARM be received;
- (b) That written confirmation dated 4 July 2013 issued from the Director General of the Department of Planning and Infrastructure that advises that design excellence pursuant

to Clause 7.5 of the Liverpool Local Environmental Plan 2008 has been granted is noted;

- (c) That the variation to Clause 4.4 Floor Space Ratio pursuant to Clause 4.6 Exceptions to Development Standards in the Liverpool Local Environmental Plan 2008 be supported; and
- (d) That Development Application DA-189/2013 be approved, subject to conditions

## **10. ATTACHMENTS**

- 1. Plans of the proposal;
- 2. Clause 4.6 variation;
- 3. DoPI - confirmation of design excellence (8 December 2012 and 4 July 2013);
- 4. Design Review Panel comments;
- 5. Roads and Maritime services advice; and
- 6. Recommended conditions of consent.