



SYDNEY WEST CENTRAL PLANNING PANEL

COUNCIL ASSESSMENT REPORT

Panel Reference	2016SYW082 DA
DA Number	DA/863/2016 (DA/485/2016 – Hornsby Council Reference)
LGA	City of Parramatta
Proposed Development	Demolition of all structures on the site and the construction of two (2) residential flat buildings of six (6) storeys, over two (2) levels of basement, containing 63 residential units, 102 car parking spaces, 20 bicycle parking spaces, two (2) motorcycle spaces, storage, refuse, and communal open space.
Street Address	2-2A Hepburn Avenue & 199-203 Carlingford Road, Carlingford Lots 1 and 2 DP 845101, Lots 1 and 2 DP 879689, Lot 2 DP 30015, and Lot 3 DP 419712
Applicant/Owner	SWA Group
Date of DA lodgement	20 April 2016
Number of Submissions	4
Recommendation	Refusal
Regional Development Criteria (Schedule 4A of the EP&A Act)	Pursuant to Clause 3 of Schedule 4A of the <i>Environmental Planning and Assessment (EP&A) Act 1979</i> , the development has a capital investment value (CIV) of more than \$20 million.
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none">• <i>Environmental Planning and Assessment (EP&A) Act 1979</i>• Environmental Planning and Assessment (EP&A) Regulations 2000• SEPP (Infrastructure) (ISEPP) 2007• SEPP (Building Sustainability Index: BASIX) (BASIX SEPP) 2004• SEPP (State and Regional Development) (SEPP SRD) 2011• SEPP (Sydney Harbour Catchment) (SEPP Sydney Harbour) 2005• SEPP No. 55 (Remediation) (SEPP 55)• SEPP No. 65 (Design Quality of Residential Apartment Development) (SEPP 65) & Apartment Design Guide (ADG)• Hornsby Local Environmental Plan (HLEP) 2013• Hornsby Development Control Plan (HDCP) 2013
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none">• Architectural Drawings• Landscape Plans• Clause 4.6 Variation Request (Height)
Report prepared by	Matthew Hedges, SJB Planning (NSW) Consultant Planner, City of Parramatta.
Report date	7 June 2017

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (Clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **No**

Conditions

Have draft conditions been provided to the applicant for comment? **N/A**

1. Executive Summary

The proposal provides for the demolition of all structures on the site and the construction of two (2) residential flat buildings of six (6) storeys, over two (2) levels of basement, containing 63 residential units, 102 car parking spaces, 20 bicycle parking spaces, two (2) motorcycle spaces, storage, refuse, and communal open space.

The proposed development generally follows the form for the site envisaged by Hornsby Shire Council Local Environmental Plan (HLEP) 2013 and Hornsby Shire Council Development Control Plan (HDCP) 2013. The Applicant has submitted a request to vary the maximum height of the buildings under Clause 4.6 of HLEP 2013. The request is not considered to be well founded given the number of amenity impacts, including non-compliance with solar access to the residential units, the lack of cross ventilation, and the poorly located and configured communal open space. The variation statement cites site topography and flood storage requirements as reasons for the increased building height, this, however, only affects a small proportion of the site, and a more skilful and lower density design could have avoided placing residential development in the flood zone, and would also have overcome the underlying solar access issues to the communal open space experienced as a result of the overdevelopment of the site.

The amenity impacts on adjoining and nearby properties are considered to be reasonable. No overshadowing or amenity impacts would be experienced as a result of the proposed development. It is considered that the proposed increase in traffic would not compromise the efficient function of the local road network. Upgrades to the public realm have been requested by Council during the DA processes.

The application has been assessed relative to section 79C of the *Environmental Planning and Assessment (EP&A) Act 1979*, taking into consideration all relevant State and local planning controls. On balance, the proposal has not demonstrated a satisfactory response to the objectives and controls of the applicable planning framework. The amenity afforded to future residents is below the standard required and expected, and is considered to be as a direct result of the poor design and overdevelopment of the site. Accordingly, refusal of the Development Application (DA) is recommended.

2. Site Description, Location and Context

The site is located to the corner of Carlingford Road and Hepburn Avenue, close to Carlingford town centre, and is legally described as Lots 1 and 2 DP 845101, Lots 1 and 2 DP 879689, Lot 2 DP 30015, and Lot 3 DP 419712.

The site is 3319.58m² in size and is rectangular in shape, with 66m frontage to Carlingford Road and 47m frontage to Hepburn Avenue. The site falls from east to west from RL110.41 to RL104.01 (6.4m).

The site currently accommodates 6 detached dwellings 199, 199A, 201 and 203 Carlingford Road, and 2 and 2A Hepburn Avenue.

To the east of the site are low density residential dwelling houses, mainly formed of detached dwelling houses set within their own allotments. To the south of the site is a recently

constructed residential flat building (RFB), and to the west of the site are detached dwellings. To the north of the site is Carlingford Road, with a mixture of RFBs with detached dwellings beyond.

Carlingford town centre, 440m away, provides access to a range of public transport options. Epping town centre is located 2.3km from the site, and provides direct rail links to Sydney Central Railway Station and the CBD, as well as services to the north and south. Both town centres are linked by the 630 and M54 bus routes, and provide a range of shopping and local facilities.

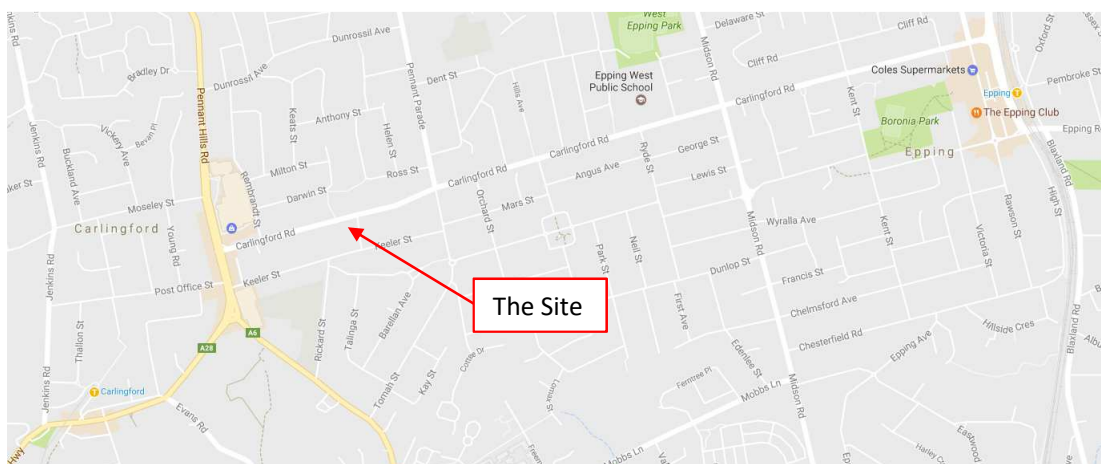


Figure 1. Locality Map showing subject site and Epping and Carlingford Town Centres and site location.

The following applications are relevant to the proposal:

Site	DA	Description / Details	Approved
30 Keeler Street, Carlingford	DA/1229/2013	Construction of a five (5) storey residential flat building containing 48 units with basement carparking.	13/08/2014
58-60 Keeler Street, Carlingford	DA/03/2014	Construction of a five (5) storey residential flat building containing 31 units and basement parking.	18/06/2014

3. The Proposal

The proposal involves the following:

- Demolition of existing structures, hard stand areas, and vegetation removal;
- Construction of two (2) residential flat buildings of six (6) storeys each containing:
 - Sixty-three (63) residential units;
 - Two (2) levels of basement containing;
 - 102 car parking spaces;
 - 20 bicycle parking spaces;
 - Two (2) motorcycle spaces;
 - Residential storage cages;
 - Refuse; and

- Storm water detention.
 - Communal open space;
 - Overland Flow Flood path; and
 - Flood water storage facility.
- Public domain improvements including new pedestrian footpaths.



Figure 2. Photomontage of proposal as viewed from junction of Hepburn Avenue and Carlingford Road .



Figure 6. Photomontage of proposal frontage to Carlingford Road.

Summary of Amended Proposal

The DA has been amended on two (2) occasions in response to concerns raised by Council Officers.

The applicant submitted revised drawings and documentation at each stage addressing the concerns which included the following changes:

- Revised apartment layouts to address poor internal living spaces;
- Revisions to ensure ADG compliance;
- Addition of window to communal corridors;
- Revised communal open space;
- Addition of acoustic fencing to Carlingford Road;

- Revised waste collection and storage;
- Floor to ceiling heights;
- Basement height revisions to allow servicing;
- Parking layout revisions;
- Motorcycle parking;
- Building alignment revisions;
- Drainage (On site detention) and overland flow alterations; and
- Public domain alterations (addition of bus stop and footpath).

4. Referrals

The following referrals were undertaken during the assessment process:

Sydney West Joint Regional Planning Panel

20 July 2016	<p>Concerns were raised with respect to the below matters by the Panel Members:</p> <ul style="list-style-type: none"> • RMS Easement not identified on proposed plans and adhered to • Lack of motorcycle spaces • On site building separation • Location of communal open space • Building setback • Failure of design and layout to respond to sloping nature of the site resulting in poor solar penetration to units and open spaces • Inadequate preparation of Clause 4.6 Submission.
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External

Authority	Comment
Roads and Maritime Services (RMS)	RMS required the modification of the plans to reflect an easement on the land in their favour.

Internal

Authority	Comment
Tree Management (Hornsby)	Tree 20 identified for removal on the submitted Arborist report is to be retained.
Urban Design	<ul style="list-style-type: none"> • The basement and balconies of the building are not sufficiently setback within the building envelope; • The encroachment to the setbacks required is unacceptable; and • The driveway is to be realigned to conform to Parramatta Design Standard DS8.
Transport	Only seven (7) adaptable spaces are provided where eight (8) should be.
Engineer	Overland flow path and onsite detention inadequacies, both of which have now been addressed.

5. Environmental Planning and Assessment Act 1979

The sections of this Act which require consideration are addressed below:

5.1 Section 5A: Significant effect on threatened species, populations or ecological communities, or their habitats

Council's tree officer has raised an objection to the removal of the tree identified as tree 20 on the accompanying arborist report. The applicant's Arborist has further examined the retention of tree 20 and determined that the impact on the root zone by the development would be detrimental to the tree and therefore its retention is not possible with the proposed design.

5.2 Section 79C: Evaluation

This section specifies the matters which a consent authority must consider when determining a development application, and these are addressed in the Table below:

Provision	Comment
Section 79(1)(a)(i) - Environmental planning instruments	Refer to section 6
Section 79C(1)(a)(ii) - Draft environmental planning instruments	Refer to section 7
Section 79C(1)(a)(iii) – Development control plans	Refer to section 8
Other	Refer to section 9
Section 79C(1)(a)(iiia) - Planning Agreement	Refer to section 10
Section 79C(1)(a)(iv) - The Regulations	Refer to section 11
Section 79C(1)(a)(v) - Coastal zone management plan	Not applicable.
Section 79C(1)(b) - Likely impacts	Refer to section 12
Section 79C(1)(c) - Site suitability	Refer to section 13
Section 79C(1)(d) – Submissions	Refer to section 14
Section 79C(1)(e) - The public interest	Refer to section 15

Table 2: Section 79C(1)(a) considerations

6. Environmental planning instruments

6.1 Overview

The instruments applicable to this application comprise:

- SEPP (Building Sustainability Index: BASIX) (BASIX SEPP) 2004;
- SEPP (Infrastructure) (ISEPP) 2007;
- SEPP (State and Regional Development) (SEPP SRD)2011;
- SREP (Sydney Harbour Catchment) (SREP (Sydney Harbour)) 2005;
- SEPP No. 55 (Remediation) (SEPP 55);
- SEPP No. 65 (Design Quality of Residential Apartment Development) (SEPP 65); and
- Hornsby Local Environmental Plan (HLEP) 2013.

Compliance with these instruments is addressed below.

6.2 State Environmental Planning Policy (Infrastructure) 2007

The proposal is considered to constitute a 'traffic generating development' as it proposes

parking for more than 50 motor vehicles. The DA has been referred to RMS, who have responded requiring an easement in their favour to be maintained. No other concerns have been raised or recommended conditions being imposed on any consent.

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

The application is accompanied by a BASIX certificate that lists commitments by the applicant as to the manner in which the development will be carried out. The requirements outlined in the BASIX certificate have been satisfied in the design of the proposal. A revised BASIX certificate would be required if permission was to be granted to reflect the changes to the layout of the apartments within the latest submission. It is not envisaged that BASIX compliance would be an issue.

6.4 State Environmental Planning Policy (State and Regional Development) 2011

As this proposal has a CIV of more than \$20 million, Part 4 of this Policy provides that the Sydney West Central Planning Panel (SWCPP) is the consent authority for this application.

6.5 Sydney Regional Environmental Policy (Sydney Harbour Catchment) 2005 (Deemed SEPP)

This Policy, which applies to the whole of the Parramatta LGA, aims to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment, and promoting recreational access to the foreshore and waterways by establishing planning principles and controls for the catchment as a whole. The nature of this project and the location of the site are such that there are no specific controls which directly apply, with the exception of the objective of improved water quality. That outcome will be achieved through the imposition of suitable conditions to address the collection and discharge of water during construction and operational phases of the development.

6.6 State Environmental Planning Policy No. 55 – Remediation of land

No site investigation has been submitted as part of the DA. Notwithstanding, consideration have been given to Clause 7 of the SEPP and it is considered that the subject land is unlikely to be contaminated given its current use for residential purposes and no further action is required prior to the determination of this DA.

6.7 State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development)

SEPP 65 applies to the development as the proposal is for a new building, is more than three (3) storeys in height, and will have more than four (4) units. SEPP 65 requires that residential flat buildings satisfactorily address nine (9) design quality principles, and consider the recommendations in the (ADG).

Design Quality Principles

A design statement addressing the quality principles prescribed by SEPP 65 was prepared by the project architect and submitted with the application. The proposal is considered to be inconsistent with the design principles for the reasons outlined below:

Requirement	Council Officer Comments
Principle 1: Context and Neighbourhood Character	Whilst this part of Carlingford Road has been rezoned as a R4 High Density Residential zone, the non-compliances with the ADG and Council's DCP resulting from poor design and overdevelopment of the site do not deliver the desired character of the area.
Principle 2: Built Form and Scale	<p>The variation to the height above the permissible height under the HLEP, exceedance of the building setbacks required by HDCP, and the failure of the development to provide the required solar access to both the required number of dwellings and communal open space are as a direct result of the built form and scale of the development.</p> <p>It is therefore considered that the built form and scale of the proposal is unacceptable and does not meet the requirements of Principle 2.</p>
Principle 3: Density	The proposed development does not provide satisfactory solar access to 70% of dwellings as required by the ADG, or the required number of hours of solar access to the communal open space. Thus, the density of the development is not considered consistent with the principle.
Principle 4: Sustainability	<p>A BASIX Certificate and relevant reports have been submitted with the development application. The certificates require sustainable development features to be installed into the development.</p> <p>The application includes suitable provision of bicycle parking for both visitors and residents (provided in secure areas), and is in a location well served by public transport.</p>
Principle 5: Landscape	The development proposed is consistent with the objectives of the HDCP 2013.
Principle 6: Amenity	The proposal is considered to have poor amenity, failing to provide sufficient solar access, cross ventilation, or suitably located private open space.
Principle 7: Safety	<p>The proposal is considered to provide appropriate safety for occupants and the public for the following reasons:</p> <ul style="list-style-type: none">• Surveillance of open spaces by residential balconies and windows from above;• Clear sight lines through the communal open space; and• Improved pedestrian access via improved footpaths to the public domain fronting Hepburn Avenue and Carlingford Road.

Requirement	Council Officer Comments
Principle 8: Housing Diversity and Social Interaction	This principle essentially relates to design responding to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities, optimising the provision of housing to suit the social mix, and provide for the future community. It is considered that the proposal satisfies these requirements, providing additional housing choice within the area in close proximity to public transport.
Principle 9: Aesthetics	The appearance of the building is considered acceptable and inkeeping with the surrounding residential flat buildings to the west and south of the site.

Apartment Design Guide

The relevant provisions of the ADG are considered within the following assessment table:

Standard	Requirement	Proposal	Compliance
Part 3			
3B-1: Orientation	<p>The proposed RFBs adequately respond to the street frontage addressing both Hepburn Avenue and Carlingford Road, providing pedestrian access from both frontages, and vehicular access from Hepburn Avenue.</p> <p>However, the arrangement of the two (2) buildings, and the ability of the principle communal open space and apartments to achieve the required solar access is not acceptable, and therefore the DA does not comply with Part 3B-1.</p>		
3B-2: Overshadowing	<p>The proposed development has inadequate solar access to the proposed apartments and communal open space, with only 63% of living rooms and private open space within the development achieving two (2) hours of direct sunlight. 50% of the communal open space receives direct sunlight between 1:00pm and 2:00pm. This is below the two (2) hours required.</p> <p>The neighbouring dwellings and private and public open spaces all receive adequate solar access in excess of two (2) hours on the winter solstice (21 June).</p>		
3C: Public Domain Interface	The public domain interface is considered acceptable. Planting is provided to the public spaces including a significant landscape buffer to Carlingford Road, which is considered to be an acceptable approach.		
3D: Communal & Public Open Space	Minimum 25% of site area.	1033m ² (31%) of communal open space is provided	Yes
	Minimum 50% direct sunlight to main communal open space for a minimum of two (2) hours between 9:00am and 3:00pm on June 21	Solar access is only achieved for one (1) hour between 1:00pm and 2:00pm on 21 June.	NO
The proposal includes communal open space to the ground floor. The principle communal open space is located between the two (2) apartment buildings and to the southern boundary. The amenity of the space is considered unacceptable with only one (1) hour of direct sunlight being received between 1:00pm and 2:00pm. The main 'grassed' amenity area to the rear of the communal open space receives little to no solar access.			

Standard	Requirement	Proposal	Compliance
Entries	A is however considered inadequate, requiring residents to traverse the basement level 1, or navigate around the site to gain access.		
3H: Vehicle Access	<p>Vehicular access is via Hepburn Avenue located in the south-east corner of the site.</p> <p>No access is available from Carlingford Road due to its designation as a classified road, and the recent proposal by RMS to upgrade the intersection at Hepburn Avenue and Carlingford Road with traffic lights and a left turn lane prohibits the location of the access further north along Hepburn Avenue.</p> <p>Refuse collection and servicing is proposed to be conducted via basement level 1 avoiding the need for vehicles to park on Hepburn Avenue.</p> <p>The location of the vehicular access is considered acceptable given the site constraints.</p>		
3J: Bicycle and car parking	<u>Car Parking</u>		
	Residential: 1 per 1 bed (12) 1.25 per 2 bed (45) 2 per 3 bed (30) Total 63 (87)	Residential: 89 (of which adaptable 6)	Yes (over provision)
	Visitor: 1 per 5 units (12.6 (13))	Visitor: 13	
	Total: 100	Total: 102	
The proposed development overprovides carparking by two (2) residential spaces. It is considered that this is acceptable and it is considered the proposed parking rates are acceptable.			
	<u>Bicycle Parking</u>		
	1 space per 5 Units (12.6 (13)) 1 per 10 visitors (6.3 (7)) Total 20	20 secure spaces proposed in the basement	Yes
	The proposed development provides 20 secure bicycle spaces within the basement parking area. It is considered the proposed cycle storage is acceptable.		
Part 4			
4A: Daylight / Solar Access	Minimum of two (2) hours for 70% of apartments living & private open space between 9:00am and 3:00pm mid-winter;	40 out of 63 apartments (63%)	NO
	Maximum of 15% of apartments receiving no direct sunlight between 9:00am and 3:00pm in mid-	6 out of 63 apartments (9.5%)	Yes

Standard	Requirement	Proposal	Compliance
	winter (<39)		
	<p>The applicant claims that 43 apartments (68.25%) receive the required two (2) hours of solar access. This is non-compliant with the ADG, and further to this, Council has discounted three (3) of these apartments, as Council Staff and the external assessment team are not convinced adequate solar access would be achieved for two (2) hours in the living spaces. As such the proposal only manages to provide two (2) hours of solar access to 63% of the proposed apartments. This is an unacceptable outcome.</p> <p>No accurate information has been provided on the number of apartments that would receive no direct sunlight. It has been deduced from the information provide that six (6) apartments (9.5%) would receive no direct sunlight on 21 June, which is below the maximum 15% allowed.</p>		
4B: Natural Ventilation	Minimum of 60% of apartments below nine (9) storeys naturally ventilated.	33 out of 63 apartments (52%)	NO
	The proposed development does not comply with the ADG natural ventilation requirement for the first nine (9) levels, with only 52% of apartments receiving the required levels of natural ventilation.		
4C: Ceiling heights	Minimum 2.7m habitable Minimum 2.4m non-habitable	2.7m 2.8m	Yes Yes
4D: Apartment size & layout	1B – Min 50m ²	1B – min. 50m ² – max 62m ²	Yes
	2B – Min 75m ² (2 baths)	2B – min. 75m ² – max 102m ²	Yes
	3B – Min 95m ² (2 baths)	3B – min. 97m ² – max 122m ²	Yes
	All rooms to have a window in an external wall with a total minimum glass area not less than 10% of the floor area of the room.	Not demonstrated	Not demonstrated
	Maximum habitable room depth from window for open plan layouts: 8m.	Up to 7.5m	Yes
	Minimum internal areas: Master Bed - 10m ² Other Bed - 9m ²	<9m ² >9m ²	No Yes
	Minimum 3m dimension for bedrooms (excl. wardrobe space).	Complies	Yes
	Minimum width living/dining: 1B – 3.6m 2B – 4m 3B – 4m	>4m >4m >4.2m	Yes Yes Yes
	The units all meet the minimum internal dimension, however, non-compliance with the minimum room area by 1m ² exists to some of the smallest one (1) bedroom apartments. This is considered an unacceptable impact on the		

Standard	Requirement	Proposal	Compliance
	amenity of future residents of these units, as they are of the minimum size recommended for a one (1) bedroom unit by the ADG.		
4E: Private open space & balconies	Minimum area/depth: 1B - 8m ² /2m 2B - 10m ² /2m 3B - 12m ² /2.4m	>8m ² /2m >10m ² /2m >15m ² /2.4m	Yes Yes Yes
	<p>The proposed development is consistent with the size and dimensions for the private open space (balconies). However, there are some balconies, to the three (3) bedroom apartments on the fourth and fifth floors, from the living spaces which are smaller than required.</p> <p>Whilst it would be preferable to have the recommended amount of private open space linked to the living spaces, it is considered acceptable to have smaller balconies as private open space of a compliant size or larger provided to the bedroom level.</p>		
4F: Common circulation & spaces	Maximum apartments off circulation core on single level: 8 - 12	Block A - 7 Block B - 7	Yes Yes
	Corridors >12m length from lift core to be articulated.	Block A and B exceed 12m	No
	The proposed corridors are of a length that is considered unacceptable and as a direct result of the site overdevelopment and excessive floorplates.		
4G: Storage	1B – Minimum 6m ³ 2B – Minimum 8m ³ 3B – Minimum 10m ³	1B – 7.6m ³ 2B – 7.6m ³ 3B – 9.3m ³	Yes NO NO
	Minimum 50% required in Apartment (1,011m ³)	At least 50% of the storage is located within the Apartments.	Yes
	<p>A detailed breakdown of the allocation of storage has been provided, and the applicant indicates that 50% of the required storage is provided in the apartments.</p> <p>As the minimum required storage is not provided for some units, it is considered that this is an unacceptable impact on the amenity of the future occupants and cannot be supported.</p>		
4H: Acoustic Privacy	<p>The proposal has a mismatch with living areas/balconies and bedrooms adjacent to each other. This further contributes to the poor design experienced within the wider development, and would potentially lead to amenity issues for future residents.</p> <p>Noisier areas, such as kitchens and laundries, are to be located away from bedrooms when possible.</p>		
4J: Noise and pollution	<p>The application includes an acoustic report which recommends construction methods/materials/treatments to be used to meet the criteria for the site.</p> <p>Following the latest revision, if the DA was to be approved a revised acoustic assessment would be required to reflect the arrangement of living spaces adjacent to bedrooms.</p>		

Standard	Requirement	Proposal	Compliance
	<p>The development has the following bedroom mix:</p> <ul style="list-style-type: none"> 12 x 1 bedroom apartments (19%) 36 x 2 bedroom apartments (57%) 15 x 3 bedroom apartments (24%) <p>These units vary in size, amenity, orientation and outlook to provide a mix for future home owners. A variety of apartments are provided across all levels of the apartment building.</p>		
4M: Facades	The proposal provides a well-articulated façade, providing an interesting and varied appearance.		
4N: Roof design	The proposed apartment buildings have flat roofs, which are considered to be appropriate given the proposed design. Rooftop plant and lift overrun are suitably concealed ensuring they are not visible from the street.		
4O: Landscape Design	<p>The application includes a landscape plan which demonstrates that the proposed development will be adequately landscaped.</p> <p>The proposal includes landscaping at ground floor level providing high quality communal open spaces for the future residents.</p> <p>The proposed landscaping will also adequately provide habitat for local wildlife; contributing to biodiversity.</p>		
4P: Planting on structures	The landscape drawings outline that planting on structures would have adequate soil depth to accommodate good quality planting.		
4Q: Universal Design	20% Liveable Housing Guidelines Silver Level design features (94)	20 (32%) Accessible Units	Yes
	<p>The site is considered to be appropriately barrier free and wheelchair accessible. An Access Report has been included as part of the original DA package.</p> <p>A revised Access Audit should be carried out confirming that the proposed development is capable of meeting the requirement of SEPP 65, and Part 4Q of the ADG if the DA is to be approved.</p>		
4U: Energy Efficiency	The BASIX Certificate demonstrates that the development achieves the pass mark for energy efficiency.		
4V: Water management	The BASIX Certificate demonstrates that the development achieves the pass mark for water conservation.		
4W: Waste management	<p>Waste areas have been located in convenient locations in the first basement level. Waste collection will occur within the basement with the waste vehicle able to enter and leave in first gear.</p> <p>A construction waste management plan has been prepared by a qualified waste consultant adhering to council's waste controls. All units are provided with sufficient areas to store waste/recyclables.</p>		
4X: Building maintenance	The proposed materials are considered to be sufficiently robust, minimising the use of render and other easily stained materials.		

6.6 Hornsby Local Environmental Plan 2013

The relevant objectives and requirements of HLEP 2013 have been considered in the assessment of the development application and are contained within the following table.

Development standard	Proposal	Compliance
2.3 Zone Objectives R4 – High Density Residential	<p>The proposed development is for two (2) residential flat buildings over a communal basement which is permissible with development consent in the zone.</p> <p>The proposal is not considered to be in keeping with the objectives of the R4 High Density Residential zone for the following reasons:</p> <ul style="list-style-type: none"> The proposed development fails to provide for the housing needs of the community in a high-density setting because of the lack of amenity provided. 	<p>Yes</p> <p>NO</p>
4.3 Height of Buildings	<p>Control: 17.5m</p> <p>Max Height 20.05m</p> <p>Block has a maximum roof height variation of 2.55m and Block B has a roof height variation of 1.8m.</p> <p>This is, however, misleading as a carpark exhaust riser is proposed above the roof level of block B. No height information is provided for this, its shown as approximately 1m higher than the roof on the section drawings, giving an overall height breach of 2.8m to block B.</p>	<p>NO (2.8m to Block B, 16% breach)</p>
4.6 Exceptions to Development Standards	<p>Variation to Building Height Standard.</p>	<p>NO (see below)</p>
5.9 Preservation of trees or vegetation	<p>The proposal includes the removal of 21 trees across the site. Council expressed wishes to retain trees 20 and 21 as identified in the accompanying Arboricultural assessment. The retention of these trees was dismissed due the impact of the proposed development.</p> <p>It is not considered that the proposed development is consistent with the objectives of Clause 5.9.</p>	<p>NO</p>
6.2 Earthworks	<p>The application includes a geotechnical report which outlines measures to reduce the impacts of earthworks. A condition will be included requiring non-contaminated fill be used.</p>	<p>Yes</p>



Hornsby Local Environmental Plan 2013

Height of Buildings Map - Sheet HOB_011

Maximum Building Height (m)

I	8.5
K	10.5
M	12
N	14.5
O	16
P	17.5
S	23.5
T1	26.5
T2	29.5
U	32.5
V1	35.5
V2	38.5
V3	40
V4	41.5
X	48
AA	72

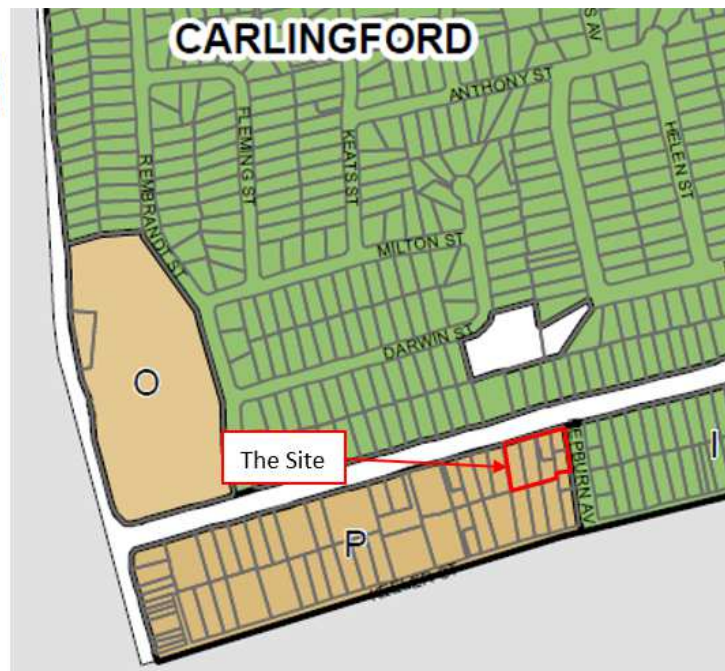


Figure 3. HLEP 2013 Height of Buildings map (subject site outlined in red).

Clause 4.6 Variation Assessment

Clause 4.6 of HLEP 2013 allows Council to provide an appropriate degree of flexibility in applying certain development standards where flexibility would achieve better outcomes.

The proposal does not comply with the Clause 4.3 'Height of Buildings' development standards as outlined in the table above.

Clause 4.6(1) – Objectives of clause 4.6

The objectives of this clause are:

- “(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”*

Clause 4.6(2) – Operation of clause 4.6

The operation of clause 4.6 is not limited by the terms of Clause 4.6(8) of this LEP, or otherwise by any other instrument.

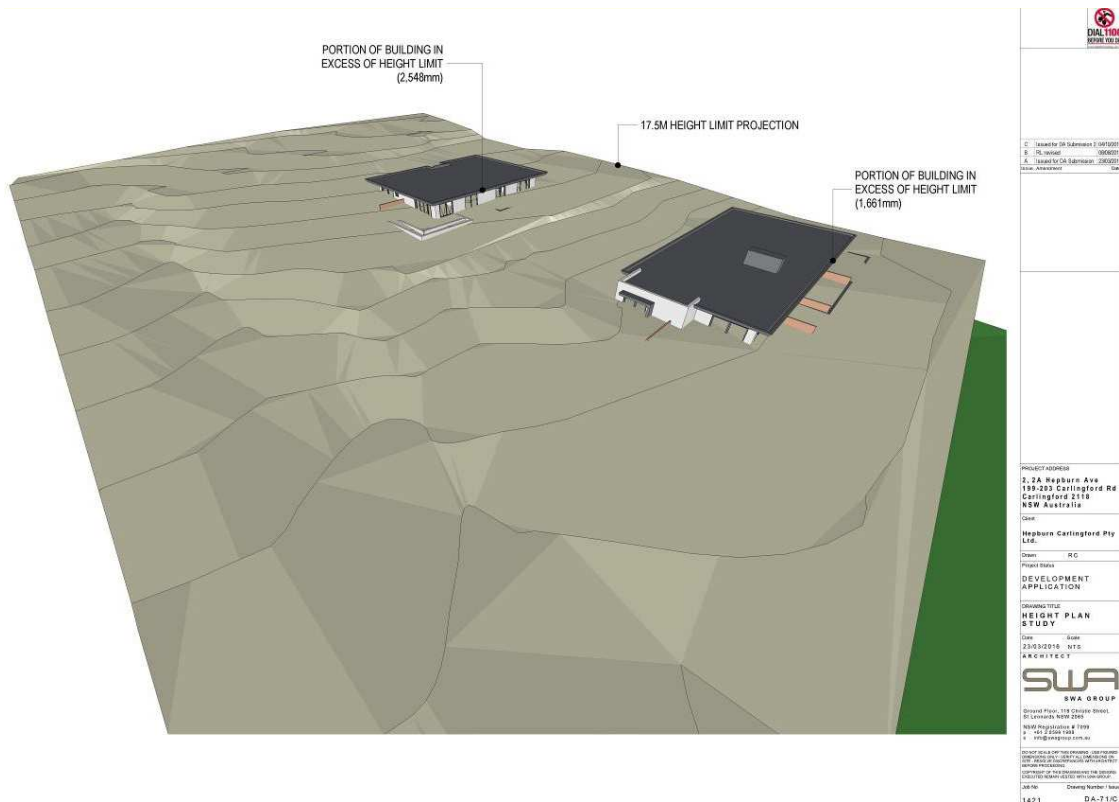


Figure 4. breach of building height.

Clause 4.6(3) - The Applicant's written request

Clause 4.6(3) requires that the applicant provide a written request seeking to justify contravention of the development standard. The request must demonstrate that:

- “(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.”*

The applicant has provided the following environmental planning grounds to justify the non-compliance with the development standard (relevant extracts provided):

- The exceedance of the building height control will have minimal impact on the streetscape;
- The impact on visual privacy and solar access of neighbouring developments will be minimal;
- The building is appropriate for the size and dimensions of the site;
- The building incorporates design consistent with the principles of residential amenity contained within the Apartment Design Guide;
- The proposed height variation will not result in a building from that is out of character with the surrounding area and does not result in any non-compliance with other controls;
- The site is located within an area undergoing transformation and transition and is compliant with Council’s vision for the future character of the Carlingford precinct;

- The proposed development is consistent with the objectives of the height control; and
- The overall proposed development will not result in any adverse impacts on the surrounding area.

Clause 4.6(4) - Consent Authority Assessment of Proposed Variation

Clause 4.6(4) outlines that consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that:

“Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case”

Case law in the NSW Land & Environment Court has considered circumstances in which an exception to a development standard may be well founded. In the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827 the presiding Chief Judge outlined the following five (5) circumstances:

1. ***The objectives of the development standard are achieved notwithstanding non-compliance with the standard.***

Height of Buildings

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

The height and scale of the proposed development is not appropriate for the site. Amenity issues as outlined earlier in this report are as a direct result of the scale of development proposed.

The proposed development is therefore not consistent with the objective of the standard.

2. ***The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.***

The underlying objective is relevant and strict compliance with the standard is justified given the amenity issues that form part of the proposals.

3. ***The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable***

The applicant does not suggest that the objectives would be thwarted if compliance was required; rather that the objectives are achieved despite the breach of the height of buildings development standard.

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***

It is considered that the standard has not been abandoned.

5. ***The zoning of particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.***

The applicant does not challenge that the zoning is inappropriate.

The decision in the Land & Environment Court case of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, suggests that 'sufficient environmental planning grounds' is more onerous than compliance with zone and standard objectives. The commissioner also established that the additional grounds had to be particular to the circumstances of the proposed development and not merely grounds that would apply to any similar development.

Given the proposed development has amenity issues it is not considered that the circumstances warrant a variation of the standard, and the proposed variation is not within the public interest

Conclusion

In summary, it is considered that breaching the building height control is not acceptable in this case given the number of amenity issues that would arise if this development were to be approved and constructed.

In reaching this conclusion regard has been had to the relevant Judgements of the LEC, including, *Zhang v City of Ryde Council* (2016).

7. Draft Environmental Planning Instruments

There are no draft environmental planning instruments relevant to the subject application.

8. Development Control Plan

8.1 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within HDCP 2013. The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

Hornsby Development Control Plan 2013			
Control	Requirement	Proposal	Compliance
3.4.3 - Site Width	Min 30m	66m	Yes
3.4.4 - Height	5 storeys – 17.5m	5 storeys – 20.16m	No
3.4.5 - Setback	Residential Flat Buildings Front Boundary - 10m (reduced to 8m for 1/3)	Hepburn Avenue – 6m Carlingford Road – 8m	NO NO
	Side/Rear Boundary - 6m (reduced to 4m for 1/3)	5-4m	NO
	Fifth Storey – 6m from wall of lowest story	6m	Yes
	Basement Parking – 7m from front and rear boundaries	7m	Yes
	Basement parking – 4m from side boundaries	4m	Yes
3.4.6 - Floorplates	35m (Max)	37m	NO
3.4.12 - Basement Ramp Setback	2m	2m	Yes
1C2.1 - Parking	Compliant – See ADG table	Compliant – See ADG table	Yes
3.4.11 - Housing Choice	Adaptable Housing 10% Universal Design Housing 20%	Adaptable Housing 31% Universal Design Housing 0%	Yes NO (Considered acceptable given Adaptable housing)

As detailed in the above table, the proposed development does not comply with a number of prescriptive setback requirements within HDCP 2013. Therefore it is considered that the proposed development is unacceptable given the amenity issues outlined in this report.

10. Planning Agreements

No Planning agreements are proposed as part of this DA.

11. The Regulations

If the subject DA were to be approved conditions should be included to ensure the following provisions of the Regulation will be satisfied:

- Clause 92 - Demolition works are to satisfy AS 2601 - 1991; and
- Clause 98 - Building works are to satisfy the Building Code of Australia.

12. The likely impacts of the development

The likely impacts of the development have been considered in this report and it is considered that there would be adverse amenity impacts on future residents of the proposed scheme and the development is therefore not supported.

13. Site suitability

The site is located in an area close to Carlingford Town Centre, zoned for high density residential development, and represents one the last sites in this block to redeveloped for this purpose. The site is ideally located to take advantage of local transport links along Carlingford Road and wider public transport facilities from Carlingford and Epping Town Centres.

The proposed development has been assessed in regard to its environmental consequences and having regard to this assessment, it is considered that the site is suitable for the type of high-density residential development proposed and is suitable in the context of the surrounding locality.

The scheme presented however fails to deliver the amenity required for future residents and therefore is not supported.

14. Submissions

The application was notified and advertised in accordance with Council's Notification Policy, ending on 18 May 2016. Four (4) submissions have been received.

In summary, the issues raised in the public submissions relate to traffic impact and generation, lack of infrastructure and the impacts of high density residential on the adjacent low density residential area.

Submission issues are summarised and commented on as follows:

Issues Raised	Comment
<i>Traffic Impact</i>	The proposed development has been assessed by RMS, Parramatta Traffic Officers and Hornsby Traffic Officers who have all concluded the increased traffic generations will not have any detrimental impact on the local transport network.
<i>Lack of schools</i>	Education provisions are a matter for the NSW State Government. No education contribution levy has been established for this area.
<i>Impact of high-density on adjacent low-density area</i>	Through the re-zoning process undertaken Council and the Department of Planning have considered the impacts of the proposed zoning on the surrounding areas and considered these impacts to be acceptable. The proposed development is consistent with the objectives of the zone and permissible.
<i>On street parking in Hepburn Avenue</i> <i>Privacy to the low density residential zone on the eastern side of Hepburn Avenue</i> <i>Noise intrusion to existing properties</i>	The parking levels provided by the proposed development are in excess of the that prescribed by Hornsby DCP and as such is acceptable. It is unlikely that there will be a noticeable impact on the privacy of the low density residential properties to the east of the development as the proposed buildings, if approved, are located between 4 to 5 metres from the boundary on Hepburn Avenue and this combined with the width of Hepburn Avenue means that any potential building will be at least 25m away from the existing dwellings. The proposed use is residential in nature and is considered compatible with the surrounding residential neighbourhood.

15. Public interest

Due to the amenity impacts on future resident as set out in this report it is considered that the proposed development would be contrary to the public interest.

16. Disclosure of Political Donations and Gifts

No disclosures of any political donations or gifts have been declared by the applicant or any organisation/persons that have made submissions in respect to the proposed development.

18. Summary and conclusion

The application has been assessed relative to section 79C of the *EP&A Act 1979*, taking into consideration all relevant state and local planning controls.

Whilst the development is permissible within the R4 High Density Residential Zone, and the scale of development is not out of character with the desired future character of the area, the proposed development fails to provide sufficient amenity for future residents in the form of solar access and cross ventilation. Less than 70% of dwellings, and the principle communal

open space fail to receive the required two (2) hours solar access, and only 52% of dwellings achieve cross ventilation, below the 60% required as set out in Councils DCP and SEPP 65 ADG. In addition to the failure to provide suitable amenity, the proposed development does not comply with the setbacks required by the ADG and HDCP, which is considered unacceptable and leads to overdevelopment of the site.

Furthermore, the proposed development breaches the HELP height control and is considered not acceptable in this case given the number of amenity issues that would arise if this development were to proceed.

Council Officers have allowed the Applicant several opportunities to revise the proposal subject of this report. The latest variation to the DA is a significant improvement on the originally submitted scheme, but the shortcomings in amenity provision are still significant and unsupportable.

Therefore, it is considered that the proposed development is not in the public interest having regard to the matters of consideration under Section 79C of the *EP&A Act 1979*.

19. Recommendation

That the Sydney West Central Planning Panel as the consent authority refuse Development Application No. DA/263/2016 for the demolition of all structures on the site and the construction of two (2) residential flat buildings of six (6) storeys, over two (2) levels of basement, containing 63 residential units, 102 car parking spaces, 20 bicycle parking spaces, two (2) motorcycle spaces, storage, refuse, and communal open space at 2-2A Hepburn Avenue and 199-203 Carlingford Road, Carlingford, legally described as Lots 1 and 2 DP 845101, Lot 1 and 2 DP 879689, Lot 2 DP 30015, and Lot 3 DP 419712, for the reasons set out in this report.

SCHEDULE 1

Reasons for Refusal

It is recommended that Development Application 236/2016 be refused for the following reasons:

1. The proposal is inconsistent with the following Design Quality Principles as set out in Schedule 1 of State Environmental Planning Policy 65 (SEPP65):
 - 1 – Context and Neighbourhood Character
 - 2 – Built Form and Scale
 - 6 – Amenity
2. The proposal does not satisfy the Objectives of the Apartment Design Guide (ADG) applicable under Clause 28 of the State Environmental Planning Policy 65 (SEPP65):
 - 3b-2 Overshadowing
 - 3D Communal and Public Open Space
 - 3F Visual Privacy
 - 4A Daylight/Solar Access
 - 4F Common circulation & spaces
 - 4G Storage
 - 4H Acoustic Privacy
3. The proposal does not satisfy the following Clauses of the Hornsby Local Environmental Plan 2013 (HLEP), pursuant to Section 79C(1)(a)(i) of the *Environmental Planning and Assessment Act 1979*:
 - Clause 2.3 Zone objectives and Land Use Table
 - Clause 4.3 Height of Buildings
 - Clause 4.6 Exceptions of Development Standards
 - Clause 5.9 Preservation of Trees of Vegetation
4. The proposal does not satisfy the following Parts of the Hornsby Development Control Plan 2013 (HDCP), pursuant to Section 79C(1)(a)(iii) of the *Environmental Planning and Assessment Act 1979*:
 - 3.4.4 Height
 - 3.4.5 Setback
 - 3.4.6 Floorplates
5. The proposal is not considered suitable on the site pursuant to Section 79C(1)(c) of the *Environmental Planning and Assessment Act 1979*.

6. The proposal is not considered to be in the public interest pursuant to Section 79C(1)(e) of the *Environmental Planning and Assessment Act 1979*.