



SYDNEY WEST CENTRAL PLANNING PANEL

Panel Reference No.	2016SYW249
DA No.	DA 2016/381
LGA	Cumberland
Proposed Development	Construction of 7 x part 3, 4 & 5 storey residential flat buildings comprising a total of 300 units above 3 basement levels and at-grade parking accommodating a total of 379 car parking spaces and internal roadways in 2 stages with Stage A accommodating Blocks A, B, C and D and Stage B accommodating Blocks E, F and G.
Street Address	Lots 12 & 13, Butu Wargun Drive, Pemulwuy
Applicant	Mintus Holdings Pty Ltd
Owner	Mintus Holdings Pty Ltd
No. of Submissions	Nine (9) submissions
Regional Development Criteria (Schedule 4A of the Act)	Capital Investment Value \$69,042,032 (>\$20 million lodged before 1 March 2018)
List of All Relevant Section 4.15(1)(a) Matters	<ul style="list-style-type: none"> • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development • State Environmental Planning Policy (BASIX) 2004 • State Environmental Planning Policy (Infrastructure) 2007 • Holroyd Local Environmental Plan 2013 (HLEP 2013) • Holroyd Development Control Plan 2013 (HDCP 2013) • EP&A Regulation 2000 – Section 92
Recommendation	Approval, subject to conditions
Report by	Mark Stephenson – Consultant Planner, Cumberland Council
Meeting date	11 September 2018

ATTACHMENTS

- 1 – Development Application Plans
- 2 – Applicant's Clause 4.6 request for variation
- 3 – Draft Conditions of Consent
- 4 – Assessment of compliance with SEPP 65 Apartment Design Guide
- 5 – Assessment of compliance with Holroyd LEP 2013
- 6 – Assessment of compliance with Holroyd DCP 2013

CHECKLIST

Summary of section 4.15 matters

Have all recommendations in relation to relevant Section 4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
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Legislative clauses

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

Does the Development Application require Special Infrastructure Contributions conditions (Section 7.24)?	No
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1 Executive Summary

- 1.1 Cumberland Council is in receipt of a Development Application (DA) from Mintus Holdings Pty Ltd proposing the construction of 7 x part 3, 4 & 5 storey residential flat buildings comprising a total of 300 units above 3 basement levels and at-grade parking accommodating a total of 379 car parking spaces and internal roadways in 2 stages with Stage A accommodating Blocks A, B, C and D and Stage B accommodating Blocks E, F and G.
- 1.2 The proposed development constitutes 'Regional Development' requiring referral to the Sydney West Central Planning Panel, as it has a capital investment value of \$69,042,032. While Council is responsible for the assessment of the application, the Panel is the determining authority.
- 1.3 The site is zoned R4 High Density Residential pursuant to the Holroyd Local Environmental Plan (HLEP) 2013. The proposed residential flat buildings, which are defined as *a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing*, are permitted within the zone with development consent and are considered to be consistent with the objectives of the zone.
- 1.4 The key issues that need to be considered by the Panel with respect to the application are building height; visual impact on a heritage item; and vehicular access.
- 1.5 In accordance with the requirements in Clause 7 of State Environmental Planning Policy No. 55, Council is satisfied that the site can be made suitable for the proposed use.
- 1.6 The proposal is consistent with the objectives of State Environmental Planning Policy No. 65 and satisfactorily achieves the 9 design quality principles listed under Schedule 1. The proposal achieves the objectives of the Apartment Design Guide (ADG) and complies with all numerical design criteria.
- 1.7 The development complies with the development standards contained within HLEP 2013 with the exception of building height. The maximum permissible height of buildings on the site is 12.5 metres. Building B is 13.5m (8% variation); Building C is 14m (12% variation); and Building D is 13.1m (4.8% variation). Buildings E, F & G also exceed the 12.5m height, however, these small encroachments are associated with architectural roof features, requested by Council to break up the roof lines of each building.
- 1.8 The applicant has lodged a request under Clause 4.6 of HLEP 2013 seeking a variation to the height of buildings development standards. A copy of the Clause 4.6 request is provided at **Attachment 2**. The height variations are supported as the objectives of the standards are achieved and the proposal is acceptable with respect to visual impact, overshadowing, and maintaining privacy and views.
- 1.9 The application proposes a total GFA of 24,900m². The proposed GFA is below the maximum achievable GFA of 26,281.66m² for the site, and represents a FSR 0.805:1.
- 1.10 The development is generally consistent with the requirements of the Holroyd Development Control Plan (HDCP) 2013 with the exception of building height.

- 1.11 In accordance with legislative requirements, the application was referred to Water NSW, Sydney Water, Roads and Maritime Services (RMS) and NSW Police for comments, all of which raised no objection to the proposal subject to conditions of consent. Due to the proximity of the development to Prospect Hill, the application was also referred to the Office of Environment and Heritage for comments as a neighbouring property, as concurrence is not required.
- 1.12 The application was notified to surrounding property owners and occupiers over 2 notification periods, during which time a total of 9 submissions were received, including 2 pro-forma letters. The grounds of objection raised in the submissions have been satisfactorily addressed as a part of the application and are not considered sufficient to warrant refusal of the DA.
- 1.13 The proposed development is considered satisfactory with regard to issues such as siting and design, bulk and scale, privacy, overshadowing, access, traffic impacts, parking, site contamination, stormwater drainage and social and economic impacts. The proposed development has been assessed against the relevant matters for consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979 including the suitability of the site for the development and the public interest, and is considered satisfactory subject to the imposition of suitable conditions of consent.
- 1.14 In light of the above, it is recommended that the Panel approve the development application as a deferred commencement consent and subject to the imposition of appropriate conditions. Recommended conditions are provided at **Attachment 3**.

2 Site & Locality

- 2.1 The site is located in the suburb of Pemulwuy, which is situated approximately 30kms to the west of the Sydney CBD. Pemulwuy is located within the Cumberland LGA (formerly Holroyd) and is bordered by Blacktown LGA to the north and Fairfield LGA to the south.

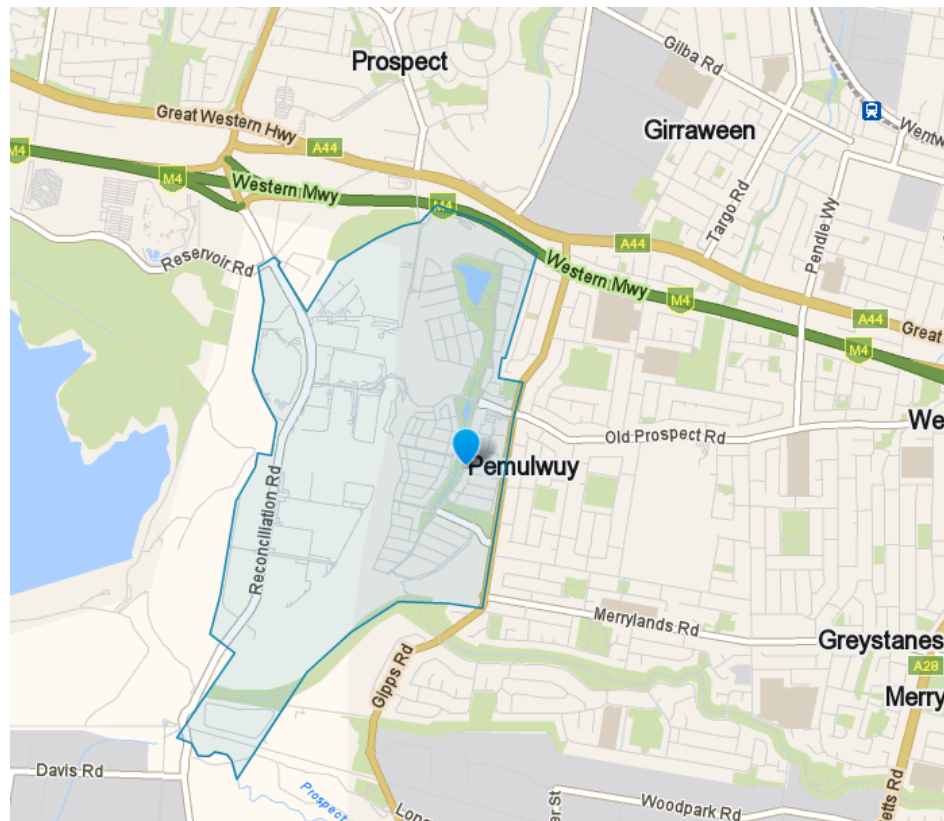


Figure 1 – Suburb of Pemulwuy (Source: whereis.com, 2017)

- 2.2 Pemulwuy forms part of the Greystanes Estate Residential Lands Precinct Plan which was developed in 2002 under State Environmental Planning Policy No. 59 Central Western Sydney Economic and Employment Area (SEPP 59). The estate was known as the former Prospect Quarry, owned and operated by Boral Resources (NSW) Pty Ltd. The estate has been remediated and is now home to residential, commercial and industrial development.
- 2.3 The site itself is located in an area identified as the 'Northern Residential Lands'. Both the Northern and Southern Residential Lands contain a range of residential development, such as detached and attached dwellings, multi dwelling housing, residential flat buildings and multi-level seniors housing, as well as commercial development.
- 2.4 Prospect Hill is the estate's primary topographical and historical feature. Listed on the State Heritage Register, Prospect Hill runs north-south through the middle of the estate. Prospect Hill is an elevated ridgeline that was used by Aboriginals as a vantage point and for navigation. Prospect Hill also became a landmark reference point for European settlement.

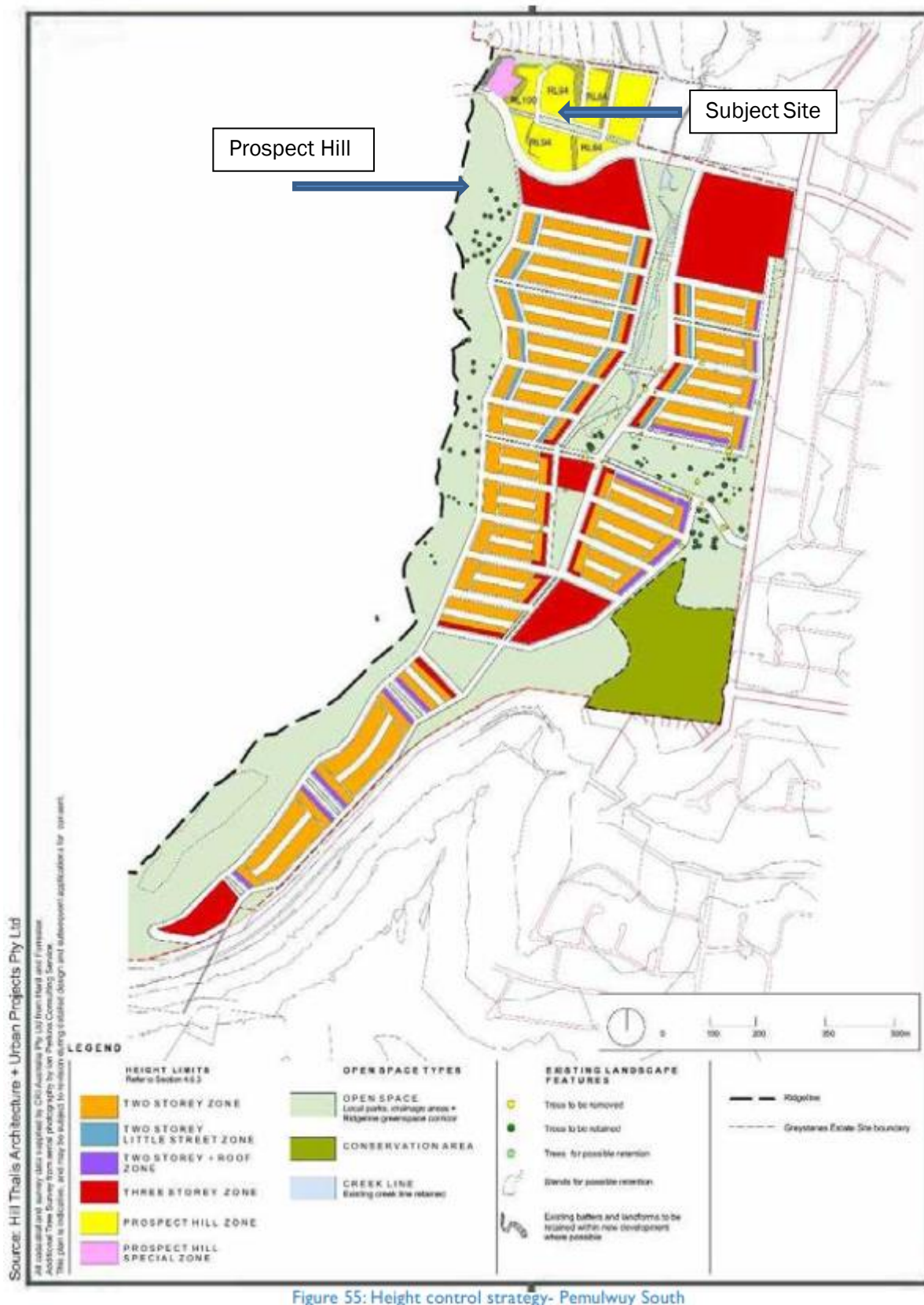


Figure 55: Height control strategy- Pemulwuy South

Figure 2 – Pemulwuy Residential Estate (Source: Part P, Holroyd DCP 2013)

- 2.5 The northern part of Prospect Hill is located to the west, directly adjacent to the subject site, and forms a backdrop to the development, as it also does for the rest of the estate.



Figure 3 – Google Street View from roundabout on Butu Wargun Drive
(Source: Google Maps, April 2017)

- 2.6 The development site comprises two large irregularly shaped vacant parcels of land that are currently undergoing bulk earthworks in preparation for future residential development. The allotments are legally described as Lots 12 & 13, DP 1162280, Butu Wargun Drive and have a combined area of 30,919sqm or 3.09ha.
- 2.7 The site is bounded to the south by Butu Wargun Drive and beyond that is two storey residential development. To the west and south-west is Prospect Hill (zoned E2 Environmental Recreation). To the east is vacant land identified for residential flat development and beyond that is single and two storey residential development. To the north is a public reserve (zoned RE1 Public Recreation) which also forms part of the state-listed Prospect Hill conservation area. To the north-east is single, two and three-storey residential dwelling development.

- 2.8 The topography of the site is fairly steep, rising in height approximately 36 metres from RL 64.10 in the east to RL 100.5 in the west. However, it is noted that approved excavation works are currently occurring on the site which is creating level platforms for future development.



Figure 4 – Aerial photo (Source: NearMap, 2018)

- 2.9 The subject site is zoned R4 High Density Residential pursuant to Holroyd Local Environmental Plan (HLEP) 2013 as shown below. It is noted that, under the previous plan applying to the site (SEPP 59) and the accompanying Precinct Plan, the site was identified for the purpose of multi unit housing, which included apartments.

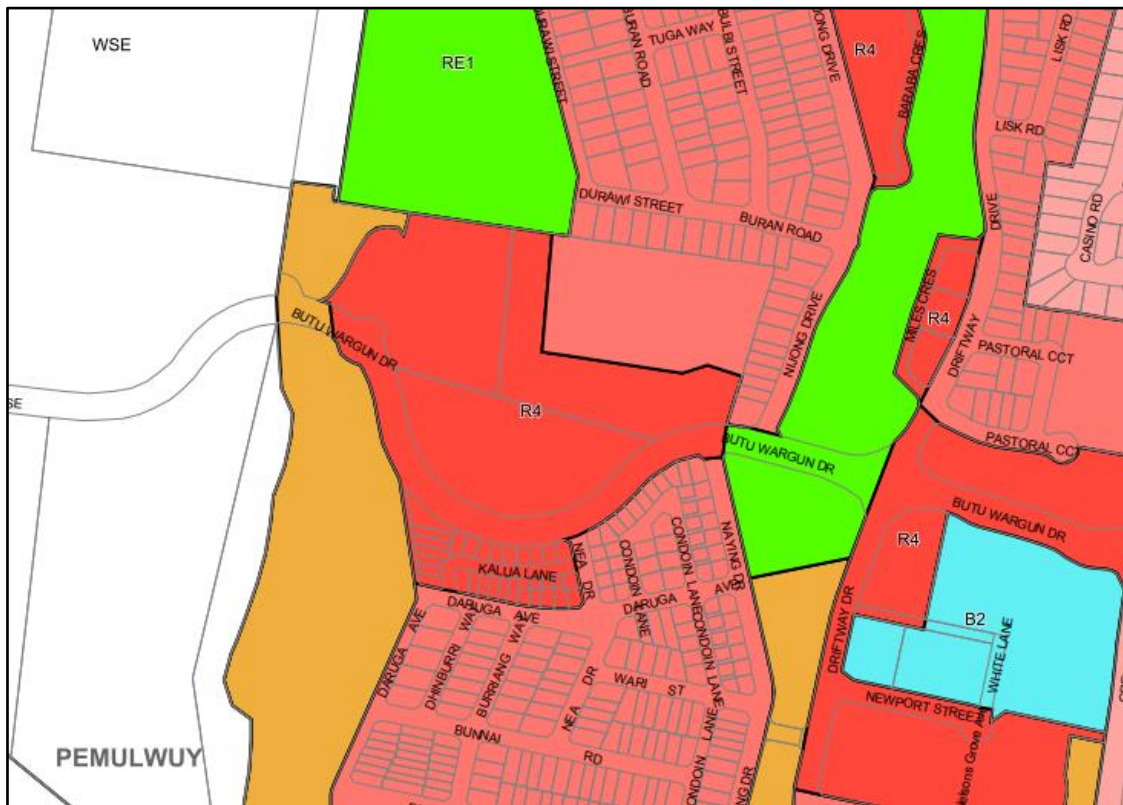


Figure 5 – Zoning Map (Source: Legislation website, 2018)

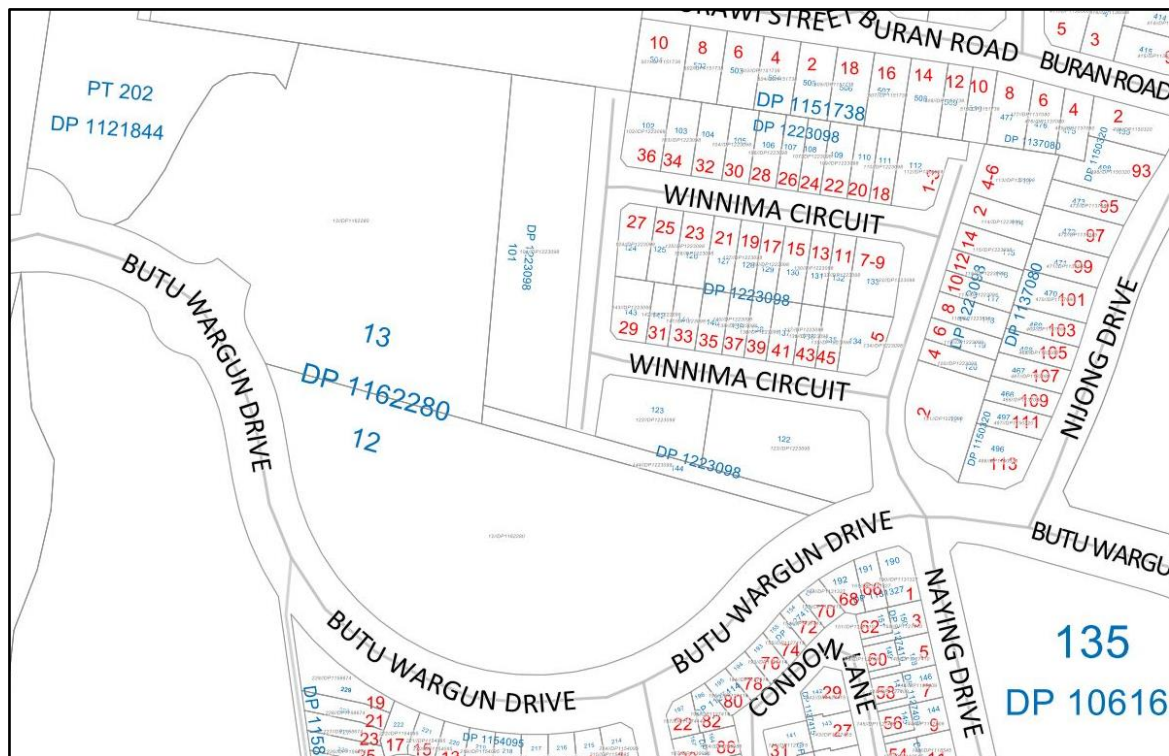


Figure 6 – Locality Map (Source: Cumberland Council, 2018)

3 The Proposal

3.1 The application proposes the construction of 7 x part 3, 4 & 5 storey residential flat buildings comprising a total of 300 units above 3 basement levels and at-grade parking accommodating a total of 379 car parking spaces and internal roadways in 2 stages with Stage A accommodating Blocks A, B, C and D and Stage B accommodating Blocks E, F and G.

3.2 Specific details of the proposed development are as follows:

Residential

RFB	Storeys	Dwellings	1b/r	2b/r	3b/r
Block A	3 / 5	40	1	39	
Block B	4 / 5	42	3	35	4
Block C	4 / 5	42	3	35	4
Block D	3 / 5	32		32	
Block E	3 / 5	46	8	37	1
Block F	4 / 5	53	5	44	4
Block G	3 / 5	45	10	32	3
Total		300	30 (10%)	254 (84.7%)	16 (5.3%)

- Stage A contains 156 dwellings, including 24 adaptable
- Stage B contains 144 dwellings, including 38 adaptable
- Total adaptable dwellings = 62 (20.6%)

Parking

Stage	Required	Provided	Accessible	Bicycle	Motorcycle
A	187.4	207	24	112	4
B	169.8	172	43	76	6
Total	358	379	67	188	10

- 7 x car wash bays also provided

Communal Open Space

The proposal comprises active and passive communal open spaces at-grade level, as follows:

- Western-most common open space area – 3,155sqm
- Blocks A & D grade level common area – 1,389sqm
- Blocks B & C grade level common area – 1,389sqm
- Block E grade level common area – 328.8sqm
- Block F grade level common area – 156.2sqm
- Eastern-most pocket park – 2,451sqm (to be dedicated as public open space)
- Total communal open space = 8,007sqm or 25.7%

Access Arrangements

Pedestrian access points into the site and buildings are legible and well-defined for each residential flat building. Each building provides at least 1 main pedestrian entry and accessible paths of travel to units and lift cores from accessible parking spaces.

Whilst there is still only 1 main vehicular access point to the development site, the design has been amended such that there is now separate vehicular access for Blocks A, B, C & D (in Stage A) and for Blocks E, F & G (in Stage B). Pedestrian thoroughfares, whilst shared with vehicles, are now well defined and provided with pedestrian crossings.

Servicing

Waste and recycling is proposed to be conveyed via a chute system within each building to bin store rooms located in the basement levels. Prior to pick up, bins will be transported to the ground level bin storage area located adjacent to the garbage truck loading bay.

4 Planning Controls

4.1 The planning controls that relate to the proposed development are as follows:

a. State Environmental Planning Policy (State and Regional Development) 2011

Development of a type that is listed in Schedule 4A of the Environmental Planning and Assessment Act, 1979 is defined as 'Regional Development' within the meaning of SEPP (State and Regional Development) 2011. Such applications require a referral to a Sydney Planning Panel for determination. The proposed development constitutes 'Regional Development' as it has a Capital Investment Value (CIV) \$69,042,032 which exceeds the \$20 million threshold. While Council is responsible for the assessment of the DA, determination of the application will be made by the Sydney West Central Planning Panel.

b. State Environmental Planning Policy (Infrastructure) 2007

- i. Clause 45 requires that written notice be provided to the local electricity supply authority for any development carried out within or immediately adjacent to an easement for electric purposes. A 6m electricity easement runs adjacent to the northern boundary of the site and burdens Lot 13. Accordingly, the application was referred to Endeavour Energy, who raised no objection and provided recommendations.
- ii. Clause 104 ensures that the RMS is given the opportunity to comment on development nominated as 'traffic generating development' under Schedule 3 of the SEPP. Schedule 3 identifies development involving more than 300 dwellings or 200 car spaces. The application proposes 300 dwellings and 379 car parking spaces and accordingly was referred to the RMS for comment. The RMS raised no objection to the development and did not impose any conditions. In accordance with Clause 104(4) of the SEPP, a copy of any determination will be forwarded to the RMS.

c. State Environmental Planning Policy No. 55 (Remediation of Land)

SEPP 55 aims to provide a state wide planning approach to the remediation of contaminated land. Where contamination is, or may be, present, the SEPP requires a proponent to investigate the site and provide the consent authority with the information to determine whether the site is suitable for its intended use.

In 2003, a Site Audit Statement (SAS) and Site Audit Report were issued for the site known as the 'Northern Residential Lands'. At that time, the site was considered suitable for standard residential use without the requirement for further remediation.

Due to uncontrolled stockpiling of dumped materials across the site subsequent to the issue of the 2003 SAS, a Phase 1 and Phase 2 Environmental Site Assessment was conducted as well as a number of other contamination assessments, which identified that chlorinated ethene, benzo(a)pyrene and petroleum hydrocarbon contaminated soils required remediation. The environmental assessments also identified asbestos containing materials in the stockpiled materials and soils which also required remediation.

The results of the environmental site assessments indicate that the site can be made suitable for the proposed residential land use following the development and implementation of a suitable remedial and management strategy for the identified contamination.

JBS&G Australia (formerly JBS Environmental) was engaged by Boral to prepare a Remedial Action Plan (RAP) for the site. The RAP concludes that, subject to the successful implementation of the measures detailed in the RAP, it is considered that the site (Lots 11, 12 & 13 in DP 1162280, Butu Wargun Drive, Pemulwuy), can be made suitable for the proposed land uses associated with the proposed residential development.

Council's Environmental Health Unit has assessed the application and considers the Remedial Action Plan to be satisfactory, and has requested submission of the Validation Report once works are completed.

With regard to Clause 7 of SEPP 55, Council is satisfied that the site can be made suitable for the proposed use.

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

A BASIX Certificate has been lodged as a part of the DA, as well as a NatHERS (Nationwide House Energy Rating Scheme) assessor certification. The BASIX certificate indicates that the development has been designed to achieve the required water, thermal comfort and energy scores.

e. State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

SEPP 65 and the associated Apartment Design Guide (ADG) apply to the development as each building is more than 3 storeys in height and contain more than 4 dwellings. The application is accompanied by a design verification statement from a registered architect addressing the 9 'design quality principles'. The design verification statement has been assessed as being acceptable.

Clause 28 of the SEPP requires a consent authority to take into consideration the provisions of the ADG in the assessment of any application. The proposed development is considered acceptable having regard to the requirements of SEPP 65 and the ADG. A detailed assessment against the provisions of the ADG is provided at **Attachment 4**.

f. Holroyd Local Environmental Plan (HLEP) 2013

The Holroyd LEP 2013 applies to the site. Pursuant to HLEP 2013, the site is zoned R4 High Density Residential. The proposed residential flat buildings, which are defined as *a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing*, are permitted within the zone with development consent and are considered to be consistent with the objectives of the zone.

As noted above, under the previous plan applying to the site (SEPP 59) and the accompanying Precinct Plan, the site was identified for the purpose of multi unit housing, which included apartments.

The development is generally consistent with the provisions of the LEP with the exception of the height of buildings development standard. The applicant has submitted a written request justifying the proposed variation to the development standard and considers that strict compliance is unreasonable and unnecessary in the circumstances of the case. The variation is discussed in further detail in Section 5 below. A detailed assessment against the provisions of the HLEP is provided at **Attachment 5**.

g. Holroyd Development Control Plan (HDCP) 2013

The Holroyd DCP 2013 applies to the site. The development is consistent with the provisions of the DCP with the exception of building height. The proposed variation is discussed in further detail in Section 5 below. A detailed assessment against the provisions of the HDCP is provided at **Attachment 6**.

5 Key Issues

5.1 Variations to HLEP 2013 development standards

The proposed variation to the height of buildings development standard requested by the Applicant under Clause 4.6 of HLEP 2013 is discussed below:

a. Height of buildings variation:

The maximum permissible height of buildings on the site is 12.5 metres as per the Height of Buildings Map pursuant to the Holroyd LEP 2013. The proposed heights and extent of variations are reflected in the table below.

Block	Building RL*	Lowest NGL	Height	Variation
B	93.8	80.3	13.5 metres	1 metre / 8%
C	93.8	79.8	14 metres	1.5 metres / 12%
D	99.0	85.9	13.1 metres	0.6 metres / 4.8%

* at highest point in metres above NGL

Whilst the height of buildings standard in the LEP is an important consideration, it is noted that the DCP contains maximum RL height limits for development in close proximity to Prospect Hill, a state-listed heritage item. The max. RLs were developed in consultation with the NSW Heritage Office having regard to the Prospect Hill Conservation Management Plan.

At Pre-DA stage, the proposed concept plans showed significant departures in height from the max. RLs (i.e. there was a proposed RFB on the upper level within the Prospect Hill special zone, that exceeded the max. 100 RL by 4 storeys). Advice from Council at the time stated that the RLs were to be maintained and exceedances to the LEP height of 12.5m would be considered so long as the RLs were not exceeded.

The building proposed to be located within the Prospect Hill Special Zone was deleted altogether. However, the original plans as submitted still showed height exceedances for Blocks B, C & F, up to 5 metres above the DCP RL heights.

At the request of Council, the initial DA plans were subsequently amended and the upper levels of Blocks B, C & F were deleted, and compliance with the DCP RLs were generally maintained (with the exception of the clerestory roofs, which were suggested by Council to provide all-weather protection to the internal areas of each building). In the latest iteration, skillion roofs have also been added in order to break up the long horizontal roof line of Buildings E, B & C, as requested by Council.

Compliance with the DCP RLs has meant that, in parts, the LEP height of 12.5m has been exceeded. However, this is more a product of the site's steep topography than anything else.

As required, a Clause 4.6 Variation was submitted in support of the application. Clause 4.6 allows the consent authority to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. The consent authority may grant the exception as the Secretary's concurrence can be assumed where clause 4.6 is adopted as per the Department of Planning Circular PS 18-003, dated 21 February 2018.

The applicant has submitted a written request to vary the height of buildings standard. Based on various case law established by the Land and Environment Court of NSW, such as *Four2five P/L v Ashfield Council [2015] NSWLEC 9*, *Randwick City Council v Micaul Holdings P/L [2016] NSW LEC7* and *Zhang and anor v Council of the City of Ryde [2016] NSWLEC 1179*, a 3 part assessment framework for a variation request proposed under Clause 4.6 has been considered and an assessment of the proposed variations following the 3 part test is discussed in detail below.

1. Is the proposed development consistent with the objectives of the zone?

R4 High Density Residential zone objectives:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Applicant's justification:

The proposal ensures that the high density character envisioned for the land parcel is achieved. In addition, the proposal will complement and enhance the local streetscape by virtue of the careful siting of the development and the landscape embellishment works within the front setback areas and to Prospect Hill.

Planner's comment:

It is considered that the proposal is consistent with the objectives of the zone as it will provide for the housing needs of the community within a high density residential environment.

2. Is the proposed development consistent with the objectives of the development standard which is not met?

Height of buildings standard objectives

- (a) *to minimise the visual impact of development and ensure sufficient solar access and privacy for neighbouring properties,*
- (b) *to ensure development is consistent with the landform,*
- (c) *to provide appropriate scales and intensities of development through height controls.*

Applicant's justification:

The current development proposal is consistent with the RL set by Holroyd DCP, and the proposal remains consistent with the objectives based on the following:

- All built form heights are complying with the RL DCP heights that ensures that view to/from the Ridgeline Park and Prospect Hill is protected.
- Buildings have been stepped to address the site's steep cross-fall that will contribute towards minimising building height, bulk and scale when viewed from the street level.

- The size of the site permits sufficient separation of building on site and also from neighbouring land parcels and also have negligible impacts in terms of privacy and overshadowing to adjoining properties.
- The increased height and modulation of building locations enables greater amenity to the proposed units through better solar orientation and increased levels of natural ventilation.
- The proposed development will permit the site to develop to its full zoning potential whilst complementing the future vision envisioned for the site by providing a residential flat building that provides good address to the street frontage.
- The proposed development complies with key planning controls applying to the proposal including FSR, landscape, deep soil zones and communal open space.”

Planner’s comment:

The variations are minor, ranging from 600mm or 4.8% for Building D to 1.5 metres or 12% for Building C, and are primarily associated with the significant slope of the site.

Having regard to the photomontages provided with the amended proposal, it is considered that the ridgeline of Prospect Hill is maintained from the 8 key vantage points identified in the Prospect Hill Conservation Management Plan, and the views from Prospect Hill to the east are not affected. In this regard, it is considered that the RLs contained in the DCP are correct in their intent to maintain views to and from Prospect Hill.

The shadow and solar access diagrams accompanying the application demonstrate that the proposal does not result in any significant adverse impacts on surrounding properties and that an appropriate number of dwellings within the development comply with the solar access requirements.

3. a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? And;

Applicant’s justification:

Strict compliance with the prescriptive building height requirement is unreasonable and unnecessary in the context of the proposal and its unique circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The design response aligns with the intent of the control and provides for an appropriate transition to the adjoining properties.

The proposal promotes the economic use and development of the land consistent with its zone and purpose. Council is requested to invoke its powers under Clause 4.6 to permit the variation proposed.

Planner's comment:

As the proposal is consistent with the objectives of the height of buildings control, and there is no significant adverse impacts associated with the variation having regard to privacy, overshadowing, and maintaining views, strict compliance with the development standard is considered to be unreasonable and unnecessary in the circumstances of the case, as the proposed built form is considered to be a satisfactory and acceptable outcome for the site.

3. b) Are there sufficient environmental planning grounds to justify contravening the development standard and therefore is the applicant's written justification well founded?

Applicant's justification:

- Adopt an appropriate Urban Form, and Quality Common Open Space:

The proposal provides for a variety of building heights and building modulations, with the development distributed across seven (7) separate buildings to achieve a series of buildings in a landscaped setting that substantially exceeds the required levels of landscaped area, deep soil, and common open space.

It also enables the proposal to achieve greater than the minimum required levels of solar access and natural ventilation to dwellings to present a more suitable and site responsive layout of the buildings.

Strict compliance to the height through flattening of the buildings to achieve the 12.5m control would mean larger floorplates that reduces the design merit by removing quality landscaping and common open space with a northern aspect and would provide a homogenous building height with limited design merit.

- Retain the Heritage View Corridors:

When having regard to the DCP height controls applying to the proposal- being the RL controls- that have been implemented specifically for the site in order to maintain view-lines to and from Prospect Hill.

The site has been designed with the intention to comply with RL under Holroyd DCP in order to ensure that view to/from the Ridgeline Park and Prospect Hill is protected. A key consideration in the variation request is that technical compliance with the 12.5m control to Block E, G, A, and D would substantially exceed the RL controls contained within the DCP. Further the top most portion of the site has remained undeveloped given that any building at the western edge of the site would break the DCP RL control. Therefore the building height and mass has been modulated across the site to respond to the RL view line controls which is clearly a site specific design response and a better planning outcome on the site.

Strict compliance to the height through adopting the 12.5m height control in the LEP, and manipulating building mass further to Blocks E, G, A, and D would breach the RL control and impact on view corridors to Prospect Hill.

- Response to Topography:

It is also noted that the stepped building form is a direct design response to the excessive cross-fall experienced by the site, noting that the DCP acknowledges that on steep sites, the storey control can be exceeded and it is suitable to have consideration to the overall relative heights on the site- i.e. those buildings that breach the height control sit lower in the landscape than the buildings further to the west when having regard to natural topography on the site. Providing additional height in the central portion, and lower heights at the edges, is a more responsive design outcome that mitigates views to Prospect Hill and impacts surrounding properties.

- Articulate / Undulated Roof Form:

The roof form has been revised to incorporate an articulated/undulated roof form to emulate the topography of Prospect Hill. The roof form will provide visual interest to the proposal whilst having negligible impact on the amenity of neighbouring properties in terms of overshadowing or privacy.

- Full Compliance with the DCP Controls:

The departure enables full compliance with all DCP controls, including the maximum permitted RL heights contained in the DCP.

Planner's comment:

It is considered that the above arguments have merit and the proposed variation to the height standard would result in a better design outcome than would if strict compliance was enforced, particularly having regard to the maximum RL heights prescribed within the DCP and the associated visual impact to Prospect Hill. In this regard, it is considered that there are sufficient environmental planning grounds in this case to warrant varying the LEP height standard.

Conclusion:

Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 subclause (3) and that the proposed development will be in the public interest as it is consistent with the objectives of the height standard and the objectives for the zone in which the development is proposed to be carried out.

5.2 Heritage – Impact to Prospect Hill

Prospect Hill is the estate's primary topographical and historical feature. Listed on the State Heritage Register, the Prospect Hill Conservation Area runs north-south through the middle of the estate. Prospect Hill is an elevated ridgeline that was used by Aboriginals as a vantage point and for navigation. Prospect Hill also became a landmark reference point for European settlement.

Whilst the subject site itself is not heritage listed, Prospect Hill is located directly adjacent to the subject site. In this regard, the application was referred to Council's Heritage Advisor for review as well as the the Office of Environment and Heritage. Provided below is a summary of their comments.

Heritage Advisor

Having regard to the amended design, Council's Heritage Advisor stated:

Generally, the impact on views from the lower levels looking up toward the ridge is acceptable. However, the view looking down from the ridgeline and higher elevations is negatively impacted by the expanse of unlandscaped and unarticulated roof. It is recommended that the roof forms be varied and the flat areas of roof be landscaped as communally accessible terraces.

In response, the application was further amended to incorporate skillion roofs, as well as a green roof system to all buildings within the development using 'VersiDrain' technology. 'VersiDrain' is a lightweight modular system comprising a network of cells to store and drain water for the installation of green roofs.

Council's Landscape and Tree Management Co-ordinator has assessed the proposed green roof system and the technology behind the concept, and has indicated that the design would be self-sustainable. Furthermore, the low height grasses proposed by TaylorBrammer would have no problem surviving in this format, and would require little if any maintenance.

The proposed low height grass plantings are intended to replicate the grassed hillside that is located adjacent to the site to the north and the contours of the site as it previously existed. The proposed green roof concept is not a new technology and has been demonstrated to improve stormwater management by reducing runoff and improving water quality, conserve energy and increase the life of roofing membranes. The green roof concept as currently proposed is supported by Council.

Following further review of the amended design, and accompanying Heritage Impact Statement, Council's Heritage Advisor has outlined in his opinion that *the amendments made will not add any additional negative impacts on the setting and heritage significance of the Prospect Hill Conservation Area, that is an item listed on the NSW State Heritage Register.*

NSW Office of Environment & Heritage

Whilst the site is immediately adjacent to Prospect Hill, Lots 12 & 13 are outside the boundaries of the state-listed item, and in this regard, approval under the Heritage Act is not required. Notwithstanding, given its proximity, the original and amended application was forwarded to the Heritage Office for comments.

In response to the original design, the Heritage Office made the following recommendations:

- *Remove blocks A and D and reduce the height of the remaining RFBs to allow a reading of the topography and reduce adverse impacts on views to and from Prospect Hill and the landmark qualities of the place;*
- *Increase the landscaped buffer on the western and northern boundaries of the site;*
- *Incorporate additional landscaping across the site to soften the appearance of the development in views to and from Prospect Hill; and*
- *Further articulate roof forms to break up the bulk of the proposal to better mitigate adverse heritage impacts.*

In response to the comments raised, the application was amended as follows:

- The upper level of Blocks B, C & F were removed (thus complying with the max RL heights in the DCP). Blocks A & D were not removed, with the applicant arguing the following:

The removal of Blocks A and D as suggested would not result in any perceivable increased benefit having regards to viewing of Prospect Hill. View analyses have been undertaken from several points around the area (identified within the CMP). These view analyses clearly show that views of the ridgeline of Prospect Hill are retained in an acceptable manner and that the modifications undertaken relating to the height of the development result in a development that allows for Prospect Hill to be read and viewed from key locations around Greystanes. These view analyses also show that the removal of the buildings in question would not result in a 'better' outcome for view to Prospect Hill.

- Additional landscaping has been provided across the site with landscaped buffers increased.
- Roof forms have been altered through the deletion of upper levels on Blocks B, C & E, which exceeded max RL heights, and a green roof provided to each building to soften views from Prospect Hill.

The application was further amended to incorporate skillion roofs in order to break up the long horizontal roof line of Buildings B, C & E, as requested by Council. Further survey analysis of Prospect Hill was undertaken, which found that the ridgeline of Prospect Hill was much higher than depicted in the original plans. The new survey information was cross-referenced with the topographic information contained within Council's mapping system and found to be correct. The correct ridgeline is shown as a backdrop in the amended architectural plans (refer Drawing No. DA11). This plan illustrates that the maximum RL heights of the proposed buildings are well below the ridgeline, which indicates that the max. RL heights prescribed in the DCP are acceptable.

Amended photomontages were prepared which depicts the development from the 8 key vantage points, illustrating that the views to and from the ridgeline are maintained.

The amended application was forwarded to the Heritage Office, and the following comments were received:

We note the amended proposal is fundamentally the same as the earlier proposal. Steps taken to reduce the impacts include reduced building height adjacent to the north-west (common) boundary and native perimeter plantings to reflect the existing character and soften the visual impact. However, the density of development would still have an adverse impact.

For such a large development, a smaller building type (i.e. smaller building units) and increased soft landscaping within the site is recommended. Skillion roofs have also been introduced. However, the design does not relate to the built form, stepping down with the topography, and for this reason, it does not assist in reducing the perceived building bulk. In view of the above, it is recommended that the proposal be amended to better respond to the unique characteristics of the site.

With regard to the above comments provided by the Heritage Office, the following points are made.

Firstly, the maximum RL heights as provided in the DCP, which were developed in consultation with the Heritage Office, do step down the site in an east-west manner, which generally follows the site's topography. However, a max RL of 94m is identified

through the middle of the development site in a north-south alignment. In other words, building to this maximum would achieve a common height, and in the case of the earlier proposal, a monotonous height plane when viewing Buildings B, C & F from the west.

It is considered that the skillion roofs do break up this horizontality. Additionally, the vertical elements have been altered so that each building now appears to be broken up into bays or segments, which further softens the horizontal nature of the development, and breaks up the perceived bulk. This is illustrated in the architectural plans, but is highlighted in the photomontages, in particular Locations 0 and 8 (Refer Attachment 1).

With regard to soft landscaping, it is noted that, due to its steep slope, the development is provided with 15,597.2sqm (40.7%) of soft surface landscaping, which is 4,867.3sqm in excess of the required minimum landscaped area as prescribed in the DCP.

Strict adherence with the recommendations made by the Heritage Office is considered to be unreasonable noting that the amended design ensures that view corridors and vistas are maintained, additional landscaping is provided to soften the visual bulk of the proposal when viewed from the public domain and within the development, and articulation of buildings to break up external facades. In addition, Council's Heritage Advisor has outlined that the amended design will not add any additional negative impacts on the setting and heritage significance of the Prospect Hill Conservation Area.

5.3 Urban Design

During the briefing session to the Panel in relation to the original development proposal, the Panel recommended that the application be provided to an urban designer to provide commentary on the development, noting its size and scale. Accordingly, AE Design Partnership was engaged by the applicant to undertake an urban design analysis of the proposal.

The urban design report was peer reviewed by Council's in-house urban designer, who raised a number of concerns with regard to the report itself, and made a number of recommendations to incorporate into the design of the buildings, namely the following:

- Provide greater separation between buildings in order to facilitate view corridors along.
- Comply with the ADG with regard to building separation between Buildings B & C, which would have the added benefit of providing a greater view corridor through the site.
- Articulate or modulate the buildings to break up the horizontal roof line of Buildings B, C & E, which have a similar height due to the max. RL height limits outlined in the DCP.

The applicant has argued that there are no DCP or other controls which require the provision of view corridors along New Road 2 and New Road 3 in the approved (but as yet unconstructed) residential subdivision on Lot 11, which is the vacant allotment to the east of Lot 13 (or Stage A). Given the topography of the site, it is difficult to rearrange the siting of the buildings in order to align with the road pattern on the adjoining subdivision.

The applicant has further argued that they have facilitated view corridors through the development site and have maintained the integrity of views to and from Prospect Hill as identified within the Conservation Management Plan, which identifies 8 key vantage

points that need to be preserved. This is reflected in the photomontages that accompany the application. It is noted that Council's Consultant Heritage Advisor has stated in their comments that the development does not restrict views to or from Prospect Hill.

The application however, was amended to comply with building separation between Buildings B & C, through the deletion of units on the upper levels in order to achieve the required 18m at the 5th storey level. In addition, skillion roofs at either end of each building were introduced in order to break up the horizontal nature of the roof line, particularly for Building B, C & E.

Varying roof heights were recommended to provide greater articulation or modulation of roof lines. The amended design incorporates skillion roofs to break up the horizontality of the previous roof line/form. The modified roof design is considered acceptable in addressing the horizontality roof form concerns raised with the previous design.

Further to the above, an amended Urban Design report was also undertaken to address the flaws or deficiencies in the report itself as identified by Council's in-house urban designer. The amended report is considered satisfactory.

5.4 Traffic Impact

Council's DCP identifies Butu Wargun Drive as a 'Distributor' road providing an east-west link through the estate, carrying indicative traffic volumes of 11,000 vehicles per day on completion of the estate. This equates to 1,100 two-way peak hour vehicle movements. Currently, Butu Wargun Drive carries between 700-750 vehicle movements per hour as per the traffic impact assessment accompanying the development application. The report states that, as per the RMS traffic generation rates, 300 units will generate 90 vehicle movements per hour into and out of the site during the AM and PM peak periods.

Additionally, potential development on Lot 11 could yield approximately 390 dwellings, which would generate 117 vehicle movements per hour. The cumulative effect is calculated at 213 vehicle movements per hour in the peak periods. In this regard, the estimated carrying capacity of Butu Wargun Drive will still not be reached. The traffic report concludes that traffic generation will not result in peak hourly flows above the design levels of the surrounding road network, and there will be no change to surrounding intersection performance under future traffic loads.

Given the physical nature of the internal driveway layout proposed, the traffic environment within the development site itself will be quite slow. So in this regard, whilst the development will accommodate 90 vehicular movements per hour in peak periods, the internal traffic environment will be relatively safe having regard to pedestrians walking through the site.

The proposed design effectively utilises 1 entry/exit point, although this entry/exit is then split into two separate entrances for the Stage A and Stage B basement levels. This means that vehicle movements into and out of the site, particularly during the morning peak periods, will be slow. This is not necessarily a bad thing, as vehicular/pedestrian conflict is reduced due to slower vehicle speeds, and the impact on the surrounding street network will also be gradual.

The original design included a shared pedestrian/vehicular area right at the entry to the development site. Both Council and the Panel identified this as a point of conflict

between pedestrians and vehicles. As noted above, the amended design provides two separate entrances for the Stage A and Stage B basement levels, with a pedestrian crossing provided between these two vehicular driveways. This design provides a clear demarcation between pedestrian and vehicular movement, giving pedestrians clear and unambiguous priority at this point of the site.

Whilst additional vehicle entry/exit points into and out of the site would be ideal, it is noted that Council's Traffic Section were unsupportive of any additional access points from Butu Wargun Drive.

In order to ensure that appropriate and safe vehicular access is achieved to and from the subject site from the surrounding road network (via Winnima Circuit and Kumar Place), road widening accommodating two way traffic for 10.5m waste vehicle and B99 vehicle, in both directions simultaneously, is proposed to the intersection of Winnima Circuit and Kumar Place. The road widening would enable the smooth transition and vehicular movement from the neighbouring road network, into the development site, and permit the continuous path of travel for pedestrians. Council's Traffic Section has recommended the road widening and associated road works as conditions of consent to address initial concerns raised relating to vehicular access and manoeuvring to and from the subject site.

5.5 Stormwater Management

The subject site is not affected by mainstream or overland flooding. The development incorporates a series of pits and pipes to direct stormwater from the site to Council's street drainage system in Butu Wargun Drive, adjacent to the proposed public park. Stormwater is then discharged into Greystanes Creek and is conveyed to the estate's own detention system, known as the former CSIRO basin located at the northern end of the estate.

Council's Engineering Section has assessed the development and has raised no objection to the proposal subject to the imposition of appropriate conditions of consent.

6 External Referrals

6.1 The subject Development Application was referred to the following public agencies as summarised in the table below.

Referral Agency	Comment
Sydney Water	No objection and no conditions.
Roads and Maritime Services	No objection and no conditions.
Holroyd Police Local Area Command	No objection, subject to recommendations
Endeavour Energy	No objection, subject to recommendations
Office of Environment & Heritage	Unsatisfactory

7 Internal Referrals

7.1 The subject Development Application was referred to the following internal sections of Council as summarised in the table below:

Referral	Comment
Development Engineering Section	No objection, subject to conditions.
Landscaping Section	No objection, subject to conditions.

Referral	Comment
Traffic Section	No objection, subject to conditions.
Environmental Health Unit	No objection, subject to conditions.
Waste Management Section	No objection, subject to conditions.
Strategic Planning Section	No objection
Parks	No objection, subject to conditions.
Heritage Advisor	No objection
Urban Design	Unsatisfactory, however considered acceptable

8 Public Comment

- 8.1 The application was placed on public exhibition for a period of 21 days from 21 September 2016 to 12 October 2016. Letters were sent to adjoining and surrounding owners and occupiers, an advertisement was placed in the local paper and a notice was placed on the site. In response, Council received 7 submissions, including 2 pro-forma letters.
- 8.2 An amended application was re-notified for a further period of 14 days from 9 May 2018 to 23 May 2018, during which time 2 further submissions were received.
- 8.3 The concerns raised in the 9 submissions are addressed below:

Concern	Comment
<u>Height of buildings</u> The height of buildings exceed the DCP external wall height of 10m.	This matter is discussed in detail in Section 6 of this Report. The proposed height variations and associated clause 4.6 request are supported in this instance for the reasons outlined in Section 6 above.
<u>Traffic congestion and safety</u> Additional units will create more traffic and an unsafe roads within the estate. The estate is already experiences speeding, noisy and hoon cars.	The traffic report submitted in support of the application indicates that the cumulative impact of additional vehicular movements generated by the subject development and the future development on Lot 11 will still not reach the identified carrying capacity of Butu Wargun Drive. Council's Traffic Engineer has assessed the submitted plans and documentation and has advised that the proposal is acceptable, subject to conditions.
<u>Parking</u> Cars within the estate already park illegally.	This report identifies that the development provides more than the minimum required parking. Further to this however, anecdotal evidence indicates that basement parking in multi-unit

Concern	Comment
<p>Shopping centre parking within the estate is already congested.</p>	<p>developments tends to be more utilised than stand-alone garage parking in detached and dual occupancy dwellings. For example, due to strata management rules and regulations, people are generally unable to store items in basement parking spaces, as is sometimes the case for garages within detached and dual occupancy developments, and are actually used for the parking of cars.</p> <p>It is further noted that both sides of Butu Wargun Drive, adjacent to the development site, contains significant on-street parking facilities, which are rarely used at all.</p> <p>There is no evidence of any illegal parking within the car parking area of the Pemulwuy Marketplace shopping village, or that the car parking area is at capacity. Nonetheless, the issue of parking at shopping centres is self-regulating to a degree, with customers generally choosing facilities that are more convenient. It is noted that there is also a large shopping centre facility located along Merrylands Road in Greystanes, approximately 2kms from the estate, which is also serviced by frequent bus services travelling along Merrylands Road.</p>
<p><u>Visual Impact</u></p> <p>The proposed high-rise buildings will obstruct views to Prospect Hill, to the north and to the east.</p>	<p>Council's consultant heritage advisor (also an architect), has concluded that the development will not obstruct views to or from Prospect Hill. In this regard, city views from Prospect Hill will still be maintained (it is noted that there are no residences located to the west of the site, thus any views eastwards to the City would be undertaken by people walking along the ridgeline).</p> <p>Whilst there is potential for views to the north to be obstructed, it is noted that the proposed residential flat buildings are set into the site, meaning that the lower portion of each building is below Butu Wargun Drive, with the upper levels protruding above the road level.</p>

Concern	Comment
<p>The slope is very steep for high-rise buildings and the development would be highly visible from surrounding suburbs and therefore would have a huge impact on estate aesthetics. It should not affect homes along Nijong Drive.</p>	<p>Additionally, each building is orientated along a north-south alignment, so that views to the north between buildings would still be achievable.</p> <p>The steep slope of the site is not prohibitive to RFB development. With regard to impact, as noted above, Council's consultant heritage advisor has concluded that the development will not obstruct views to or from Prospect Hill. Additionally, the 8 photomontages illustrating the proposed development from the 8 key vantage points from within and surrounding the estate, including the roundabout along Butu Wargun Drive in close proximity to Nijong Drive, shows a development within a landscaped setting that is acceptable.</p>
<p><u>Inadequate infrastructure</u></p> <p>The Lakewood side of Pemulwuy already has no recreational facilities, no tennis courts, no basketball courts, and not even a paved walking trail around the lake.</p> <p>The density proposed is extreme and is inconsistent with current levels.</p> <p>Local schools are already at capacity.</p>	<p>The proposed development provides its own recreational infrastructure, which includes a half-court basketball facility. The developer also proposes to dedicate 2,451sqm of open space as a public park for use by all residents of the estate.</p> <p>The development will also generate \$2,937,000.00 in Section 7.11 development contributions (formerly s.94) to assist Council in the provision of infrastructure within the estate.</p> <p>Since the Greystanes Estate Precinct Plan was developed in 2002, this site has been designated for higher density residential development. The proposed increase in population is in line with estimated targets for the estate, and in fact is required to achieve monetary targets for the provision of infrastructure through Section 7.11 development contributions.</p> <p>A Social Impact Assessment (SIA) was undertaken by GHD who provided an analysis of the capacity of surrounding public and private educational facilities. GHD consulted with the Dept. of Education, who indicated that the estimated increase in children would not trigger the need for any new schools, and</p>

Concern	Comment
<p>There is already an over-supply of units affecting the Sydney housing market. There is no such need for a community like Pemulwuy far from train lines and transport hubs.</p>	<p>that existing schools could accommodate the planned growth.</p> <p>It is considered that the supply of units within the Sydney housing market has moderated growth such that currently housing is more affordable, however, it is still unobtainable for some. Units provide a more affordable option in a city that is experiencing significant levels of population growth.</p> <p>It is noted that Pendle Hill Station is located approximately 2km from the Pemulwuy Estate. Additionally, Greystanes Road and Merrylands Road are provided with regular bus services as are Driftway Drive and Butu Wargun Drive within the estate itself. The Transitway is also located 1.5km to the south of the estate. In this regard, Pemulwuy is considered to be adequately service by public transport options, and is thus similar to surrounding suburbs.</p>
<p><u>Rubbish Removal</u></p> <p>The estate already experiences problems with rubbish removal and the dumping of rubbish.</p>	<p>The development is provided with its own garbage system within each building as well as its own loading dock for the removal of general waste and recyclables. In this regard, there will be no storage of bins along the road frontage.</p> <p>The illegal dumping of rubbish is not a consequence of this proposal, and any instances of illegal dumping should be reported directly to Council's Environmental Health Section.</p>
<p><u>Notification</u></p> <p>This application was not exhibited in a manner that reached the residents of Pemulwuy, and is misleading.</p>	<p>The application was exhibited in accordance with the requirements of Part E of the Holroyd DCP 2013, on 2 separate occasions, each for a period of 21 days and 14 days respectively. Public exhibition included letters sent to adjoining and surrounding owners and occupiers, an advertisement in the local paper and a notice placed on the site. The exhibition documents clearly identified the development that is</p>

Concern	Comment
	proposed, and provided residents with the ability to view all documents at Council's administration centre.

- 8.4 The grounds of objection raised in the submissions have been satisfactorily addressed as part of the assessment and are not considered sufficient to warrant refusal of the proposal.

9 Section 4.15 Consideration

9.1 Consideration of the matters prescribed by Section 4.15 of the Environmental Planning and Assessment Act is summarised below:

Head of Consideration	Comment	Comply
a. the provisions of: (i) any environmental planning instrument (EPI) (ii) any draft environmental planning instrument (EPI) (iii) any development control plan (DCP) (iiia) any planning agreement (iv) the regulations	The provisions of relevant EPIs and DCPs relating to the proposed development are summarised in Section 4 of this report and have been satisfactorily addressed in Section 5. There are no draft environmental planning instruments that relate to the application, and there are no existing or proposed planning agreements that relate to the development.	Yes
b. the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	An assessment of key issues relating to the proposed development is provided in Section 5 of this report, and it is considered that the likely impacts of the development, including traffic, parking and access, bulk and scale, heritage, stormwater quality, waste management, soil and groundwater quality and the like have been satisfactorily addressed.	Yes
c. the suitability of the site for the development	The subject site is zoned R4 High Density Residential pursuant to Holroyd LEP 2013. Site and environmental constraints relating to site contamination, salinity, stormwater drainage and the like have been satisfactorily addressed as a part of the application. The site, which is located within an existing estate, has always been designated for higher-density development. The site is considered suitable for the proposal.	Yes
d. any submissions made in accordance with this Act or the regulations	The application was notified to adjoining and surrounding owners and occupiers and advertised in the local newspaper in accordance with the Regulations and the Holroyd DCP 2013. Submissions received have been addressed in Section 8 of this report.	Yes
e. the public interest	The proposed development is for the purpose of 7 residential flat buildings under Holroyd LEP	Yes

Head of Consideration	Comment	Comply
	2013 that will not pose any unacceptable impacts on the amenity of adjoining and surrounding properties within the Pemulwuy Estate. Accordingly, it is considered that the proposal is in the public interest.	

10 Conclusion

- 10.1 The proposed development has been assessed against the matters for consideration listed in Section 4.15 of the Environmental Planning & Assessment Act 1979 and is considered to be satisfactory. In this regard, it is considered that the site is suitable for the proposed development, the likely impacts of the development have been satisfactorily addressed and the proposal is in the public interest.
- 10.2 The proposal is permitted within the R4 High Density Residential zone pursuant to the Holroyd LEP 2013 and is consistent with the objectives of the zone. The proposal also satisfies the criteria outlined within the Holroyd LEP 2013, SEPP 65, the Apartment Design Guide and the Holroyd DCP 2013, with the exception of building height.
- 10.3 The application proposes a satisfactory built form for the site and the locality; is satisfactory with regard to heritage, site contamination, salinity and stormwater constraints; and will result in acceptable traffic, social and economic impacts subject to the imposition of suitable conditions of consent to satisfactorily control the development.

11 Recommendation

- 11.1 That the Development Application be approved by the Sydney West Central Planning Panel subject to the conditions provided at **Attachment 3**.
- 11.2 That the applicant and objectors be advised of the Sydney West Central Planning Panel's decision.