

Panel Reference	2017SSH023
DA Number	DA2017/0138
LGA	Georges River Council
Proposed Development	This application seeks development consent for consolidation of the existing allotments, demolition of existing structures, site remediation and construction of a mixed use development. The proposal includes a supermarket and two (2) retail tenancies with shop top housing for forty (40) units and three (3) basement levels of car parking including loading facilities.
Street Address	160-178 Stoney Creek Road Beverly Hills
Applicant/Owner	Applicant: SJB Planning Owners: Cuzeno P/L
Date of DA lodgement	18 May 2017
Number of Submissions	Two (2) submissions one containing seven (7) signatures to the amended proposal.
Recommendation	Refusal
Regional Development Criteria (Schedule 7)	Regional Development is defined in Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011. Development with a capital investment value (CIV) over \$20Million The CIV of this application as outlined in the Registered Quantity Surveyors Detailed Cost Report is \$22,357,500.
List of all relevant s4.15(1)(a) matters	• Environmental Planning and Assessment Act 1979. • Environmental Planning and Assessment Regulation 2000. • 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 (Building and Sustainability Index: 2004). • State Environmental Planning Policy (Vegetation in non-rural areas) 2017. • State Environmental Planning Policy (Infrastructure) 2007. • State Regional Environmental Plan No 2 – Georges

	River Catchment. • State Environmental Planning Policy (State and Regional Development) 2011. • Hurstville Local Environmental Plan 2012. • Hurstville Development Control Plan No 1.
List all documents submitted with this report for the Panel's consideration	• Applicant's response to reasons for deferral. • Architectural plans. • Revised Clause 4.6 Variation to Floor Space Ratio. • Landscape plan. • Remediation Action Plan • BASIX • BASIX Assessor Certificate • Deliveries and Loading Schedule • Objections • Council Assessment Report (SSPP) 9 October 2018. • Record of Deferral (SSPP) Meeting 9 October 2018.
Report prepared by	Mark Raymundo Senior Development Assessment Planner
Report date	28 May 2019

Summary of S4.15 matters Have all recommendations in relation to relevant S4.15 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, amended Clause 4.6 to Clause 4.4 Floor Space Ratio of the Hurstville Local Environmental Plan 2012.

Special Infrastructure Contributions Does the DA require Special Infrastructure Contributions conditions (S94EF)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	Not Applicable.
Conditions Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report.</i>	No, but will be available on the website when the report is published

Addendum Report

Executive Summary

On 9 October 18 the Sydney South Planning Panel deferred application development (DA2017/0138) which sought development consent for consolidation of the existing allotments, demolition of existing structures, site remediation and construction of a mixed use development

The proposal includes a supermarket and two (2) retail tenancies with shop top housing for forty (40) units and three (3) basement levels of car parking including loading facilities. The Panel considered the report and representations by the applicant and submitters.

The application was deferred for the following reasons;

- 1. Remediation Action Plan (RAP).** A satisfactory assessment of the RAP submitted by the applicant to Council is required.
- 2. Residential amenity of the proposed apartments.** In particular, the adequacy of cross-ventilation on levels 1 and 2 which appear to be dependent on the open corridor and light wells to achieve adequate ventilation; the use of the skylights and glazed lightwells to meet daylight access to the south facing apartments and the consideration of the additional heat load of these skylights and separation between neighbouring bedroom windows to address acoustic privacy and the acoustic amenity of the apartments fronting Stoney Creek Road.
- 3. Isolated site.** Access arrangements for the corner through the subject site need to be demonstrated and assured that such that reasonable development potential can be realised on this site.

4. **Pedestrian access to the development.** From Stoney Creek Road, the deletion of stairs to enable at-grade access into the arcade is required; from the rear lane, the entry to the retail arcade should be broad and open to the sky where possible to improve visibility, amenity and safety for pedestrians.
5. **Privacy and overlooking of neighbouring development.** Consideration of appropriate screening and fencing to the rear boundaries of the Beresford Street properties and 1 Lee Avenue to minimise visual and acoustic impacts of increased pedestrian usage is required.
6. **Safety and security of the public domain.** The rear lane needs to be treated to ensure pedestrian safety and vehicular conflicts are minimised while ensuring adequate accessibility to the Beresford Street rear garage is still maintained. On Lee Avenue, to ensure pedestrian safety on the footpath and improved sightlines and landscaped treatment is required to optimise visibility for penetration especially children and vehicles exiting the car park.
7. **Deliveries and loading.** Inclusion of defined times for loading and delivery to the supermarket to ensure neighbouring amenity, is required, as per a Traffic Plan of Management.
8. **An update of accompanying documentation** including the BASIX certificate is required”.

The proposal has been amended to address the reasons for the deferral. For the purposes of assessment, the amended proposal is described as follows:

Commercial Breakdown (Ground level)	Floor area
(Supermarket)	1,039sqm plus additional (374sqm) back of house (supermarket nominated on the plans)
Retail 1	233sqm
Retail 2	167sqm
Centre Admin and Amenities	69sqm

Unit breakdown:

Residential Unit Breakdown (Levels 1-4)	No. proposed 40 units
Studio	2
1 bedroom units	10
2 bedroom units	22
3 bedroom units	6
Total	40 Units

The development is proposing ground floor commercial spaces with residential units over. Under the provisions of SEPP65 the development is required to provide car parking in accordance with the RMS Guide to Traffic Generating Development. However this application has provided car parking in accordance with Council's Development Control Plan (DCP). The DCP has a higher rate of car parking nominated, under the definition of floor space ratio which references gross floor area,

carparking provided above that required for the development (in this instance the RMS criterion) is included as floor space.

Minimum Car Parking Requirement (Hurstville DCP)	Minimum Car Parking (RMS) as the site is located within 800m from Beverly Hills Train Station (Metropolitan – Subregional rate)	Car Parking Proposed	Compliance
Residential Studio: 1 – 2 bed = 1 3 bed = 2 Total = 46 Visitor space: 1 space per 4 dwellings = 10	1 bed = 0.6 2 bed = 0.9 3 bed = 1.4 Total = 35.4 (36) Visitor space: 1 per 5 apartments = 8	 46 10	 Yes Yes
Commercial 1 space per 50sqm = 36.26 (37)	Supermarket 4.2 spaces per 100 sqm = 42 Shops: 4.5 spaces per 100 sqm = 18	40	Yes
Minimum car parking spaces required = 93	104	198	Yes
Note: additional car spaces over minimum car parking requirement = 105	94		Yes, exceeds the required car parking prescribed by the HDCP.

Development Application Chronology

Date	Event
9 October 2018	Deferral by Sydney South Planning Panel.
12 October 2018	Additional information has been provided by applicant, the applicant has amended the proposal as follows; - Consolidation of the existing allotments, demolition of existing structures, site remediation and construction of a mixed use development. The proposal includes a supermarket and two (2) retail tenancies with shop top housing for 40 units and three (3) basement levels of car parking including loading facilities. - In detail the extent of the changes are listed per below;

	○ Deletion of four (4) units with landscaping breaks within the eastern portion of the building on levels 1 and 2. ○ Roof top communal area on level 3; ○ Deletion of one (1) retail tenancy and changes to commercial entries along Stoney Creek Road and Laneway; ○ Internal and external design changes; ○ The following accompanying documentation has been submitted; remediation action plan, architectural plans, landscape plan, delivery and loading schedule, revised clause 4.6 Exception to Development Standard for Floor Space (on western portion of site).
10 – 13 February 2019	Re-notification Period. In response, two (2) submissions with one containing seven (7) signatures were received. The key issues raised within the submission included; • Safety concerns due to increased traffic and pedestrian generated by proposal. • Impact and congestion to rear lane access to 159 Stoney Creek Road, Beverly Hills (Vet Clinic) including treatment emergencies. • Exceedance in Height of Building and Floor Space Ratio contrary to Hurstville Local Environmental Plan 2012. Request for the applicant to comply with the above controls. • Privacy impacts on adjoining residential properties facing Beresford Avenue (North north), and Lee Avenue (East elevation). Request for north facing balconies to be constructed having a balustrade height of 2m measured from the finished floor level of the balcony. • Request for the boundary fence height along the northern and eastern boundaries to be increased to 2.5m and to be constructed of concrete. • Request for no public access from Beresford Avenue and the Laneway due to privacy, access and safety issues. Concerns raised due to disruption/blocking of laneway during demolition, construction and after completion of construction.
24 May 2019	• Revised Clause 4.6 Exception to Clause 4.4 Floor Space Ratio to the eastern wing submitted by the applicant.

An assessment has been undertaken having regard to the reasons for the deferral, the applicant's response, applicable planning controls, relevant issues raised by objectors as per the below;

- 1. Remediation Action Plan (RAP).** A satisfactory assessment of the RAP submitted by the applicant to Council is required.

Applicant's response: "The applicant submitted a RAP on 24 September 2017 to Council. We note that within the "Scope" of the RAP there was a reference to

the establishment of a Site Management Plan (SMP), Environmental Management Plan (EMP), and Work Health and Safety Plan (WHSP) to be implemented during remediation and validation works. An updated RAP was submitted electronically to Council on 3 December 2018. The updated RAP requires the establishment of a Site Environmental Management Plan (SEMP) which is to be implemented by the principal remediation contractor during remediation works to ensure that statutory requirements have been met. The SEMP is effectively the consolidation of a SMP and an EMP. The SEMP is set out under Section 10 of the RAP, and ensures that the following issues will be addressed during remediation and validation works: site access; working hours, stormwater management, soil management, traffic management; noise, dust and odour control; and work health safety.

We understand that the RAP is under detailed review by Council Environmental Health Department and subject to the favourable assessment, it is considered that the RAP can be implemented via a standard condition of consent”.

Councils comment: A revised Remediation Action Plan prepared by Aargus dated 30 November 2018 was reviewed and is supported by Council’s Environmental Health Officer subject to conditions of consent. This was notified for 30 days in accordance with the provision of the SEPP. The proposal has adequately addressed the applicable considerations contained within State Environmental Planning Policy No 55 – Remediation of Land.

It is considered that this reason for deferral has been satisfied.

- 2. *Residential amenity of the proposed apartments.*** *In particular, the adequacy of cross-ventilation on levels 1 and 2 which appear to be dependent on the open corridor and light wells to achieve adequate ventilation; the use of the skylights and glazed lightwells to meet daylight access to the south facing apartments and the consideration of the additional heat load of these skylights and separation between neighbouring bedroom windows to address acoustic privacy and the acoustic amenity of the apartments fronting Stoney Creek Road.*

Applicant’s response:

“Natural Ventilation

The design has been amended to improve the residential amenity of the proposed apartments. In particular, the deletion of four (4) apartments at Levels 1 and 2 within the central and western components of the building has enabled significant reconfiguration and the inclusion of three (3) new landscaped void areas in the building form. The voids allow far greater natural air flow to permeate the building, and results in more apartments achieving natural cross ventilation in accordance with Objective 4B-3 of the Apartment Design Guide (ADG) without reliance on corridors and light wells.

The voids are located so that a number of the reconfigured apartments can take advantage from improved natural cross ventilation by orientating openings towards the voids.

The voids replace the three (3) light wells which have been deleted. The central void is in excess of 105m² in area, is landscaped at Level 1, and open to the sky above (through Level 2). The westernmost void has a north-south axis, and extends through the building at Levels 1 and 2. It ranges in width from approximately 3.5m to 2.5m, is 24m long (extending from the northern side through the entire building to the southern side), is landscaped at Level 1, and is open to the air above. The east-west access corridor which traverses the void is an open walkway, with 1.8m high fixed metal slat open louvred privacy screen to the south side of the walkaway (noting that the north side has a palisade balustrade).

The easternmost void is positioned opposite the open walkway to the Level 1 communal open space, creating a larger north-south axis which extends through the building at Levels 1 and 2, and which is landscaped (on the southern side) at Level 1 and open to the sky above. This void is similar in proportions to the westernmost void.

Solar Access

The amended design has also addressed the concerns of the Panel with respect to daylight access to south facing apartments. In particular, the design has been amended so that skylights and lightwells are no longer used to achieve compliance with daylight access requirements. Instead, the deletion of apartments and inclusion of the three (3) voids discussed above has benefited the design. Consequently, the amended design achieves greater compliance with the ADG solar access controls”.

Council comment: The amended proposal seeks a reduction from forty-four (44) units to forty (40) units. This results in a net reduction of four (4) units. These amendments relate to residential levels 1 and 2. Given the extent of changes sought the proposal has been considered against the key controls as per below:

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

The proposal has been considered in accordance with the applicable provisions as per below;

Clause	Control	Proposed	Compliance
CL. 30	Standards that cannot be used as grounds to refuse development consent or modification of development consent	The application has been designed having regard to the applicable provisions.	Yes

CL. 30(1)	(a) if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,	Proposed car parking complies with HDCP No. 1 requirements which require a rate above that of the RMS criterion. The breakdown of the car parking requirements against each criterion has been previously addressed within this report.	Yes
	(b) if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,	The internal floor area complies with the minimum units sizes: Studio 35sqm 1 bedroom units exceed 50m² 2 bedroom units exceed 70m² 3 bedroom units exceed 90m²	Yes
	(c) if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.	Ceiling heights comply with the minimum standards namely: Residential: 2.7m for habitable rooms for resident levels 1-4.	Yes
		Residential minimum slab to slab height to 3.1m (min) required and 3.0m proposed	No, it is noted that there is potential scope to achieve a minimum height of 3.05m due to the commercial floor to ceiling height exceeding

			4m which could be potentially conditioned. However the application is not supported for other reasons.
		Commercial 4m (min): proposed 4.5m	Yes
CL 30	(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to: - the design quality principles, and (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.	The proposal has been considered against the design quality principles and objectives of the Apartment Design Guide, see detailed discussion below.	Yes

The amended proposal is considered to adequately satisfy the Schedule 1 Design Quality Principles relating to; Context and neighbourhood character, Built form and scale, Principle 3: Density, Principle 4: Sustainability, Principle 5: Landscape, Principle 6: Amenity, Principle 7: Safety Principle 8: Housing diversity and social interaction and Principle 9: Aesthetics. Given the minor nature of the amendments to the original proposal sought, it was considered not necessary to re-refer the application to the St George Design Review Panel.

Apartment Design Guide (ADG)

The proposal has been considered in relation to the following applicable controls as follows.

Clause 28 – Consideration of Apartment Design Guide

The following table is an assessment against the design criteria of the 'Apartment Design Guide' (ADG) as required by SEPP 65.

Clause	Standard	Proposal	Complies
Objective 3D-1	1. Communal open space has a minimum area	23% (875sqm) communal open	No (1)

	equal to 25% of the site. - Where it cannot be provided on ground level it should be provided on a podium or roof - Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should: • provide communal spaces elsewhere such as a landscaped roof top terrace or a common room • provide larger balconies or increased private open space for apartments • demonstrate good proximity to public open space and facilities and/or provide contributions to public open space	space provided on level 1 (475sqm) and on the roof top on level 3 (400sqm).	
	2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid- winter)	100% direct sunlight achieved to both communal open spaces which are orientated to the north. Other landscaped embellished areas are located on level 1 which are orientated to the south however these do not form communal open space.	Yes
Objective 3F-1	Separation between windows and balconies is provided to ensure visual privacy is achieved.	Appropriate spatial separation between balconies and windows provided given the outward orientation of units and privacy treatment which includes glass	Yes

		blocks, offsets and screening. The numeric setbacks are nominated below.	
	Front setback align with adjoining developments	The front setback seeks a nil boundary setback to Stoney Creek Road and King Georges Road which is compatible with the character of the B2 Local Centre Zoning and built form context.	Yes
	Minimum required separation distances from buildings to the side and rear boundaries are as follows: <i>*R2 Low density residential to the north and east of the site</i>	For the purposes of assessment setback: North (rear) varying setback, East (side) varying setback, West – Nil South - Nil	
	Additional 3m setback with landscaping treatment.	Additional setback of 3m with sufficient landscaping on northern and eastern boundary interfaces Notes: Northern measurement to northern boundary and to the centre of Beresford Avenue – rear lane, Eastern measurement in middle of Lee Avenue Levels: Ground – Level 3	Yes
	Up to 12m (4 storeys)	Range (N): 15.2m – 32.42m	Yes, subject to conditioning of deletion of Unit 1.03,
	Habitable rooms and balconies = 6m		

			2.03, 3.03 northern window however not supported for other planning reasons
	Non-habitable rooms = 3m	Range: (E) 11.1m – 81.46m=	Yes
		Range (N): 15.2m – 32.4m	Yes
		Range (E): 11m – 81.46m	Yes
	Up to 25m (5-8 storeys) Habitable rooms and balconies = 9m	(Level 4) Range (N): 15.2m – 31m	Yes subject to conditioning of deletion of Unit 4.03 northern window however not supported for other planning reasons
	Non-habitable rooms = 4.5m	Range (E): 11m – 73.02m	Yes
		Range (N): 15.2m – 31m	Yes
		Range (E): 11m – 73.02m	Yes
Objective 3J-1	1. For development in the following locations: • on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area;	The site is located approximately 450m south of the Beverly Hills Railway Station entrance.	Yes

	The car parking needs for a development must be provided off street.	Car parking provided off street and located within basement levels B1 – B3. Compliant minimum car parking provided in accordance with the Councils DCP as opposed to the RMS criterion which is a higher car parking rate.	Yes
Objective 4A-1	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area	30 of the 40 equating to 75%. (Previously 31 of 44 Units equating to 71%).	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	5 of the 40 Units equating to 12.5%. (Previously 10 of 44 Units equating to 22%)	No (2)
Objective 4B-3	1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building.	28 of the 40 Units equating to 70%. (Previously 7 of the 44 Units equating to 15.9%)	Yes
Objective 4C-1	1. Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Habitable rooms = 2.7m Non-habitable rooms = 2.4m	2.7m 2.7m	Yes Yes
	Commercial=	4.3m	Yes
Objective 4D-1	1. Apartments are required to have the following minimum internal areas:		

	Studio = 35 m² 1 bedroom = 50 m² 2 bedroom = 70 m² 3 bedroom = 90 m² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5sqm each	49sqm. Range: 51sqm – 66sqm Range: 72-81sqm 100sqm Additional bathrooms provided with unit sizes of at least 75sqm. Units with only one bathroom comply with minimum unit sizes	Yes Yes Yes Yes
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms	Each habitable room has an external window with a glass area of more than 10%. Daylight and air is not borrowed from other rooms.	Yes
Objective 4D-2	1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height	Room depths less than 2.5 x ceiling height (2.7m).	Yes
	2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	Layouts are less than 8m in depth.	Yes
Objective 4D-3	1. Master bedrooms have a minimum area of 10sqm and other bedrooms 9sqm (excluding wardrobe space)	10sqm excluding wardrobes	Yes
	2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space).	3m minimum dimension achieved, with the exception of Units 1.09 and 2.09 can be conditioned to comply with minimum dimension excluding wardrobe. Internal configuration of this unit and exhaust shaft is permitted	Yes

	3. Living rooms or combined living/dining rooms have a minimum width of: - 3.6m for studio and 1 bedroom - 4m for 2 and 3 bedroom apartments	however the application is not supported for other reasons >3.6m 4m	Yes Yes
Objective 4E-1	1. All apartments are required to have primary balconies as follows: Studio/1 bedroom = 8sqm and 2m depth 2 bedroom = 10sqm and 2m depth 3+ bedroom = 12sqm and 2.4m The minimum balcony depth to be counted as contributing to the balcony area is 1m	>8sqm and 2m Units 1.02, 2.02, 3.03, and 4.02 provide 7sqm with minimum dimension of 2m. Additional condition imposed to provide 10sqm of balcony with a minimum dimension of 2m, amendments to the living room walls are permitted. <10sqm and 2m <12sqm and 2.4m 1m balcony depth included in calculation.	Yes subject to design changes however the application is not supported for other reasons. Yes Yes Yes
	2. For apartments at ground level or on a podium or similar structure, a private open space area is provided instead of a balcony. It must have a minimum area of 15sqm and a	Units 1.09 – 1.15 along the northern elevation greater than 15sqm and minimum depth of 3m.	Yes

	minimum depth of 3m.		
Objective 4F-1	1. The maximum number of apartments off a circulation core on a single level is eight. (Where the design criteria is not achieved, no more than 12 apartments should be provided off a circulation core on a single level)	9 units western core (levels 1-2), 5 units on western core (levels 3-4), 6 units on eastern core (levels 1-2). (Previously 12 units per core for eastern wings on levels 1-2).	Yes
Objective 4G-1	1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: 1 bedroom = 6m ³ 2 bedroom = 8m ³ 3 bedroom = 10m ³ At least 50% of the required storage is to be located in the apartments.	 6m ³ 8m ³ 10m ³ 50% of storage is located within apartment cupboards.	 Yes Yes Yes Yes

(1) Communal Open Space

Clause 3D-1 prescribes that a minimum of 25% communal open to be provided. The proposal provides 23% (875sqm) communal open space with 475sqm on level 1 and 400sqm on the roof top being level 3 which receives good levels of solar access from the north. It is acknowledged that the balconies and terraces for each unit exceed the minimum which are considered to provide sufficient levels of amenity for future residential occupants. Given the above, the proposed variation in this instance is considered to be reasonable.

(2) Solar Access

Clause 4B-1 prescribes that a maximum of 15% of units receive no direct solar access during the Winter Solstice. The amended proposal results in 12.5% (5 of 40 Units) receiving no solar access which is an improvement to the original design. The previous design resulted 10 of 44 Units equating to 22% however some solar access was gained via light wells.

The amended proposal is considered to be reasonable and provide improved solar access than the original design. It is noted that the site forms an irregular allotment shape which is primarily south facing to Stoney Creek Road. The ADG

acknowledges that difficulty in achieving strict numerical compliance on south facing sites due to orientation.

Given the above, the proposed variation in this instance is considered to be reasonable.

Hurstville Local Environmental Plan 2012

The proposal has been considered in relation to the applicable clauses as per below.

Clause	Control	Proposed	Compliance
Clause 4.3 Floor Space Ratio Map tile: FSR_004)	Objectives to be satisfied In relation to the physical built form:		
	Western element “T” = 2:1 (2,424sqm max)	2:28 :1 2,691sqm (+267sqm over the prescribed maximum)	Yes
	Including car parking below due to split zoning		No (3) It is noted that the level B3 basement has been deleted as part of the amended proposal. The proposal results in an additional 102 car spaces over the minimum car parking requirement of which has been included as floor space as the DCP rate for car parking has been used rather than the RMS criterion.
	Eastern element “S” = 1.5:1 (3,866sqm max)	1.66:1 4,319sqm (+453sqm over the prescribed maximum)	No (3) It is noted that non-compliance with this Development Standard did not form a reason for deferral.
Clause 4.4 Height of Building Map tile: HOB_004)	Western element “O” = 15m	17.29m	No – the proposal does not seek any additional height of building to that sought
	Eastern element	9m	

	"J" = 9m		within the original proposal however original Clause 4.6 for Height of Building not supported.
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Assessment of Variation to Clause 4.3 Height of Building

The amended proposal does not seek an increase to the height of building on the eastern portion or western portion. Given the above, an amended Clause 4.6 Exception to Development was not provided. The exceedance in height of building above the development standard was not supported within the original assessment. Notwithstanding an extract of the previous Clause 4.6 has been provided as per below;

Clause 4.6 Exception to Development Standard prepared seeks a variation to Clause 4.3 Height of Building of the Hurstville Local Environmental Plan 2012.

(1) Clause 4. 6 Exception to Development Standard – Clause 4.3 Height of Building

(1) The objectives of this clause are as follows:

- (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.*

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

Officer Comment: A Clause 4.6 Exception to Development Standard for a breach in height is sought whereby the development exceeds the prescribed height of contained in the LEP, being a maximum of height of 17.92m (+19.4%) along the western portion. Clause 4.3 is not a clause excluded under Clause 5.4 Controls relating to miscellaneous uses under the HLEP 2012. The applicant has demonstrated the extent of the variation within the following architectural extracts below;

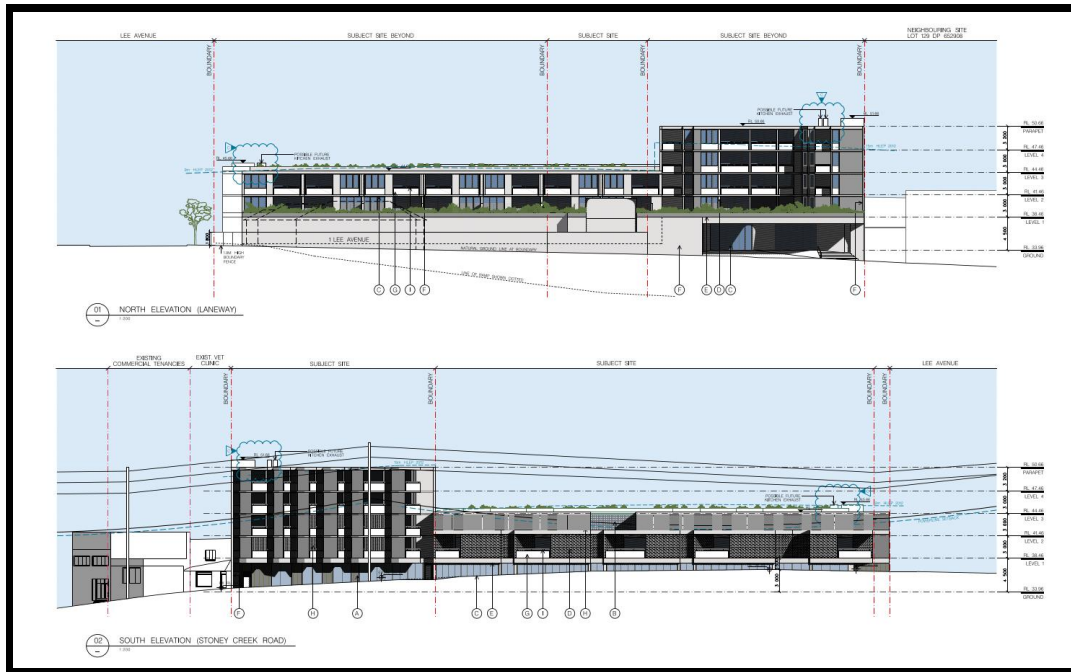


Figure 5 Extract North and South elevation demonstrating the extent of the variation to height (Candelapas Associates, 2017)

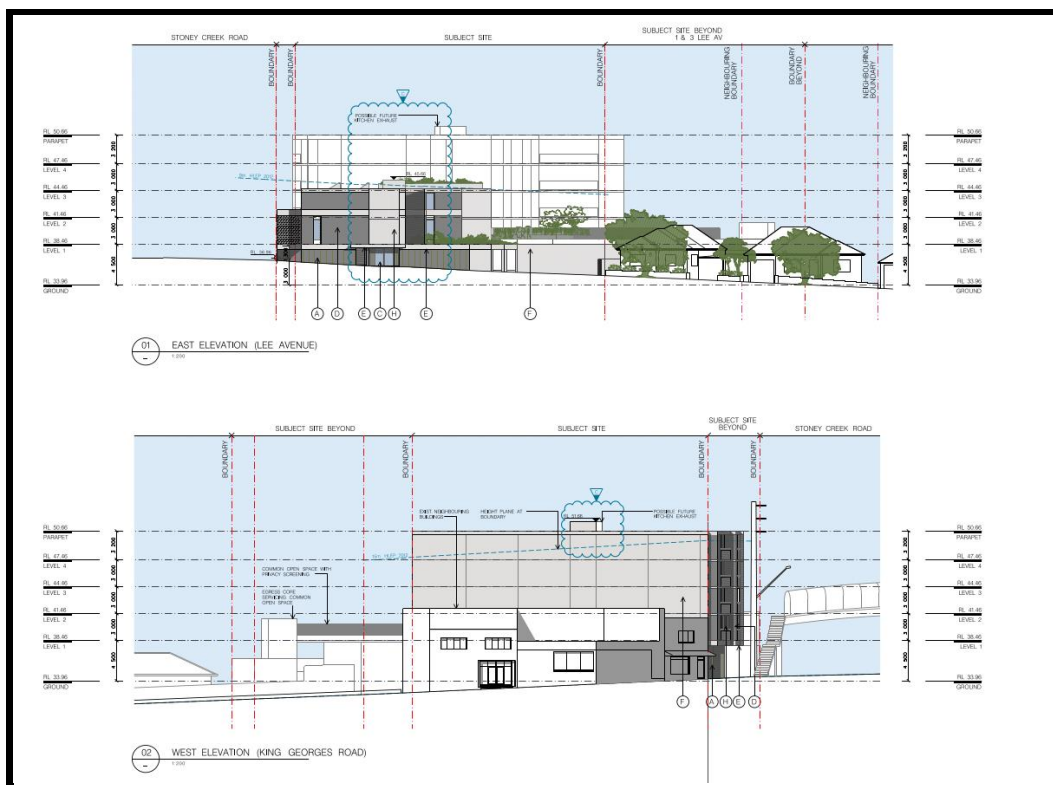


Figure 6 Extract of east and west elevations demonstrating the extent of the variation to height (Candelapas Associates, 2017)

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written*

request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Officer Comment: The applicant has provided the following justification in support of the extent of the variation. The applicants Clause 4.6 Exception to a Development Standard, is an attachment to this report. An assessment has been undertaken; however the proposed variation is not supported for the following reasons.

- The proposal results in excessive massing which was not envisaged by the controls when developed, the application will result in a building form and massing that was not envisaged for this location and therefore it is inconsistent with the desired future character of the Beverly Hills Town Centre.
- The majority of the residential fourth floor exceeds the height of building which is out of character and results in an undesirable present.
- The proposed exceedance in height is considered to be an overdevelopment of the site and is unnecessary.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

Officer Comment: The applicant has provided justification for the extent of the variation, in accordance with the above.

(b) the concurrence of the Secretary has been obtained

Comment: The applicant's Clause 4.6 Exception for Development Standard relating to Clause 4.3 - Height of Building is not supported as the extent of the variation is not in the public interest as it is inconsistent with the objectives of the relevant standard and objectives of the zone as it will create a development form that was not envisaged in this location due to the excessive bulk and massing.

(8) This clause does not allow development consent to be granted for development that would contravene any of the following:

(c) clause 5.4

Officer Comment: This development does not impact the requirements of clause 5.4.

The Clause 4.6 Exception to Development Standard Clause 4.3 Height of Building is not supported and is considered not to be well founded and is inconsistent with the intent of the Development Standard objectives and the objectives of the zone, resulting in adverse impacts due to the extent of massing and bulk. The proposed extent of the variation in height results in an undesirable precedent for the locality.

(3) Detailed assessment of variation to Clause 4.4 Floor Space Ratio

The Floor Space Ratio Map (FSR Map Tile_004) under Hurstville LEP 2012 prescribes a floor space as detailed within the table below. The proposal seeks a variation of 14% for the western portion of the site and 10.6% for the eastern portion of the site.

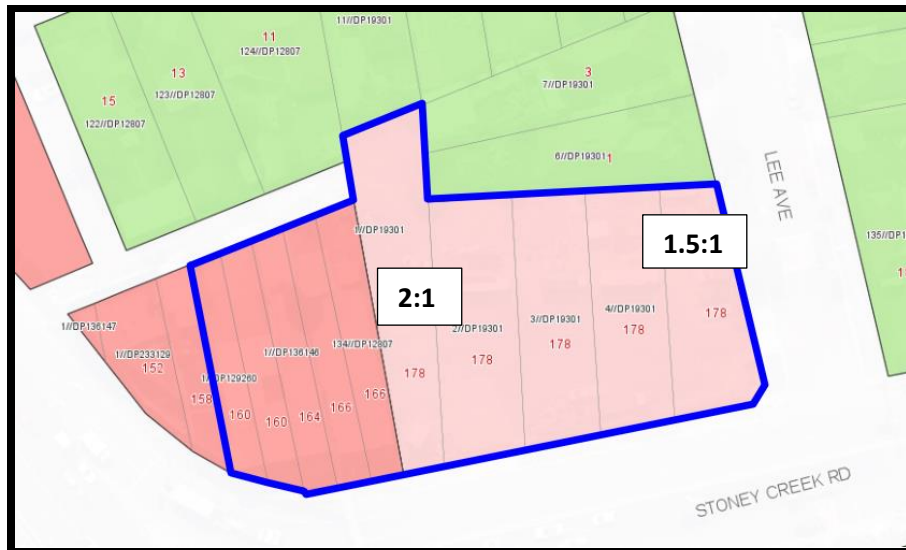
Development Standard	Previous Proposal (as assessed 9 Oct 18)	Amended Proposed
(160-166 Stoney Creek Road Beverly Hills referred to as western portion) T1 = 2.0:1	3:1	2.28:1 (+14% or 267sqm)
(178 Stoney Creek Road Beverly Hills referred to as eastern portion) = 1.5:1	1:62:1	1.66:1 (+10.6% or 453sqm)

For the purposes of assessment the extent of car parking prescribed and provided within each portion is detailed as follows:

Development Standard	Residential units and floor space	Minimum car parking required under HDCP	Car parking proposed
(160-166 Stoney Creek Road Beverly Hills referred to as western portion) T1 = 2.0:1	Ground Floor Retail 1 (part due to split zoning) = 105sqm	(1 space per 50sqm) = 2 (*round down due to retail tenancy split zoning)	31 (commercial combined)
	Ground Floor Retail 2 = 167sqm	(1 space per 50sqm) = 4	
	Levels 1-4: 1 x 1bed, 3 x 2bed, 1 x 3bed across each floor (20 units) =	(based on unit composition) = 24	11

	Residential visitor spaces =	5	7
(178 Stoney Creek Road Beverly Hills referred to as eastern portion) = 1.5:1	Ground Floor Retail 1 (part due to split zoning) = 128sqm Supermarket + back of house = 1,413sqm Levels 1-2: 1 x studio, 3 x 1bed, 5 x 2bed, 1 x 3bed across each level (20 units) = Residential visitor spaces =	(1 space per 50sqm) = 3 (1 space per 50sqm) = 29 (based unit composition) = 22 5	101 (commercial combined) 46 2 (1 additional space can be allocated as visitor)
Total		94 (due to splitting of floor space of tenancies however combined results in 93.	198

In this instance, the additional floor space is a result of the provision of additional car parking which is in excess of the prescribed minimum HDCP car parking controls over the floor space ratio development standard. These car parking spaces are located within the basement across the site to service both the retail/supermarket and residential components.



The applicant has provided the following justification regarding the development's consistency with the above objectives.

Applicant's Comments: The proposed development achieves the objectives of the standard notwithstanding non-compliance with the floor space ratio control because:

- *"The additional density, (above the density allowed under the FSR control) is positioned on the site in a manner that is unlikely to result in significant adverse impacts upon adjacent properties or the public realm by way of overshadowing, visual massing, view loss and privacy impacts. In particular, all of the GFA would be accommodated below ground level, completely out of site and in no way contributing to bulk or scale or above ground density of the development.*
- *Visual and acoustic privacy impacts: The underground basement level car spaces numerically represents the component of the building which is non-compliant. The basement level car parking will in no way contribute to visual or acoustic privacy impacts.*
- *Visual impacts: The non-compliant GFA is located below ground level and will not have a visual impact upon the locality of adjacent properties.*
- *Overshadowing impacts: It is noted that the car parking GFA in no way affects the shadow outcomes of the development.*
- *The deletion of the underground parking spaces which contribute to the excess GFA to achieve numeric compliance would have no impact on the developments overall height, bulk scale, shadowing, privacy or external visual appearance".*

Comment: The applicant's justification is considered not to be warranted given that compliant levels of car parking are provided on site to service the residential and commercial uses on site. The additional car parking spaces are considered to be excessive and unnecessary.

Given the above, the proposed variation is considered to be inconsistent with the objectives of Clause 4.4. This results in a significant departure with development standards which is not considered to be acceptable.

What are the underlying objectives of the zone?

The objectives of the B2 Local Centre Zone are as follows:

- *"To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To maintain a commercial and retail focus for larger scale commercial precincts"*

Comment: The applicant has provided the following key point in addressing the above relating to the additional floor space ratio as follows;

“The proposed non-compliance with the FSR control in no way affects the developments compliance and satisfaction of the zone objectives.

Given the circumstances of the case, the provision of a strict numerical compliance would be unreasonable on the basis that the proposed development achieves compliance with the objectives of the standard and the zone, and is compatible with adjoining development”.

Comment: The applicant’s justification is considered to be reasonable and sound given the underlying zone objectives and height objectives of the Development Standard. The proposed extent of variation is considered to result in an undesirable precedent.

The applicant has provided the following with the Clause 4.6 as attached.

Officer Comment: The proposal seeks a variation of 14% for the western portion of the site and 10.6% for the eastern portion of the site. The applicant’s justification is considered not to be well founded and is unreasonable. The extent of the variation is significant and is unwarranted and is likely to result in an undesirable precedent. Further consideration has been applied to the variation in consideration with principles established under the ‘Five Part Test’.

Written applications to vary development standards will not only address the above matters but may also address matters set out in the ‘five part test’ established by the NSW Land and Environment Court. Councils may choose to not only use the principles of Clause 4.6 and SEPP1 but also this five part test.

Court cases dealing with applications to vary development standards resulted in the Land and Environment Court setting out a five part test for consent authorities to consider when assessing an application to vary a standard to determine whether the objection to the development standards is well founded, consideration to these principles and extent of variation have been considered as per below.

1. the objectives of the standard are achieved notwithstanding noncompliance with the standard;	<u>Applicant’s comment:</u> <i>“The proposed non-compliance with the FSR control in no way affects the developments compliance and satisfaction of the zone objectives. Given the circumstances of the case, the provision of a strict numerical compliance would be unreasonable on the basis that the proposed development achieves compliance with the objectives of the standard and the zone, and is compatible with adjoining development”.</i>
	<u>Officer Comment:</u> The extent of the significant variation is considered to be inconsistent with the current planning controls and is likely to result in an undesirable precedent.
2. the underlying objective or purpose of the standard is not relevant to the development	<u>Applicant’s comment:</u> <i>“The main factor contribution to the numerical non-compliance relates to GFA associated with basement level car parking. The</i>

and therefore compliance is unnecessary;	<i>deletion of the car spaces to achieve numeric compliance with the FSR standard would not result in any above ground changes to the density, built form, or the bulk and scale of the development”.</i>
	<u>Officer Comment:</u> The proposal results in an undesirable precedent in relation to unnecessary car parking.
3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;	<u>Applicant’s comment:</u> <i>“Strict compliance with the development standard would not result in discernible benefits to the amenity of adjoining sites or the public. Further, the proposal satisfies the zone and development standard objectives, and principally maintains the scale and density envisaged for the locality. The development as proposed is consistent with the provisions of orderly and economic development and strict compliance with the standard is not required in order to achieve compliance with the objectives”.</i>
	<u>Officer Comment:</u> Given that there are not material site constraints to warrant the additional floor space ratio. The variation is not supported.
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;	<u>Applicant’s comment:</u> <i>“In this instance, it cannot be said that the development standard has been abandoned Notwithstanding, there are numerous examples of approved development that exceed the FSR development standard within the vicinity of the site and wider LGA”.</i>
	<u>Officer Comment:</u> Council has consistently applied the applicable floor space ratio development standard
5. the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.	<u>Applicant’s comment:</u> In summary, the justification for the variation as follows; <i>“The B2 zone is undergoing, and is likely to under further, substantial transformation given its proximity to the nearby train station. Notwithstanding, the proposal nonetheless responds to the lower density residential development to the north (in Beresford Avenue) and to the north east and east (in Lee Avenue) by tapering the development down in these directions, and setting the building back from the northern boundary.</i> <i>The below ground level car parking GFA in no way affects the building’s above ground height, scale or bulk and will not affect the visual character of the</i>

	<i>building”.</i>
	<u>Officer Comment:</u> The applicant’s justification is not considered to be reasonable and sound given that the variation to floor space ratio does not objectives of the development standard and is of an adverse impact.

Is the variation to the development standard consistent with Clause 4.6 of the Hurstville LEP 2012?

Clause 4.6(1):

The objectives of this clause are as follows:

- (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.*

Comment: Flexibility in applying the standard is appropriate in certain circumstances, however in this instance there are no material planning constraints to warrant the extent of the additional floor space sought.

Clause 4.6(2):

“Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause”

Comment: Clause 4.4 Floor Space Ratio is not excluded from the operation of Clause 4.6.

Clause 4.6(3):

“Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

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

Comment: The applicant has provided a written variation request prepared by SJB Planning. A copy of this Clause 4.6 request for variation is provided for the Panel's consideration.

Clause 4.6(4):

"Development consent must not be granted for development that contravenes a development standard unless:

(a) *the consent authority is satisfied that:*

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and"

Comment: The written request adequately addresses the matters in subclause (3) however is not supported. Strict compliance with the standard is reasonable and necessary because the development is not consistent with the objectives of the B2 Local Centre zone and floor space ratio development standard as described above, this results in an undesirable precedent. It is considered that there are no sufficient environmental planning grounds to justify contravening the standard given that the non-compliance results in an undesirable precedent.

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

Comment: For the reasons detailed above, the development is considered to be inconsistent with the objectives of Clause 4.4 Floor Space Ratio and B2 Local Centre zone.

(b) *the concurrence of the Director-General has been obtained.*

Comment: As the application seeks a variation to a Development Standard of over 10% at (+10.6% for the eastern portion and +14% for the western portion). The proposed residential flat building must be determined by the Local Planning Panel.

Conclusion – Assessment of Clause 4.6 Request for Variation

The variation is considered excessive in given the extent of the variation (+10.6%) for the eastern portion and (+14%) for the western portion to the floor space ratio control.

In a recent Court decision *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ further clarified the correct approach in the consideration of clause 4.6 requests. This advice further confirms that clause 4.6 does not require

that a development that contravenes a development standard must have a neutral or better environmental planning outcome than one that does not. This is considered to be the case in this instance given the additional height sought and minimal impact generated.

As held in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 at [39], Preston CJ confirmed (at[25]) that the test in 4.6 (4)(a)(i) does not require the consent authority to directly form the opinion of satisfaction regarding the matters specified. Rather, it needs to do so only indirectly in forming its opinion of satisfaction that the applicant's written request has adequately addressed the matters required to be demonstrated.

By contrast, the test in cl4.6(4)(a)(ii) requires that the consent authority must be directly satisfied about the matter in that clause (at[26]); namely that the development will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

The applicant's Clause 4.6 Exception for Development Standard relating to Clause 4.4 Floor Space Ratio is not supported as the extent of the variation is not in the public interest as is inconsistent with the objectives of the floor space ratio development standard and objectives of the zone. The proposed variation is not supported for the following reasons:

- The proposed exceedance in floor space results in an FSR of 2.28:1(+14%) for the western portion and 1.66:1 (10.6%) for the eastern portion which is a numerical departure of the LEP. This is considered to be excessive and unjustified given that there no apparent site constraints to warrant the additional floor space sought.
- The proposed use as a supermarket (retail) which is the nature of the variation to ensue when the first use is sought the development meets the car parking requirements; however this numeric non-compliance sets an undesirable precedent.

The Clause 4.6 request has been considered and it concluded that overall, the non-compliance in this instance is not acceptable and the applicant's request is not well founded. The extent of the variation is significant and is inconsistent with the objectives of both the zone and development standard. This is not considered to be in the public interest.

Hurstville Development Control Plan No. 1

The proposal has been considered in accordance with the provisions of the DCP as per below;

- **Section 2 – Application process**

Comment: The application was notified in accordance with provisions within this subsection.

- **Section 3.1– Car Parking**

Comment: The amended proposal provides compliant onsite parking and vehicular access in accordance with the HDCP as specified earlier within this report.

- **Section 3.3 – Access and mobility**

Comment: The amended proposal has provided improved access and mobility within and through the site by improved transitions to Stoney Creek Road and Beresford Avenue – rear lane.

- **Section 3.4 – Crime Prevention Through Environmental Design**

Comment: The amended proposal provides improved sight lines through the site whereby the commercial entrances along Beresford Avenue – rear lane, and Stoney Creek Road have been increased in size which has been achieved in increased thorough fare width. The amended proposal is considered result in increased opportunities for passive natural surveillance.

- **Section 3.5 – Landscaping**

Comment: The amended proposal provides improved landscape embellishment within the site and along the northern and eastern boundaries. Council's Consulting arborist supports the proposal subject to conditions of consent however the application is not supported due to the exceedance in height and floor space.

- **Section 3.7 – Stormwater**

Comment: The amended proposal does not seek any increase to the building footprint than that of the previous proposal. A condition of consent is to be imposed to ensure that the concept stormwater plans are to be consistent with the approved architectural plans.

The extent of the proposed amendments are not inconsistent with the considerations contained with the HDCP

In this regard, it is considered that the above reason for deferral has been adequately addressed.

Isolated site. Access arrangements for the corner through the subject site need to be demonstrated and assured that such that reasonable development potential can be realised on this site.

Applicant's response: *"The proposed development was supported by architectural drawings demonstrating an indicative architectural design for the redevelopment of the adjacent properties at 152-158 Stoney Creek Road.*

The design of the amended proposed development allows for the future development of those properties in a compliant manner.

The amended design also identifies a portion of the eastern boundary wall within the Basement Level 1 where the wall will be constructed so that it can be removed in the future to allow vehicular access through the subject car park into a future basement car park at 152-158 Stoney Creek Road. The 'punch through' wall will require the

removal of four (4) car parking spaces (spaces 5 to 8, as identified on the Basement 1 Floor Plan).

In addition, the applicant is happy to accept the imposition of a condition of consent requiring the creation of a right carriageway over the subject site that would allow vehicular access through the basement car park to a future basement car park at 152-158 Stoney Creek Road”.

Council’s comment: As stated above, the applicant through written correspondence has agreed to the imposition of a (right of access way) which allows for reasonable future vehicular access to 152-158 Stoney Creek Road, Beverly Hills however the application is not supported due to excessive height and floor space which is not consistent with current planning controls and therefore the application is not supported.

3. Pedestrian access to the development. *From Stoney Creek Road, the deletion of stairs to enable at-grade access into the arcade is required; from the rear lane, the entry to the retail arcade should be broad and open to the sky where possible to improve visibility, amenity and safety for pedestrians.*

Applicant response: *“The amended DA includes a reconfiguration of the retail arcade so that it now achieves at-grade access from Stoney Creek Road and broader, more open access from the rear lane.*

The redesign of the retail arcade to allow the at-grade access has required the consolidation of 3 retail shops (in addition to the supermarket) to 2 retail shops. The redesign includes an enlarged skylight over the retail arcade and an increased shopfront to the rear lane. It is considered that the amendments will allow greater visual permeability through the retail arcade (from Stoney Creek Road to the rear lane) and improves the visibility, amenity, safety and overall pedestrian experience future users of the site compared to the unamended proposal”.

Council’s comment: The amended proposal regrading improves transitional access from Stoney Creek Road and Beresford Avenue – Rear Laneway. The amendments are considered to result in improved accessibility into and through the site.

The proposal has been amended to form two (2) retail shops and a supermarket tenancy space. The redesign is considered to form an improvement over the original proposal as it creates a direct connection through the site. This is considered to result in an improved clear longer sight within and through the site.

In relation to concerns raised within the submissions regarding traffic and pedestrian impacts. The proposal is not considered to result in any adverse unreasonable traffic or pedestrian impacts during construction and when the development is complete subject to compliance with an on-going use condition for compliance the traffic management plan condition of consent.

In this regard, it is considered that the reason for deferral has been adequately addressed.

- 4. Privacy and overlooking of neighbouring development.** *Consideration of appropriate screening and fencing to the rear boundaries of the Beresford Street properties and 1 Lee Avenue to minimise visual and acoustic impacts of increased pedestrian usage is required.*

Applicant's response:

"It is outside the scope of the DA to propose and undertake works on adjacent properties which do not form part of the development site and which have different owners.

Notwithstanding, the proposal has been amended in order to provide a greater level of screening to properties in Beresford Avenue and Lee Avenue. The amendments relate to changes along the northern edge of the development site, particularly at Level 1 adjacent to the proposed communal open space.

Specifically, the usable principal communal space has been setback so that it is at least 11.6m from the northern boundary, with additional screen planting provided within the setback at Level 1.

The screen planting is to be Syzigium austral (Lilypilly Pinnacle) which can reach 6m to 8m upon maturity, but provides a thick screen when hedged to 1.8m to 2m in height.

In addition, planting is proposed at ground level along the rear boundary and within the development site, adjacent to the retail arcade entrance. It is envisaged this will assist to minimise visual impacts along the laneway interface.

It is noted that these additional amendments complement the proposed setbacks and screening along the northern boundary, adjacent to 1 and 3 Lee Avenue and 9 Beresford Avenue. In this regard the Section C Drawing demonstrates the adequacy of the screening and separation relationship of the proposed development and those properties".

Councils comment: Concerns received within the submissions sought an increase in fence height to 2.5m and to be constructed of concrete along the northern and eastern boundaries. The revised proposal incorporates 1.8m high privacy screening on the level 1 communal open space terrace and access along the northern and eastern elevations with sufficient spatial separation to these adjoining properties.

In addition, further landscape embellishment which includes nominated species such as 'Magnolia Teddy Bear' (with a potential 4m maturity height) and 'Pinnacle trees' (with a potential 8m maturity height) are proposed along the respective northern and eastern boundaries to provide additional amenity between properties. Council's consulting arborist has recommended that the

proposed 'magnolia Teddy Bear' and Pale Vanilla Lily are to be replaced with 'Pinnacle Trees' with 1m spacing and 4.5L minimum pot size to provide improved landscape screening between properties.

The communal open space on level 1 and level 2 (roof top) are unlikely to result in any unreasonable acoustic impacts. In addition, a condition of consent is to be imposed regarding time restrictions during night time to preserve the amenity to properties on site and to adjoining properties. Adequate spatial separation is provided between the units and proposed rear balconies which do not result in any adverse material privacy impacts between properties.

In this regard, it is considered that the above reason for deferral has been adequately addressed.

- 5. Safety and security of the public domain.** *The rear lane needs to be treated to ensure pedestrian safety and vehicular conflicts are minimised while ensuring adequate accessibility to the Beresford Street rear garage is still maintained. On Lee Avenue, to ensure pedestrian safety on the footpath and improved sightlines and landscaped treatment is required to optimise visibility for penetration especially children and vehicles exiting the car park.*

Applicant's response:

"Beresford Avenue – Rear Lane

The amended drawings demonstrate changed treatments for the rear lane. Specifically, it is proposed to maintain a hard surface to the rear lane and not alter the laneway arrangements (other than to the southern side where the proposal will dedicate 2m of the site to allow for wider footpath on the south side of the lane). This will ensure vehicular access is maintained to 11, 13 and 15 Beresford Avenue as is the current situation.

The proposed landscaping at the western end of the lane has been removed from the amended design. This has been done, in part, to ensure that this area does not become security risk with people able to linger and cause nuisance. It is also noted that this part of the lane is under the ownership of Council and any future works to that area will be public domain works and the design will be the responsibility of Council.

Lee Avenue

The amended plans include changes to the entry arrangements from Lee Avenue. Specifically, in response to the concerns raised relating to pedestrian safety on the footpath, the proposal has been amended in the following ways:

- *Sightlines have been improved on either side of the vehicular entry ramp. This has been achieved by reducing the height of the fence on the northern boundary, such that the fence has been tapered down to 1.2m where it sits forward of the front building line of the dwelling at 1 Lee Avenue. Additionally,*

structures have been removed and replaced with low level planting (creepers) adjacent to the southern side of the driveway entry where it meets the footpath; and

- *The western end of the building (in the south corner) has been reconfigured to provide a setback from the western boundary and a planter bed has been introduced.*

The amended design is an improved outcome compared to the previously proposed arrangements and will optimise visibility for pedestrians especially children and vehicles exiting carpark.”

Councils comment: Concerns were raised by submitters in to security and safety. Amended reconfiguration allows for greater opportunities for passive natural surveillance with clearer and direct sightlines to from the site in particular to Beresford Avenue – rear laneway.

In this regard, it is considered that the above reason for deferral has been adequately addressed.

- 6. Deliveries and loading.** *Inclusion of defined times for loading and delivery to the supermarket to ensure neighbouring amenity, is required, as per a Traffic Plan of Management.*

Applicant’s response: *“A Deliveries and Loading Schedule for the supermarket has been prepared and is attached to this submission.”*

Councils comment: Council’s Senior Traffic Engineer has reviewed Deliveries and Loading Schedule provided for the supermarket supports the proposal.

In addition, concerns were raised in relation to traffic and pedestrian impacts along the rear Laneway. This is not considered to result in a material adverse impact given that vehicular entry to the basement level is accessed via Lee Street.

In this regard, it is considered that the above reason for deferral has been adequately addressed.

- 7. An update of accompanying documentation including the BASIX certificate is required”.**

Applicant’s response: *“The amended DA is supported with updated documentation including a full set of amended architectural drawings, an amended Landscape Plan, updated BASIX Certificate, Updated RAP, and a Supermarket Deliveries and Loading Schedule for the supermarket”.*

Councils comment: Amended Supporting documentation accompanies the proposal which is considered to be satisfactory.

A revised BASIX Certificate (790894M_02 dated 7 December 2018 prepared by Building Sustainability Assessments) accompanies the amended plans which meet the targets for; water, thermal comfort and energy. The proposal has satisfied provisions of State Environmental Planning Policy (Building and Sustainability Index) 2004 and Regulation 2000.

In this regard, it is considered that the above reason for deferral has been adequately addressed.

Referrals

The amended proposal was referred internally to the following;

Consultant Arborist

Council's consultant arborist supports the proposal subject to additional landscaping conditions.

Environmental Health Officer

Council's Environmental Health Officer supports the proposal subject to conditions.

Senior Traffic Engineer

Council's Senior Traffic Engineer has commented on the submitted Supermarket Deliveries and Loading Schedule stating that the delivery times are not specific and that the delivery times should ideally be isolated from the peak shopping centre times.

Comment: It is noted that Council's Traffic Section previously raised no concerns with the original assessment report. Furthermore, this application does not seek development consent for the operation or fit-out of the supermarket tenancy.

Team Leader Subdivision and Development

Council's Team Leader Subdivision and Development supports the proposal subject to the imposition a condition which would require the creation of a new right of carriageway over lot 1 DP 29260, lot 1/DP 28696, lot 1 DP 136146 , lot 134 DP 12807 & lots 1-5 DP 19301 in benefit of 152-158 Stoney Creek Road, Beverly Hills(Lot 1 DP 233129 and Lot 129 DP652908).

This easement shall be incorporated with any subdivision linen plan and shall be marked on the architectural plans as well as on a subdivision linen plan. Terms of easement shall be included in an 88B instrument; however the application is not supported for other planning reasons.

Senior Strategic Planner

Council's Senior Strategic Planner has commented on the proposal as per below;

"DA assessed against Masterplan Phase 1 documents

The DA is considered to be consistent with the vision statement for Beverly Hills town centre:

The Beverly Hills Town Centre celebrates its existing character while successfully integrating a new, modern feel. It provides a safe, inviting environment for all, is accessible and well-connected, and has green streets and open spaces to enjoy.

The proposal was assessed against the vision aims and recommendations of the urban design analysis and satisfies the following recommendations:

- *provides an active street frontage on Stoney Creek Road,*
- *provides a supermarket and additional retail space, and*
- *contributes to the diversity of uses in the centre by encouraging more activity during day hours.*

One of the objectives of the Masterplan is to improve connectivity, safety and amenity creating a safer, more connected Town Centre with identified pedestrian areas, share ways and bicycle routes in private development. It is noted that the amended design improves on the previous design for pedestrian access to the development, which is accessed through the laneway adjacent to the Council carpark or via entrance on Stoney Creek Road. The activation of the laneway as a pedestrian entry from King Georges Road raises issues of pedestrian safety as the lane must be accessed by crossing through Council's carpark. Any future redevelopment of the adjoining sites and/or Council's carpark should have consideration to improving pedestrian amenity and visibility in this laneway/area (it is noted that site isolation has been considered).

Overall the proposal is supported as it does not conflict with the principles and vision aims of the Masterplan work undertaken in Phase 1".

Comment: Whilst the proposal seeks to be consistent with the general vision of the Masterplan Phase 1 documents, the proposal does not comply with the Height of Building and Floor Space Ratio to the applicable controls on site and there is considered to be inconsistent with Council's current applicable controls.

Conclusion

The amended proposal is considered adequately address the reasons for deferral by the Sydney South Planning Panel on 9 October 2018. The amended proposal is considered to result in a better design outcome than the original proposal by providing improved levels of residential and commercial amenity for future occupants and visitors. Furthermore the amended proposal seeks to further protect the amenity of adjoining residential properties to the north and east.

However, as per the original assessment report the amended proposal still seeks additional height and floor space which is inconsistent with Council's current planning controls of which is considered to form an undesirable precedent.

Recommendation

Having regards to the Matter for Consideration under Section 4.15 of the Environmental Planning and Assessment Act and following a detailed assessment of the proposed application DA2017/138 for consolidation of the existing allotments,

demolition of existing structures, site remediation and construction of a mixed use development. The proposal includes a supermarket and two (2) retail tenancies with shop top housing for forty (40) units and three (3) basement levels of car parking including loading facilities should be refused for the following reasons;

Environmental Planning Instrument - Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the relevant environmental planning instruments in terms of the following:

Hurstville Local Environmental Plan 2012

- a) The proposal fails to adequately satisfy the Clause 1.2 Aims of Plan Clause (2)(a) to encourage and co-ordinate the orderly and economic use and development of land that is compatible with local amenity.
- b) The proposal results in a significant departure to Clause 4.3 – Height of Building which results in adverse bulk and scale impacts. The previously submitted Clause 4.6 Exception to Development Standard for Height of Building is not supported.
- c) The proposal results in a significant departure to Clause 4.4 – Floor Space Ratio which is considered to be excessive and unnecessary. The revised Clause 4.6 Exception to Development standard is not supported.