

COUNCIL ASSESSMENT REPORT

Panel Reference	2018SSW006
DA Number	DA-43/2018
LGA	Liverpool City Council
Proposed Development	Demolition of existing structures and removal of all vegetation, the construction of four x part 3 and 4-storey residential flat buildings containing 162 residential apartments, basement carparking, landscaping, and road construction and civil works.
Street Address	185 FIFTH AVENUE, AUSTRAL (LOT 1115 DP 2475)
Applicant/Owner	GM ARCHITECTS PTY LTD
Date of DA Lodgement	17 January 2018
Number of Submissions	Nil
Recommendation	Refusal
Regional Development Criteria (Schedule 4A of the EP&A Act)	The proposal has a capital investment value of over \$30 million.
List of all relevant s79C(1)(a) matters	<p>1. <i>List all of the relevant environmental planning instruments: s4.15(1)(a)(i)</i></p> <ul style="list-style-type: none"> • State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (SEPP SRGC). • State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development (SEPP 65). • State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55). • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. • Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No2 – 1997) (SREP 20). <p>2. <i>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s415(1)(a)(ii)</i></p> <ul style="list-style-type: none"> • No draft Environmental Planning Instruments apply to the site. <p>3. <i>List any relevant development control plan: s4.15(1)(a)(iii)</i></p> <ul style="list-style-type: none"> • Liverpool Growth Centre Precincts DCP 2016 (Growth Centres DCP) <ul style="list-style-type: none"> ○ Part 1 – Introduction ○ Part 2 – Precinct Planning Outcomes ○ Part 3 – Neighbourhood and subdivision design ○ Part 4 – Development in the residential zones ○ Schedule 1 – Austral and Leppington North Precinct ○ Schedule 2 – Leppington Major Centre

	<ul style="list-style-type: none"> Liverpool City Council Development Control Plan (LDCP) 2008 <ul style="list-style-type: none"> Part 1 – Notification <p>4. List any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F: s4.15(1)(a)(iv)</p> <ul style="list-style-type: none"> No planning agreement relates to the site or proposed development. <p>5. List any relevant regulations: s4.15(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288</p> <ul style="list-style-type: none"> Consideration of the provisions of the Building Code of Australia and National Construction Code (NCC).
List all documents submitted with this report for the Panel's consideration	<ol style="list-style-type: none"> Architectural plans Schedule of Colours and Finishes Statement of Environmental Effects (with Clause 4.6 Variation Written Justification to Height / ADG Compliance Table) Draft conditions of consent (without prejudice) SEPP 65 Verification Statement Landscape plan Demolition and Waste Management Plan Traffic Report Preliminary Site Investigation Detailed Site Investigation Remediation Action Plan Geotechnical Report Flooding Study Drainage Plan Civil Engineering Plans NCC Overview Report Accessibility Compliance Report Acoustic Report Arborist Report BASIX Certificate Bushfire Risk Assessment Car Parking Report
Report prepared by	Ivan Kokotovic – Senior Development Planner
Report date	3 July 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

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

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

Yes

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.11EF)?

Yes

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment?

N/A

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

1. EXECUTIVE SUMMARY

1.1 Reasons for the report

The Sydney Western City Planning Panel (SWCPP) is the determining body as the Capital Investment Value of the development is over \$30 million, pursuant to Schedule 7 of the *State Environmental Planning Policy (State and Regional Development) 2011*.

1.2 The proposal

The application proposes the demolition of existing structures and removal of all vegetation, the construction of four x part 3 and 4-storey residential flat buildings containing 162 residential apartments, basement carparking, landscaping, and road construction and civil works.

1.3 The site

The site is identified as Lot 1115 DP 2475, at No. 185 Fifth Avenue, Austral.

1.4 The issues

The main issues are identified as follows:

- i) Excessive Residential Density pursuant to Clause 4.1B in Appendix 8 of SEPP SRGC;
- ii) Excessive Height of Building pursuant to Clause 4.3 in Appendix 8 of SEPP SRGC;
- iii) Non-compliance with R3 zone objectives in Appendix 8 of SEPP SRGC;
- iv) Non-compliances with SEPP 65 and Apartment Design Guide (ADG);
- v) Non-compliance with SREP 20 Clause 4;
- vi) Non-compliances with the Growth Centres DCP;
- vii) Constraints on Future Development to the adjoining eastern and western allotments;
- viii) No adjoining owner's consent for additional road construction on adjoining eastern and western allotments;
- ix) Lack of technical information regarding floodplain affectation, stormwater management and overland flow infrastructure.

1.5 Exhibition of the proposal

The development application was notified for a period of 14 days between 20 February and 6 March 2018 in accordance with Liverpool Development Control Plan 2008 (LDCP 2008), and no submissions were received by Council.

1.6 Conclusion

The application has been assessed having regard to the provisions of Section 4.15 of the EP&A Act 1979, the applicable State Environmental Planning Policies, the Growth Centres DCP, and the relevant codes and policies of Council.

The proposed development is permissible within R3 Medium Density Residential zones under SEPP SRGC, however, the proposal is inconsistent with and does not satisfy the key

considerations of SEPP SRGC, SEPP No. 65 and the Growth Centres DCP, with respect to the excessive density, height and character of the proposed development. In addition, the submitted details and information are deficient in relation to flood affectation, overland flow and water quality management, and in providing the required adjoining owner's consent regarding isolation of an adjoining site / and re-location of a road on that site, and impact of trees on an adjoining site.

Based on the assessment, the application is considered to be unsupportable and unsatisfactory in establishing the merits of the development and is likely to result in adverse impacts upon the desired planning outcomes and desired future built environment of the locality. Accordingly, in accordance with the reasons for refusal as stated in the report including a lack of information, it is recommended that the application be refused.

2. SITE DESCRIPTION AND LOCALITY

2.1 The site

The subject site is identified as Lot 1115 DP 2475, being 185 Fifth Avenue, Austral. The site is rectangular in shape with a primary frontage of 80.46m to Fifth Avenue (to the south), and a total area of approximately 1.214ha. Currently on the site is one dwelling, outbuilding structures and two significant concentrations of tree canopy along the front and rear boundary. The entire site has Biodiversity classification and thus vegetation removal is generally deemed acceptable for the purpose of development consistent with the zone objectives and target densities.

The site slopes from the east to the west of the site, falling approximately 3.24m towards Scalabrini Creek which is zoned for a future drainage channel. The site is partially flood prone and bushfire affected but is not impacted by any compulsory land acquisition.



Figure 1: Aerial photograph of the Site

2.2 The locality

The subject site is located in the southern district of the current suburb of Austral, and is located in the Leppington Major Centre under the SEPP SRGC, which is in the future Leppington North Precinct. The immediate locality is semi-rural but is in transition consistent in nature with the R3 – Medium Density Residential zoning under SEPP SRGC, with a recently constructed and executed subdivision for 149 dwellings on 124 Torrens Title lots over 4.8ha (approved under DA-1053/2016) located 166m to the east.

The site is located 350m north of the main east-west road corridor through the locality being Bringelly Road, and drains naturally to Scalabrini / Bonds Creek, which is a tributary to South Creek and eventually to the Hawkesbury River.

The site is located approximately 14km south west of the Liverpool CBD and approximately 850m north of Leppington train station with an estimated walking distance of approximately 1.1km. Currently the nearest bus stop within walking distance from the site with a service is located on Bringelly Road approximately 340m to the east, which is serviced by route 855 and provides daily services from Liverpool to Leppington Station, via Austral.

The adjoining site to the east (167-175 Fifth Avenue) is currently the subject of an undetermined four-lot procedural subdivision (DA-570/2018), and the site to the north (260 Sixth Avenue) is currently the subject of a Class 1 Deemed Refusal for part Residential Flat Building and Small-lot housing development (DA-1092/2017). The adjoining lots to the west and south (opposite Fifth Avenue) have not been the subject of any Pre-DAs or DAs.



Figure 2: Aerial photograph of the locality

For clarity and context, the Leppington Major Centre is within the Leppington North Precinct, and part of it is within Camden Council (south of Bringelly Road) and part of it is in Liverpool Council (north of Bringelly Road). The vision for the part of the Leppington Major Centre which the land subject to this DA is located (as shown in Schedule Two of the Growth Centres DCP – view Figure 4), is characterised by medium density residential environments. Leppington North (which the Leppington Major Centre is within) has a target population of

33,000 with a dwelling yield of 12,000, as investigated within the Austral and Leppington North Precinct Planning Report.

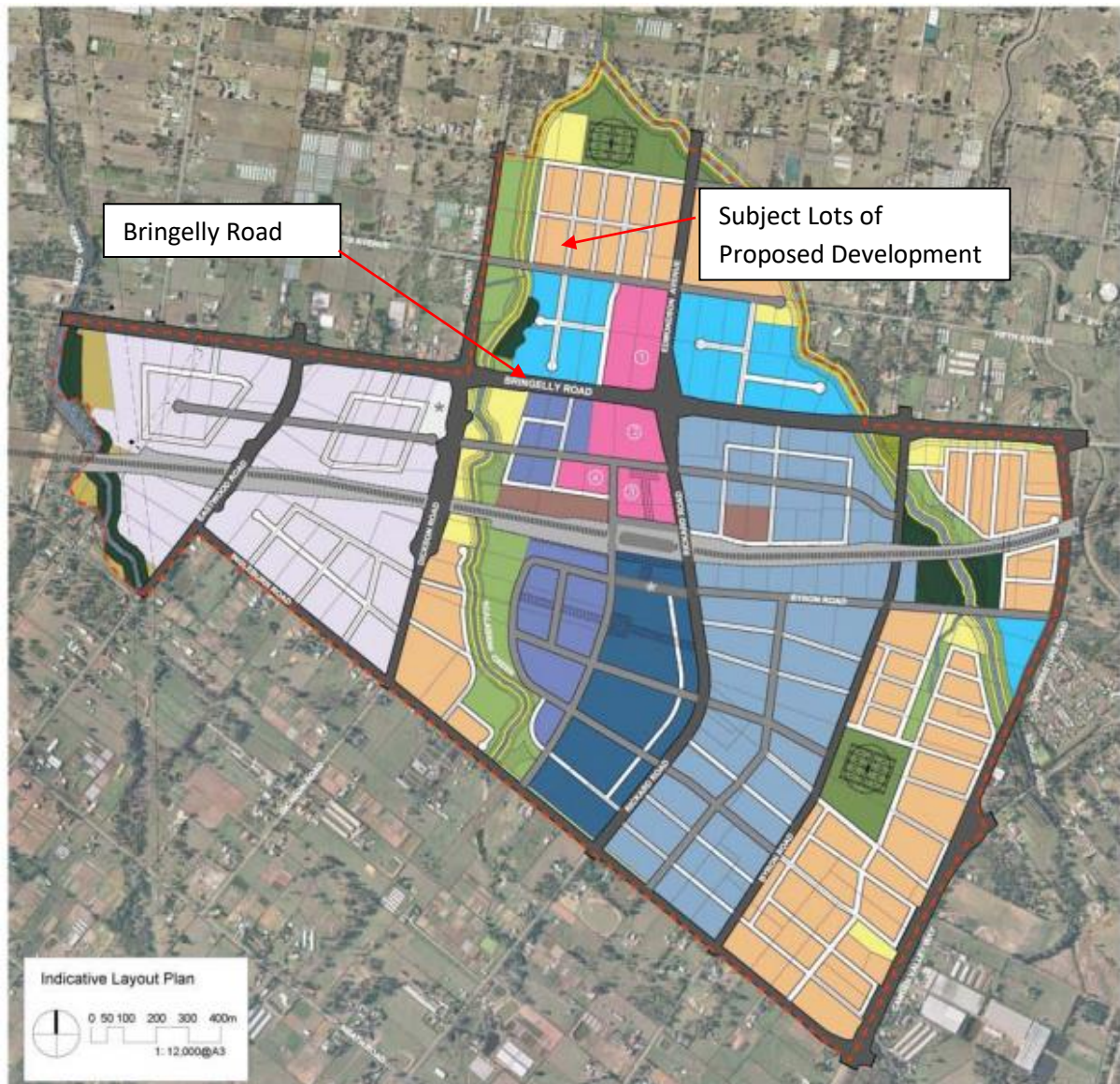


Figure 3: Leppington Major Centre and location of land the subject of this DA-43/2018.



Figure 4: Land located between Fifth and Sixth Avenue identified as Medium Density Housing, adjacent to the Scalabrini Creek Corridor.

Note:

The Department of Planning & Environment is quickly progressing with the revised ILP and land-use zones for the Leppington Town Centre and is at the Precinct Planning stage having finalised the Strategic Planning and Project Establishment. Most of these changes only affect the Camden LGA to the south, but there will likely be a rezoning between Camden Valley Way and Fifth Avenue in Austral. The proposal would be to rezone land from B5 – Business Development to B4 – Mixed Use.

Instructively, land use and yield calculations have been provided for Medium Density Residential within the Major Centre, which is the residential area bounded by Fifth Avenue to the South, Sixth Avenue to the North, Edmondson Avenue to the West and East of Scalabrini Creek. The calculations provided indicate an FSR of 0.35:1 and a net density of 35 dwellings per hectare. Given the projected yield for R3 zoned land within the more populous Leppington Major Centre Precinct, it is reasonably expected that land zoned R3 within the Austral and Leppington North Precinct should respond to the planned hierarchy in not exceeding the net density of 35 dwellings per hectare.

2.3 Site affectations

The land is flood prone and bushfire affected. Council's Floodplain Engineers provided comment requesting more information to be lodged with Council, which was requested of the applicant but which has not been forthcoming.

The land is partially bushfire affected by a buffer zone for which a Bushfire Risk Assessment was lodged recommending a construction level to meet the potential bushfire risk to the site.

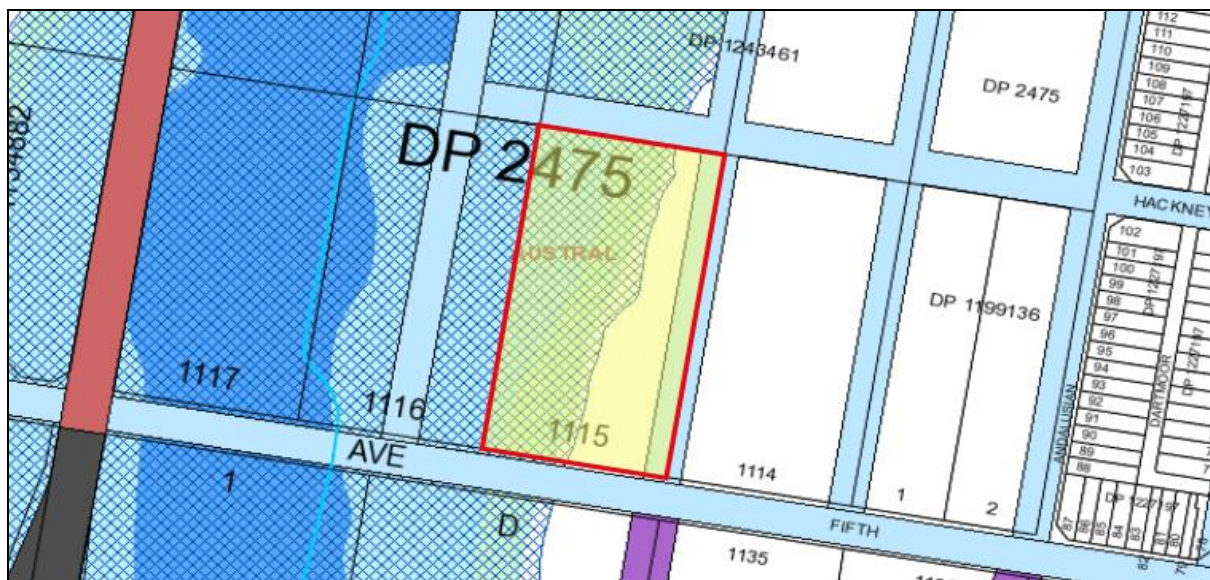


Figure 5: Flood Impact Mapping and extent of Flood Impact below a 1%AEP flood.

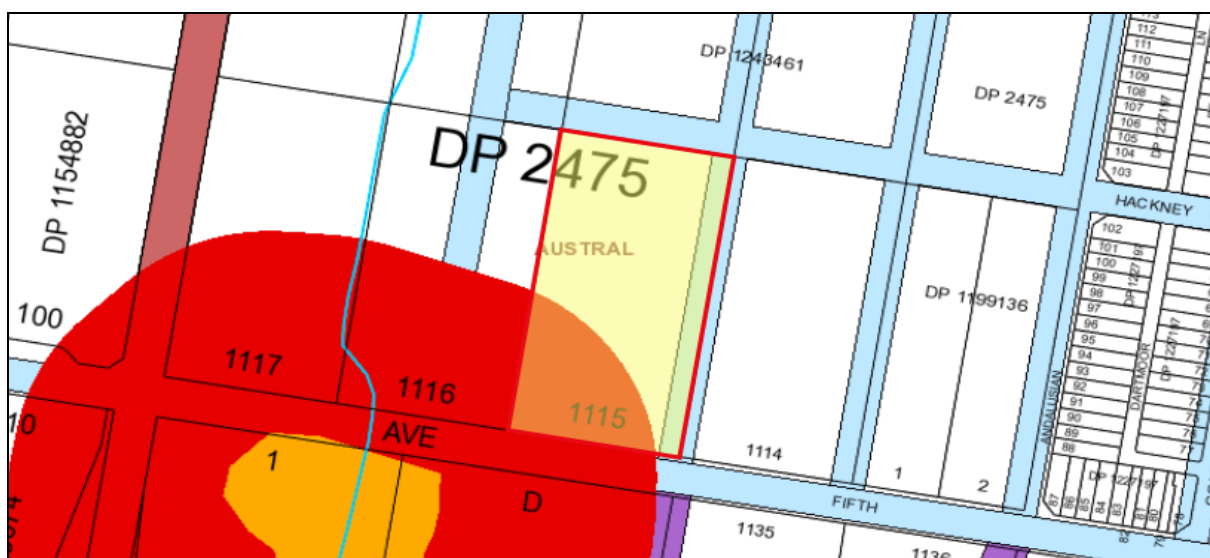


Figure 6: Bushfire Affection Mapping

3. BACKGROUND

3.1 Timeline of the Assessment

- i) 17 January 2018
DA-43/2018 was lodged (**Figures 7 and 8**).
- ii) 31 January 2018
Correspondence was sent to the applicant that raises issues concerning site contamination, and requesting further information.
- iii) 15 February 2018
The applicant provided the requested detail.
- iv) 20 February 2018 to 6 March 2018
DA-43/2018 was notified.

v) 15 March 2018

DA-43/2018 was considered by the Design Excellence (DEP).

vi) 7 May 2018

DA-43/2018 was considered by the SWCPP, at a briefing meeting.

vii) 28 August 2018

Correspondence was sent to the applicant that raised issues to be addressed concerning dwelling density, variation to the indicative layout plan, dwelling mix / typology, building height, native vegetation retention, acoustic impact of the proposed development on adjoining sites, flood affectation, development engineering, concerns, waste management issues, as well as DEP meeting comments.

viii) 23 April 2019

Applicant provided a response to the above correspondence in the form of plans of a downscaled development for the site which retains the same footprint but reduces the proposed development from 222 to 162 apartments, reduction from 2 basements levels to 1, widening of the proposed road in the east of the site to 8 metres, and decrease in overall height from a 4-5 storey to a 3-4 storey development (**Figures 9 and 10**). No technical details were submitted as requested.

ix) 15 May 2019

The applicant was advised that Council would be forwarding DA-43/2018 to SWCPP for determination based upon the information submitted, up to that point.

Clarification of the two schemes proposed densities are:

1) Figure 7 (DA lodged and assessed)

182.87 dw/ha (four x 4-5 storey RFBs)

2) Figure 8 (Amended downscaled development the subject of this assessment)

133.44 dw/ha (four x 3-4 storey RFBs)

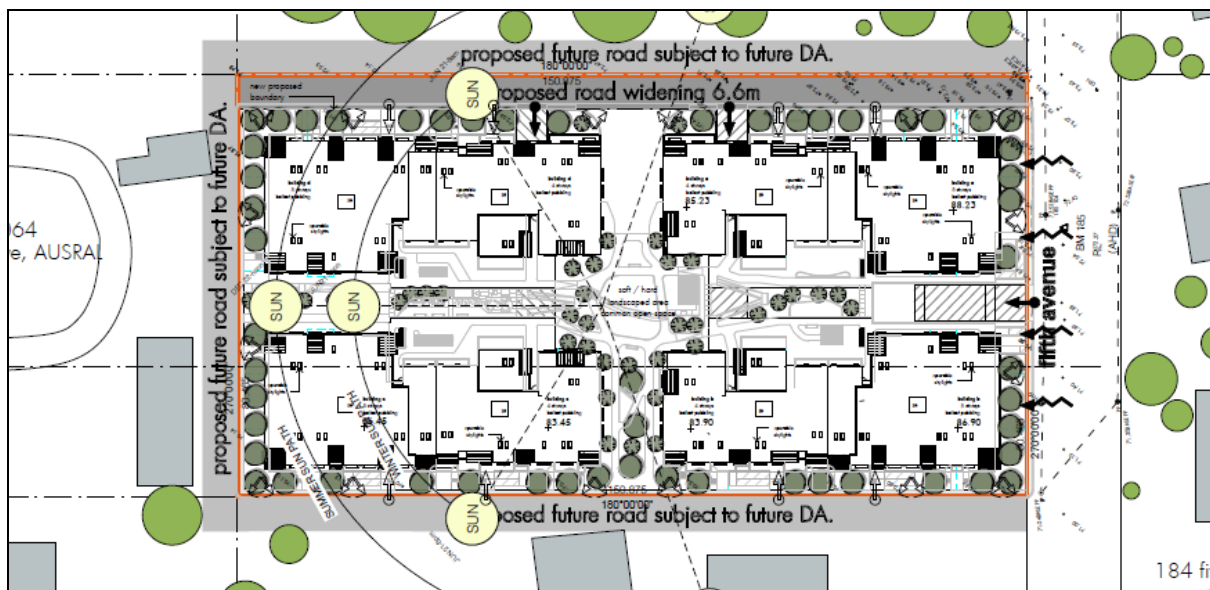


Figure 7: Site Plan of originally proposed development.

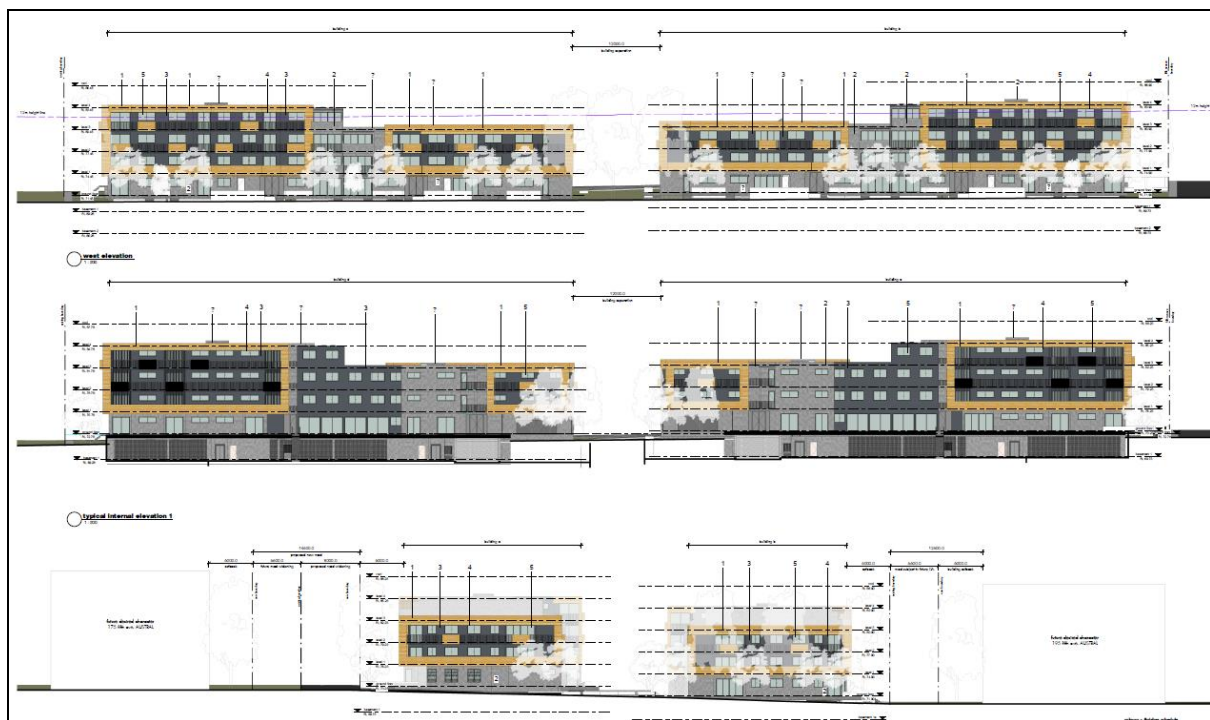


Figure 8: Elevations of originally proposed development.

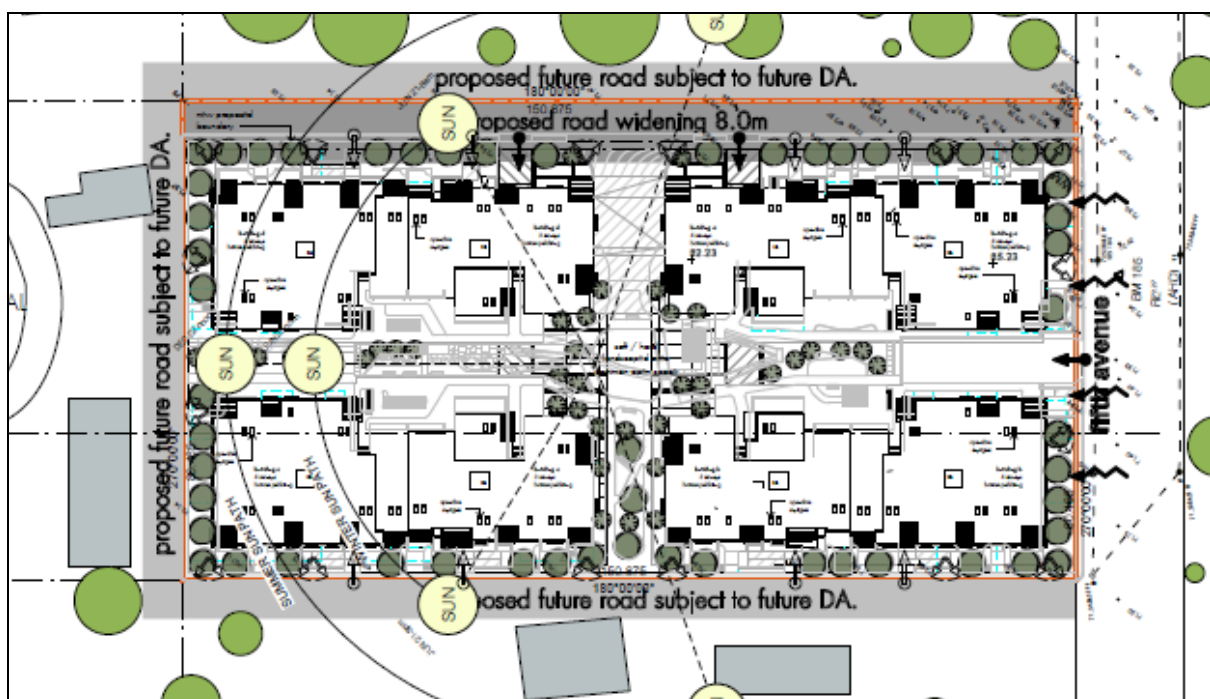


Figure 9: Site Plan of downscaled proposed development

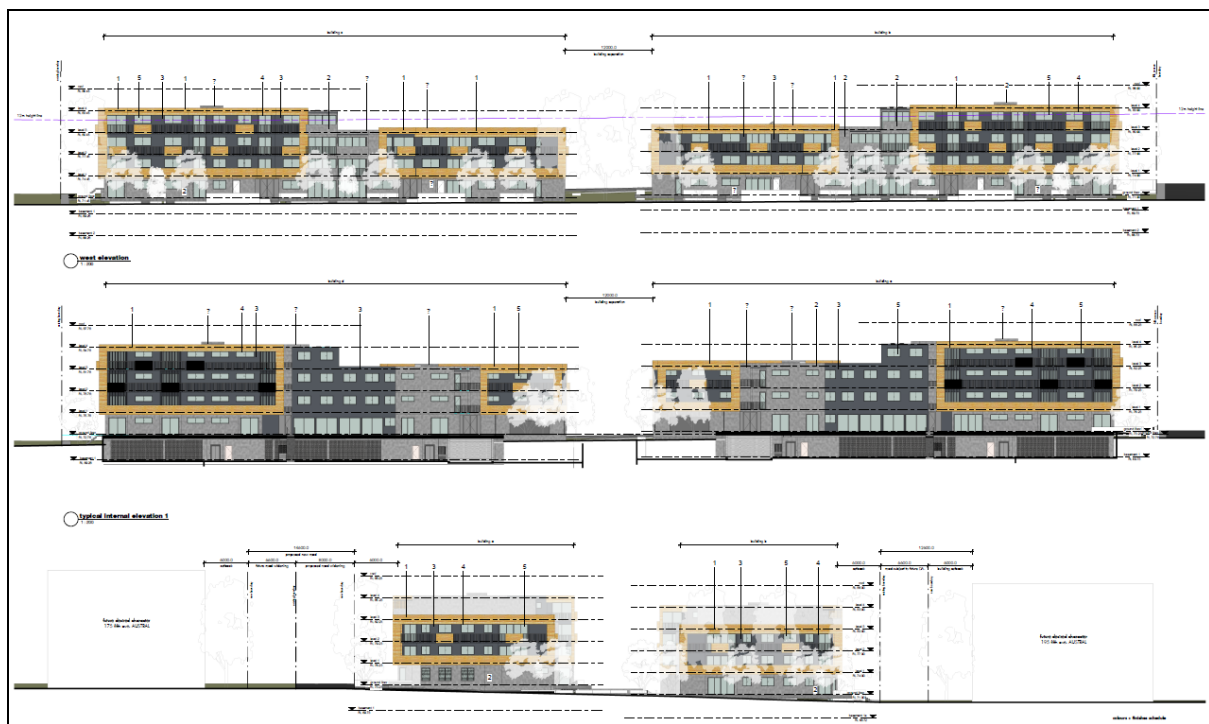


Figure 10: Elevation of downscaled proposed development

3.2 Issues Identified in Initial Assessment

Council Initial Request for Information and concern raised regarding proposed development.
(Request for this Additional Detail Sent on 28 August 2018)

Following on from a preliminary assessment of the application, Council sought further information and clarification regarding the following items, (in addition to the comments provided by the DEP (as presented in Section 3.4 of this report) and the SWCPP (as presented in Section 3.5 of this report):

1. Non-compliance with SEPP (SRGC)
 - Excessive Dwelling Density pursuant to Clause 4.1B;
 - Excessive Height of Building pursuant to Clause 4.3; and
 - Inconsistency with R3 – Medium Density zone objectives.
2. Non-compliance with Growth Centre Precincts DCP:
 - Variation to Indicative Layout Plan road location pursuant to Section 1.7.3;
 - Lack of information with respect to Section 2.3.1 Flooding and Section 2.3.2 Water Cycle Management;
 - Unjustified excessive removal of Vegetation pursuant to Section 2.3.5 Native vegetation and ecology;
 - Lack of information (Acoustic Report) with respect to Section 2.3.9 Noise Impact;
 - Inconsistency with Section 3.1.1 Residential Density, in particular with the expected typical characteristics of 25-30dw/ha density band.
3. Concerns were also raised by Council's internal referring officers (and forwarded to the applicant) with respect to the following (note – these have not been satisfied as no additional detail regarding these issues was received by Council):

- **Floodplain Engineering** - The site is partially affected by the 1%AEP flooding from Scalabrini Creek - a tributary to Bonds Creek. The proposal involves development of the site below the 1%AEP flood. Overland flows from upstream catchment to the east and south-east of the site cross the site and drains into Scalabrini Creek through adjoining downstream properties. The proposal has not addressed mainstream flooding and overland flooding issues associated with the proposed development and hence the proposal is unsatisfactory. For assessment of the proposal following information shall be submitted:
 - i) There shall be no adverse flooding impact from both mainstream and overland flooding in the vicinity of the site due to proposed development. Any adverse flood impact below the 1%AEP flood shall be mitigated.
 - ii) Mainstream flooding:
 - a) There shall be no net loss of floodplain storage volume below the 1%AEP flooding due to proposed work on western portion of the site. Interim flood compensatory work for loss of flood storage shall be provided within the site, until regional flood mitigation works of the Precinct are completed. Design plans/drawings of flood compensatory works, flood storage volume calculation along with a flood impact assessment shall be submitted for review and approval.
 - b) Finished habitable floor levels of proposed buildings shall be no lower than the 1%AEP flood levels plus 0.5m freeboard. The 1%AEP flood levels of Scalabrini Creek in the vicinity of the site shall be consistent with Council flood levels established for the Precinct and be obtained from Council.
 - iii) Overland Flow Flooding:
 - a) Existing overland flows through the site from upstream external catchment shall not be disturbed and be accommodated into the proposed major/minor system of the development for range of storm events up to the 1%AEP flood event.
 - b) Post development flow discharges from the site onto downstream properties shall not be greater than the predevelopment flows. Temporary on-site detention (OSD) shall be provided to limit the post development flows to pre-development level up to the 1%AEP flood. Hydrologic/hydraulic modelling analysis of OSD design shall be submitted.
 - c) Design & sizing of ultimate major/minor drainage system shall take into account full developed external catchment flows through the site for up to the 1%AEP flood event.
 - d) Major system (roads/open flow routes) shall consider overland flows through the site up to the 1%AEP flood with flood depth not exceeding 0.2m & comply with velocityxdepth safety criteria as per Councils design criteria.

- e) *Undertake an overland flow path study using preferably 2D tuflow modelling for existing and post development scenarios. Details of catchment analysis, hydrologic & hydraulic modelling analysis along with an overland flow flood impact assessment report supported by flood extent, hazard, depth, velocity vector mapping and flood difference mapping shall be prepared for the 1%AEP flood event. The report shall demonstrate that overland flows through the site is managed satisfactorily without adversely affecting the adjoining properties.*
- iv) *Basement car parking shall be protected from inundation by floods equal or greater than 1%AEP flood plus 0.1m freeboard.*
- v) *Temporary on-site water quality control measures shall be provided for capturing gross pollutants and contaminants from the stormwater before discharging onto downstream of the site. Water quality measures shall be designed using MUSIC modelling.*
- vi) *Revised proposal shall include all necessary information outlined above and not limited to following information;*
 - *Design drawings/plans of the development, flood compensatory works including storage volume calculation*
 - *Overland flow path study report along with all flood mapping*
 - *Electronic copies of hydrologic/hydraulic flood modelling*
 - *Electronic copy of hydrologic/hydraulic model and analysis used for OSD design*
 - *Music water quality model and modelling analysis*
- **Waste Management** - *Waste Management Plan is not in accordance with Waste Management Services for RFBs and MUD Housing Fact Sheet.*
 - *Design drawings/plans of the development, flood compensatory works including storage volume calculation*
 - *Insufficient sized bin storage areas.*
 - *Access and location of the loading bay where bins are proposed to be collected needs to be clarified.*
- **Land Development Engineering**
 - *The proposed road on the eastern side of the development has a design pavement width of 6.0m with 3.0m of pavement proposed on the adjoining allotment. As a minimum Council would need to be certain that adjoining owner's consent has been obtained for this and this should be supplied by the applicant.*
 - *The proposed eastern property boundary should be positioned at 8.0m from the existing boundary to allow for the correct alignment of the future extension of the ILP road to the north and also avoid an offset kerb line at the future 4 way intersection on the north east of the site.*
 - *The boundary treatment along the future ILP road on the northern side of the site is not resolved by these drawings. The applicant should develop a typical cross section showing approximate road*

level, the proposed 2.0m pedestrian footpath, building floor level and any retaining walls potentially required.

- Please clarify if this is a Strata Subdivision. The SEE does not state this.
- Please clarify if the 20m wide vehicle crossing on the proposed ILP road is for heavy vehicle movements. The 3 proposed access driveways to the basement car parks do not meet sight distance requirements and will require splays to be developed at the building frontages for pedestrian safety.
- The 25% gradient on the vehicle access ramps is not in accordance with AS 2890.1. The 5.0m wide driveway width is inadequate for vehicle ramps.
- The applicant should demonstrate full compliance with the AS 2890.1 standard at DA stage.

3.3 Related applications

a) Pre-DA meetings

PL-152/2016 was held on 7th December 2016 for proposed;

Construction of a Residential Flat Building complex with 196 apartments.

Council officers provided planning advice as follows:

The proposed development, the construction of residential flat building, is one of the first proposals of its kind in Austral. As such it is essential that the development sets a positive standard for the area and provides for a high level of residential amenity for the subject site and the neighbouring properties.

Indicative Layout Plan (ILP) sets out the planned future local road network for the Growth Centres Precincts. The plans accompanying the development application show a road to the west of the subject lot. The road indicated in the ILP does not impact on the subject site so will not be required for the proposal.

The design provided with the application would not be supported as they would not provide adequate solar access and would present privacy and amenity issues. The plans presented at the meeting would be more consistent with DEP and ADG requirements

The proposed development will be reviewed by Council's Design Excellence Panel (DEP). The majority of the planning issues/planning control items that have been raised will be reviewed and commented on by the DEP. The recommendations of the DEP can have a considerable impact on the final design of the proposal. Therefore, it is highly recommended that the subject proposal seeks advice from the DEP prior to the lodgement of a development application.

3.4 Design Review Panel Briefing

The subject application was considered by the DEP on 15th March 2018. The DEP were unsupportive of the proposal subject to the following amendments which are summarised below.

“The Design Excellence Panel makes the following comments in relation to the project:

- The Panel thanks the proponent for bringing the scheme to the Panel for its consideration. The presentation helped the Panel to better understand the scheme.*
- The proposal, in terms of the design appears to be thoughtful, however the density is excessive, well beyond what is proposed for the locality and inconsistent with the R3 Medium Density Residential zoning which would broadly support development in the order of up to 40 dwellings/ha. The Panel notes that the site-specific density requires a minimum of 25 dwellings/ha but the proposal shows around 185 dwellings/ha. The panel will not support the density proposed. A new proposal in line with the density discussed above should be prepared.*
- The proposal substantially exceeds the maximum permissible building height of 12m. While the proponent suggested that the scale of the proposal reflects the flexible provisions of the DCP, the Panel noted that the height of buildings is stipulated within the SEPP maps which takes precedence over the DCP. The panel does not support the exceedance on height.*
- The Panel is not satisfied that the site is located within a comfortable walking distance of the train station and essential services to warrant the types of density proposed.*
- Any future presentations should include master plan site analysis to justify the built form, building typology or density and be considerate of existing trees, topography and the proposed context for the area, including the future provision of infrastructure.*
- The Panel is not satisfied that the proposed built form and distribution of scale and mass on the site is the most appropriate for the site and the topography. Other alternatives and more suitable options should be considered.*
- Every effort should be made to retain as many trees on the site as possible and include them as part of the proposal. Where trees are to be removed a justification should be provided, along with a landscape plan to demonstrate the replacement of the tree canopy. Urban heat island effect is a significant issue affecting western Sydney that needs to be adequately dealt with by the proposal.*
- The Panel expressed concern that the proposal relied on access from a future road to the west of the subject site. The Panel noted that the “future” road is not consistent with the road layout shown in the indicative layout plan that applies to the area and that there will be a relatively narrow “future” development site which may be prejudiced in terms of development potential. The proponent needs to carefully reconsider the overall planning for the subject site given its apparent reliance on a “future” road immediately to the west.*
- The development proposes vehicular access from Fifth Avenue and three access points along a proposed new road on the eastern boundary of the site. Fifth Avenue is a main road and the Panel considered that it should not represent primary access to the subject site. The proponent indicated that the rationale for the proposed access off Fifth Avenue was that the proposed new road to the east will only be a half road until such time as adjoining sites are developed. Notwithstanding this temporary issue, the Panel suggests that the proponent should explore alternative access options. The Panel recommends that no vehicular access be provided from Fifth Avenue and that all vehicular access and servicing be from the new eastern road.*
- The Panel does not support snorkel windows to bedrooms.*

- *Given the Panel's concerns about the density of the proposal, the height of the proposed buildings and reliance on a road that is not consistent with the indicative layout plan, there was little to be gained in discussing the merit of the proposal any further.*
- *The Panel noted that the Leppington Town Centre is under review by the Department of Planning and Environment, but it is not yet clear whether the subject site will be included in that review.*

General

Note: All SEPP 65 apartment buildings must be designed by an architect and their registration number is to be on all drawings. The architect is to attend the DEP presentations.

Quality of construction and Material Selection

Consideration must be given by the applicant to the quality of materials and finishes. All apartment buildings are to be made of robust, low maintenance materials and be detailed to avoid staining weathering and failure of applied finishes. Render is discouraged.

Close

The proposal is not acceptable in its present form and a revised proposal that more accurately reflects scale and density must be referred to the Design Excellence Panel.

Comment: As presented earlier in Section 3.1 of this report, the applicant provided a re-design in an attempt to address DEPs and Council's concerns. It is considered that the proposed reduction from 222 to 162 and reduction in height by one storey does not fully address the concerns raised by the DEP, and the amended proposal has not been re-referred to the DEP.

3.5 Planning Panel Briefing

The subject application was considered by the Sydney Western City Planning Panel (SWCPP) on 7th May 2018. The SWCPP were unsupportive of the proposal and provided the following commentary for Council consideration:

- *The current planning controls provide for a minimum of 25 dwellings per hectare (yielding a minimum density of around 30 dwellings for this 1.2 hectare site if one deducts the area of the dedicated roads). This proposal is for 185 dwellings and complies with the LEP minimum.*
- *However, while the control only imposes a minimum density, attention still needs to be given as to the capacity of the site to accommodate the proposed number of dwellings. It is also relevant to consider the capacity of local infrastructure to handle the resulting additional population and traffic (noting that there is no s.94 plan to provide for funding of new public facilities that would be required if the proposed density is replicated through the immediate area, and on similarly zoned sites in Austral and Leppington with the same distance from the station.*

Given the distance from the station, the suitability of new development which is more than six times the minimum dwelling density will need to be considered carefully.

- Attention might usefully be given to the densities permitted under the Growth Centres Code (adopted for the Growth Centres generally). The Panel understands that the densities anticipated under that document for “medium density areas” is 25 – 40 dwellings per hectare – significantly less than this DA proposal.*
- The Panel took note that Schedule 2 from the Liverpool Growth Centres DCP contains a building envelopes plan which includes heights which are significantly less than the proposal. However the envelopes plan displays narrower buildings with lower site coverage. The building envelopes plan is not however an exhibited document and may not provide a reliable guide to the building form intended for this area.*
- This DA highlights the urgent need for greater guidance in the available controls as to appropriate heights and densities for new development in the Leppington Major Centre. Indeed, the Panel has seen the same issue arise for recent applications made elsewhere in Liverpool and in the Camden part of the Growth Centre. The Panel is concerned that without reliable guidance neither developers nor consent authorities have an objective and consistent means to determine when the scale and form of proposal is acceptable, and are hampered in their endeavor to ensure consistent planning outcomes.*
- Given the substantial non-compliance with the applicable height control (around 48%), a strong basis for any variation of the control under clause 4.6 would be essential given that the development is to be accommodated on a green field site with no apparent site constraints.*
- The proposal is unclear as to how it will address Council’s policy for creation of new roads along the boundaries of adjoining sites. The proposal appears to propose half of the roads on adjoining land. It is not clear how the roads will function if the development of the adjoining property is delayed.*

Comment - Council generally concurs with the commentary provided by the SWCPP and makes the following pertinent comments to the briefing report:

- Council Planning staff informs the SWCPP that the desired density for R3 zoned land in the Austral and Leppington North would be to retain consistency with the target density band of 25-30dw/ha, to be encouraged to transition up to a maximum of 40dw/ha in certain specific instances and only in response to locality and context (such as adjoining major transport corridors and local and neighbourhood centres, and the availability of nearby open space and amenity). This is to be achieved using the typical characteristics controls in the Growth Centres DCP through the provision of a mix of dwelling typologies, to enable coherent transition from low to medium residential density, such that it creates an orderly transition in the streetscape and built environment. Council does not support any density in an R3 zone greater than 40dw/ha, as it is considered that any residential density greater than 40dw/ha is suitable only for R4 High Density and commercial core / mixed use zones.

Please note that the maximum of 40dw/ha figure for a medium density residential area is obtained directly from the *Growth Centres Development Code*, published by the Growth Centres Commission in November 2006. This Code created the basis for the development standards and controls subsequently adopted for the entirety of the North-west and South-west growth areas of Sydney, pursuant to SEPP SRGC.

- The specific Precinct Plans subject to the Liverpool Growth Centre provide instructive direction regarding desired densities and density transition, in response to locality and context, and require that Council considers them over time. Austral and Leppington North Precinct has a specific dwelling target and population target as informed by the Austral and Leppington North Precinct Planning Report, published in 2011 by the then NSW Department of Planning and Infrastructure.
- Council is aware that Leppington Major Centre (which is part of the Leppington North Precinct) is undergoing review by the Department of Planning with respect to its structural planning and is at the Precinct Planning stage having finalised the Strategic Planning and Project Establishment.
- Council's internal departments do not support the addition or relocation of roads on adjoining sites to make a proposed development more viable. A more orderly and coherent approach to difficulties with applying the ILP road locations with respect to adjoining owner's boundaries, is to obtain adjoining owner's consent and acknowledgement that roads are to be constructed in variation to the ILP, and for a concept plan to be provided demonstrating that development on that adjoining land could meet the minimum zone objectives and site planning controls. In this respect, it is considered the applicant should be constructing 10m of the road reserve (rather than 8m as proposed), as per the ILP, if adjoining owner's consent cannot be obtained.
- Council acknowledges the absence of an upper limit for residential density in the Growth Centres. It appears that the absence of such a limit has been interpreted as an indication that a density in excess of the minimums is regarded as a positive outcome, given that it contributes to housing in the Growth Centres. Notwithstanding this, in the context of all relevant information concerning the Growth Centres, it is clear that the residential density of a development is subject to multiple factors, including but not limited to character, scale and height of development, as well as existing population projections coupled with identified infrastructure requirements based on these projections. Council acknowledges the comments provided by the SWCPP and advises that Council will continue to investigate options with the Department of Planning & Environment in order to publish a guide for external stakeholders on appropriate residential densities.

4. DETAILS OF THE PROPOSAL

The application as amended proposes the demolition of existing structures and removal of all vegetation, the construction of four x part 3 and 4 storey residential flat buildings containing 162 residential apartments, basement carparking, associated landscaping and road and civil works construction. Details of the stages of the proposed development are provided below:

Demolition

- Demolition of dwellings and ancillary structures and removal of all vegetation from the site.

Construction of Roads

- Construction of half road (8m) along the Eastern boundary of the site (Selale Street).

Construction of RFBs (with total of 162 units)

- Construction of Block A (south-eastern block) and Block D (north-eastern block) are part 3 and 4 storey buildings (4 storey elements concentrated toward the corners of Selale Street with Fifth and Sixth Avenues) proposed with the following apartment mix;
 - 5 x 1 bedroom units;
 - 27 x 2 bedroom units;
 - 7 x 3 bedroom units.
- Construction of Block B (south-western block) and Block C (north-western block) are part 3 and 4 storey buildings (4 storey elements concentrated toward the corners of the proposed re-located road on an adjoining site with Fifth and Sixth Avenues) proposed with the following apartment mix;
 - 6 x 1 bedroom units;
 - 28 x 2 bedroom units;
 - 8 x 3 bedroom units.
- Overall Unit Mix proposed is;
 - 22 x 1 bedroom units;
 - 110 x 2 bedroom units;
 - 30 x 3 bedroom units.

Parking Provisions and Basement Design

- One level of basement divided into two distinct sections which align with the proposed blocks and which a proposed over nominal Basement 1 and Basement 1a.
 - Blocks A (Level 1) and B (Level 1a) are provided with shared basement access from the eastern side Selale Street. Car-parking with the breakdown of allocation and facilities as follows;

Block A: 55 car spaces distributed as follows;

- 4 accessible spaces (all of which are nominated as visitor spaces)
- 4 other visitor spaces
- 47 residential car-spaces

It also provides:

- 5 motorcycle spaces
- 20 bicycle spaces

- WC
- 39 private storage areas
- a plant room
- general maintenance store
- bulky waste store
- two secure garbage rooms
- bin holding area
- 2 elevator lobbies to access the floors above
- 2 fire stairs

Block B: 60 car spaces distributed as follows;

- 5 accessible spaces (4 of which are nominated as visitor spaces)
- 5 other visitor spaces
- 50 residential car-spaces

It also provides:

- 5 motorcycle spaces
- 20 bicycle spaces
- WC
- 42 private storage areas
- general maintenance store
- two secure garbage rooms
- 2 elevator lobbies to access the floors above
- 2 fire stairs

- Blocks C (Level 1a) and D (Level 1) are provided with shared basement access from the eastern side Selale Street. This car-parking basement is designed in exact mirror image to that as described for Blocks A and B, with Block C having the same parking provisions facilities as Block B, and Block D having the same parking provisions facilities as Block A

NOTE: A deficiency in the design is considered to affect the viability by of the proposal by restricting access of 18 of the car-spaces adjacent to the internal ramp between levels 1 and 1a for both car-parking facilities. Further, the car-parking arrangement, whereby 15 car-spaces are stacked by a car-space behind, is considered problematic with respect to the ongoing maintenance of orderly car-parking management, particularly in a development of the size proposed, where conflicts in vehicular movements would likely result in some car-spaces being inaccessible for any period of time.

Even so, as provided for later in this report, the basement has a large surplus of car-spaces to mitigate this issue, however, this has a significant impact upon the availability of deep soil areas on the site (which does not comply with minimum ADG requirements), and contributes to the overall overdevelopment of the proposal.

Stormwater Design

- On-site detention (OSD) tanks to be located in the basement with pump out facility.

Temporary management of pre-existing drainage flows flood affectation is unclear based upon the level of detail proposed

Note: As discussed in Section 3.2 of this report, Council's Land Development and Floodplain Engineers considered the proposed detail insufficient to assess compliance with Council's Flood and Water Cycle Management policies.

Site Service Facilities

- 8 garbage bin storage areas have been provided in the basement with two bin holding rooms located adjacent to the basement driveway ramp. On-site loading docks for the loading of bins is proposed on the Ground Floor with access from Selale Street.

Pedestrian Access

- Pedestrian access to all buildings is designed to allow direct access from street level to some of the ground floor unit private open spaces, although, the road located on the adjoining western allotment is not consistent with the ILP and adjoining owner's consent has not been provided to ensure the development as proposed is viable in this respect.
- Each building has two main entries to the elevator lobbies of which there are two per building.
- Each lift services a maximum of 7 units per floor throughout the development.

Communal Open Space

- Communal open space is located on the Ground level between the Blocks A and B, Blocks C and D, and Blocks B and C. Deep soil and landscaped areas are located in the location of the Communal Open Space and in some side and front setbacks.

Landscaping

- Landscaping consists primarily of native tree and shrub-like species planted along all boundaries, as well as surrounding the private courtyards of the ground floor units, and within the Communal Open Space areas.

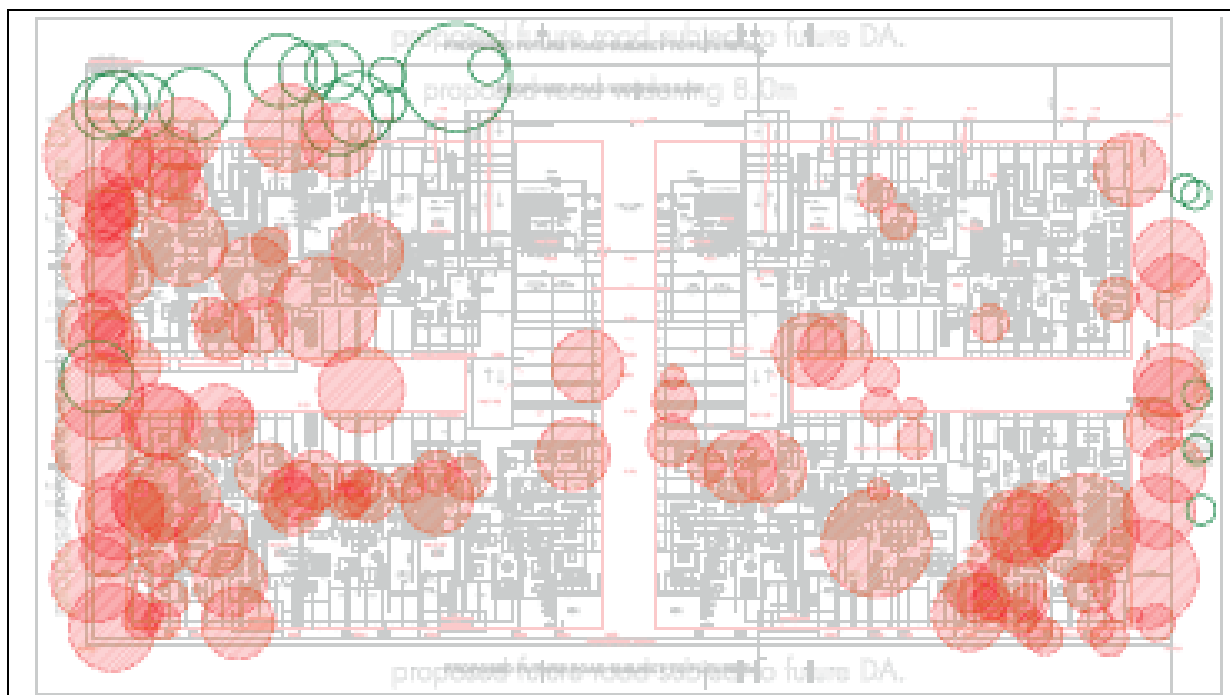


Figure 11: Proposed Removal of Existing Trees (north to right)

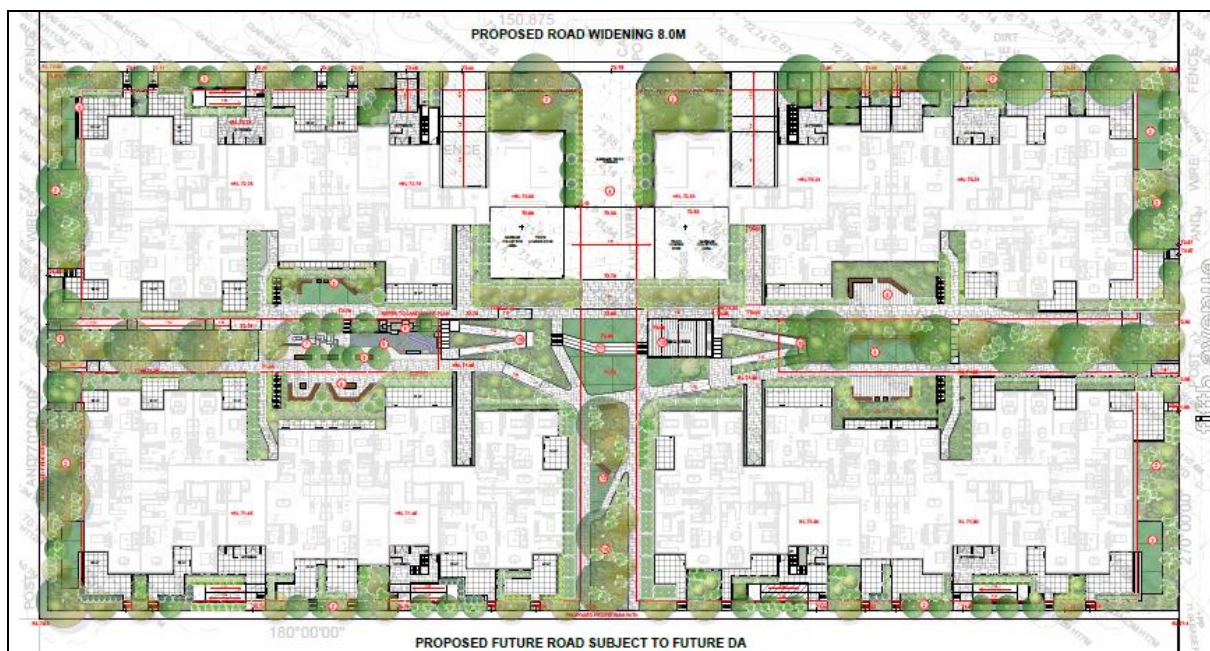


Figure 12: Proposed Site Landscape Plan (north to right)

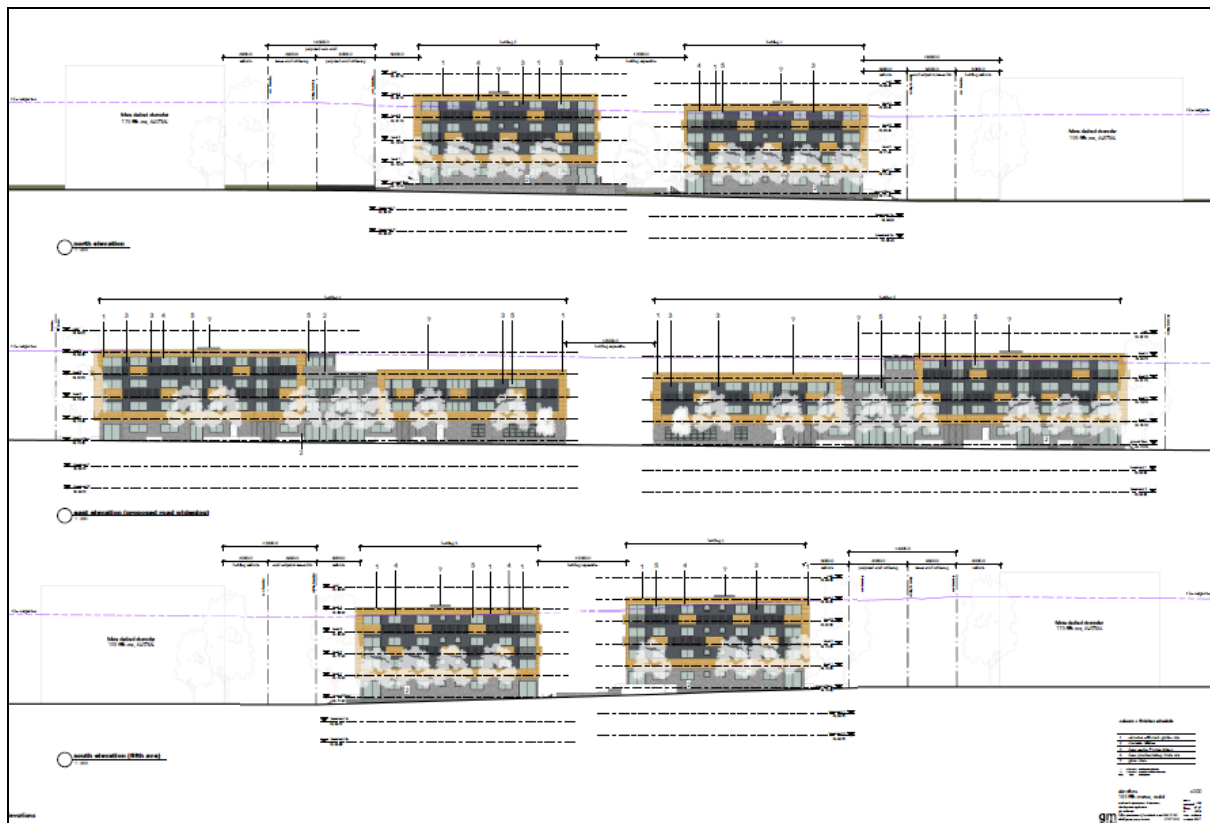


Figure 13: Elevations (east, south and north)

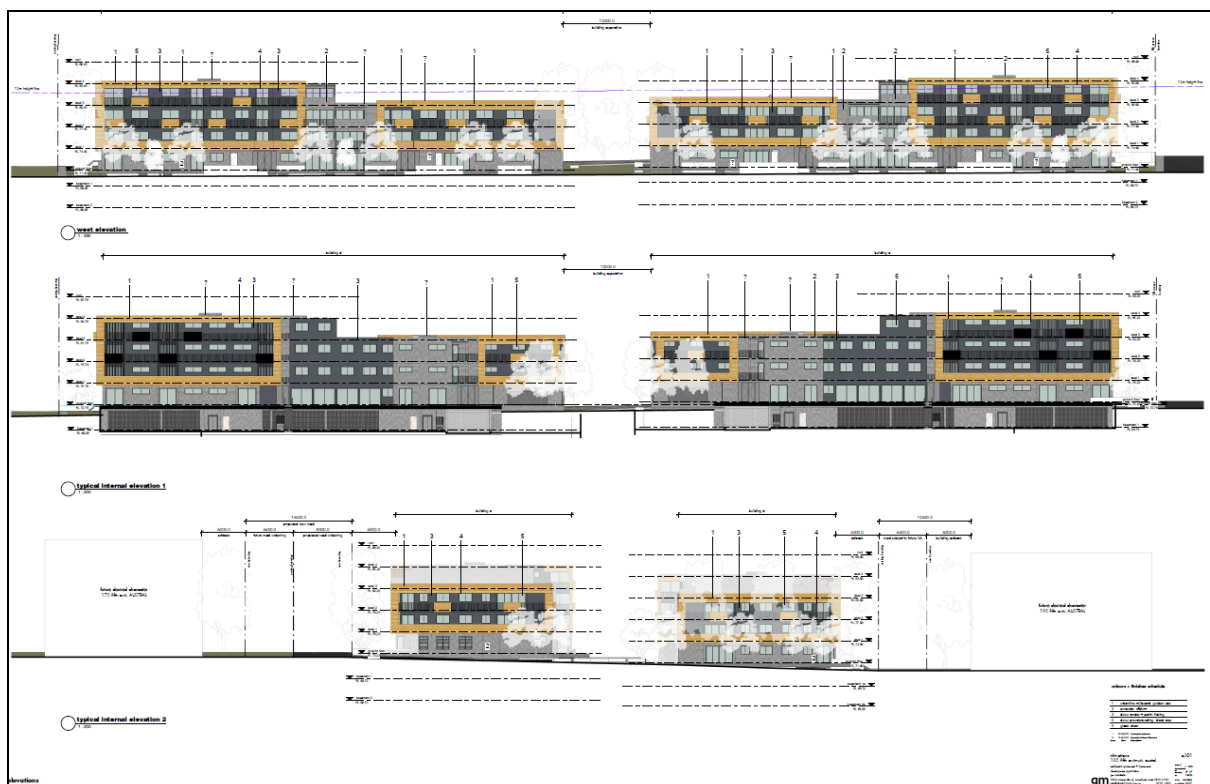
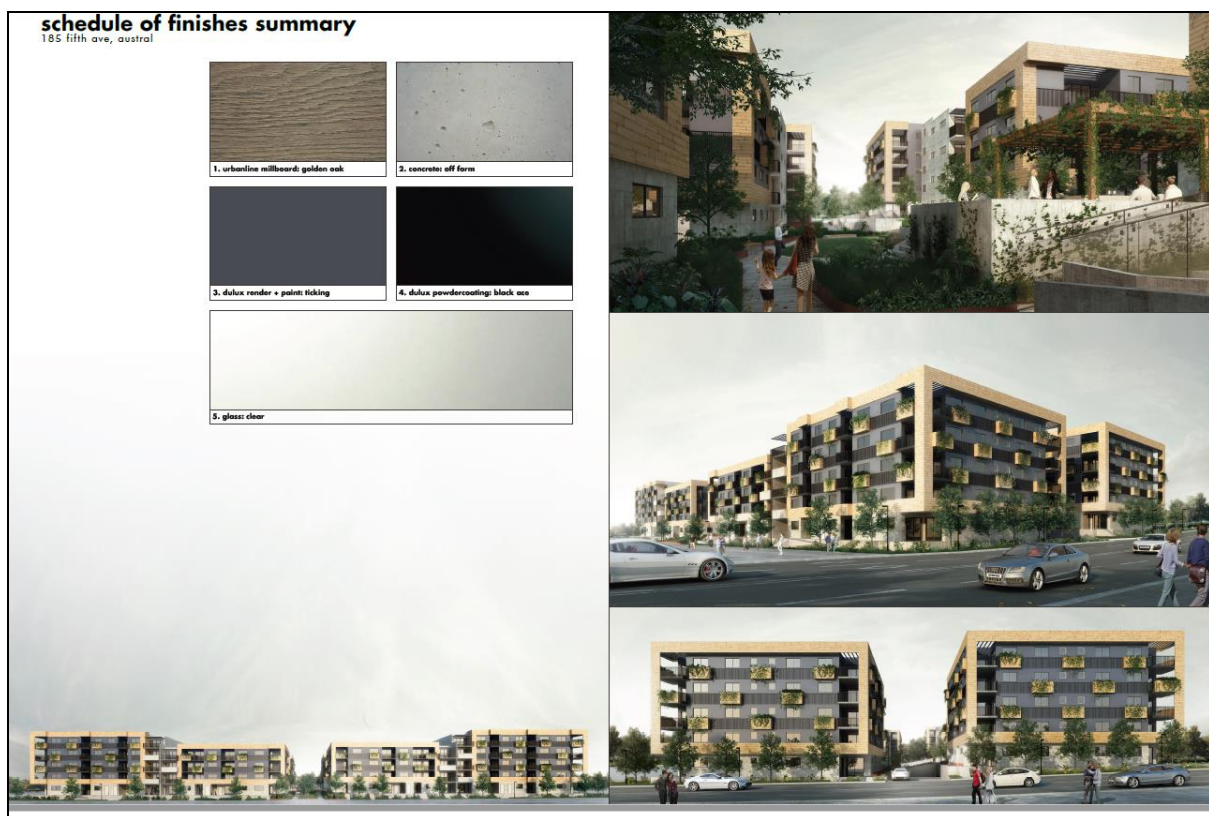
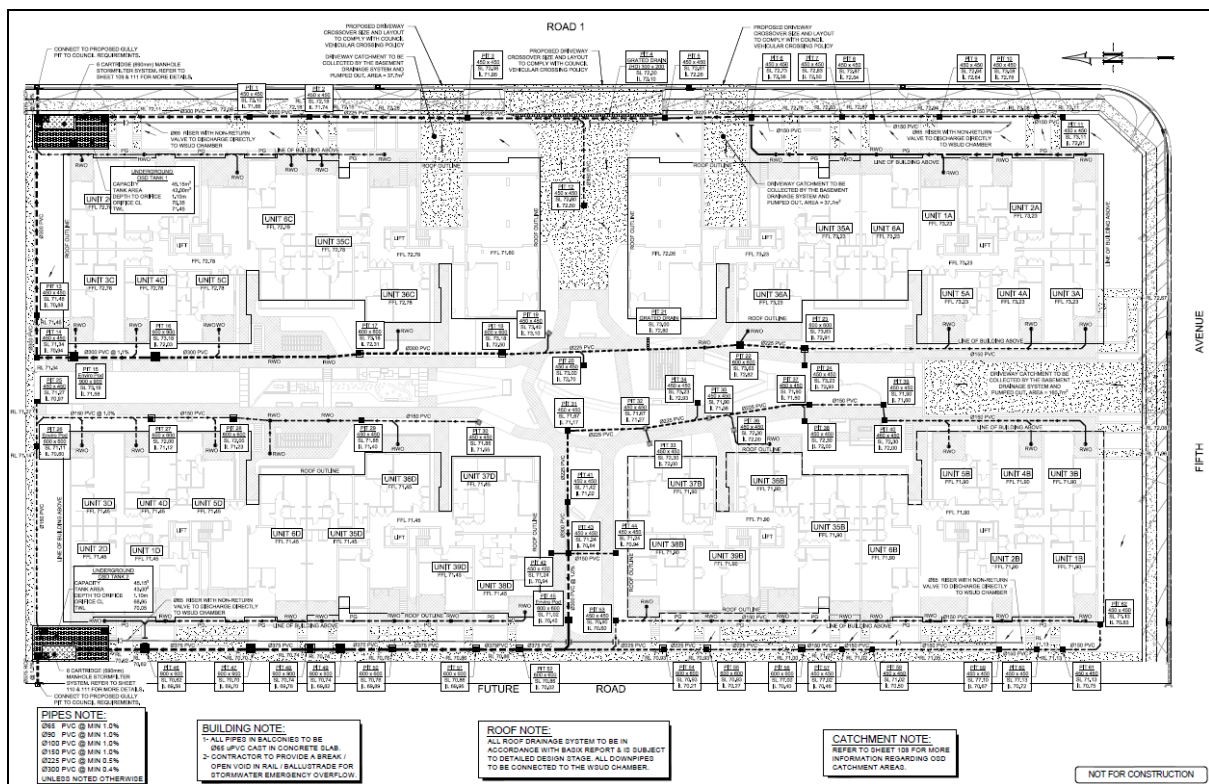


Figure 14: Elevations (west and internal)



5. STATUTORY CONSIDERATIONS

5.1 Relevant matters for consideration

The following Environmental Planning Instruments, Development Control Plans and Codes or Policies are relevant to this application:

Environmental Planning Instruments (EPI's)

- State Environmental Planning Policy (Sydney Region Growth Centres) 2006.
- State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development.
- State Environmental Planning Policy No.55 – Remediation of Land.
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- Greater Metropolitan Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No2 – 1997).

Draft Environmental Planning Instruments

- No draft Environmental Planning Instruments apply to the site.

Other Plans and Policies

- Apartment Design Guide; and
- Austral and Leppington North Precinct Planning Report.

Development Control Plans

- Liverpool Growth Centre Precincts DCP 2016
 - Part 1 – Introduction
 - Part 2 – Precinct Planning Outcomes
 - Part 3 – Neighbourhood and subdivision design
 - Part 4 – Development in the residential zones
 - Schedule 1 – Austral and Leppington North Precinct
 - Schedule 2 – Leppington Major Centre

Contributions Plans

- Liverpool Contributions Plan 2014 – Austral and Leppington North applies to the proposed development; and
- Special Infrastructure Contribution Levy

6. ASSESSMENT

The development application has been assessed in line with the relevant matters of consideration prescribed by Section 4.15 of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000* as follows:

6.1 Section 4.15(1)(a)(1) – Any Environmental Planning Instrument

(a) State Environmental Planning Policy (Sydney Region Growth Centre) 2006

(i) Zoning

The site is zoned R3 Medium Density Residential pursuant to Appendix 8 in SEPP (Sydney Region Growth Centres) 2006 as depicted in Figure 13.



Figure 17: Extract of SEPP SRGC 2006 zoning map

(ii) Permissibility

The proposed development is defined as a 'Residential flat building' which is permissible within the R3 Medium Density Residential zoning.

(iii) Objectives of the zone

Objectives of the R3 Medium Density Residential Zone are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To support the well-being of the community by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a medium density residential environment

The proposed development does not achieve and is inconsistent with the objectives of the R3 zone in that:

- The proposed development does not promote a medium density residential environment, as the proposed dwelling density and built form instead would result in development more akin to that within a High Density Residential environment usually associated with an R4 zone or a city centre / commercial core, of which there are no instances within the Austral and Leppington North Precinct, and in this part of the Leppington Major Centre (north of Bringelly Road).
- Despite there being numerous types of residential accommodation that are listed as 'Permitted with consent' for the R3 Zone, including (but not limited to) attached dwellings, boarding houses, dual occupancies, dwelling houses, group homes, manor homes, residential flat buildings, secondary dwellings, semi-detached dwellings, seniors housing and studio dwellings, the proposed development does not provide a variety of housing types within a medium density environment, rather providing only for a *Residential Flat Building* housing type on the site, which would result in a high density residential environment.

The inconsistency with the zone objectives is a reason for refusal of this DA.

(iv) Summary of Relevant SEPP (Sydney Region Growth Centre) 2006 Provisions

The SEPP (Sydney Region Growth Centre) 2006 contains a number of provisions which are relevant to the proposal. Assessment of the application against the applicable provisions is provided below.

Clause	Provision	Proposed	Comment
4.1 Minimum Subdivision Lot size	The site is subject to a minimum lot size of 2000sqm in an area with minimum dwelling density of 25dw/ha for a residential flat building	No subdivision of parent lot proposed.	N/A
4.1B Residential Density	<p>The site is subject to a minimum dwelling density of 25dw/ha</p> <p>The objectives of the clause are to:</p> <p>(a) To establish minimum density requirements for residential development, and</p> <p>(b) To ensure that residential development makes efficient use of land and infrastructure, and contributes to the availability of new housing, and</p>	<p>25dw/ha requires a minimum of 31 dwellings over 1.214ha</p> <p>162 dwellings proposed which is a density of 133.44 dw/ha and is considered to be excessive.</p> <p>The objectives of this clause cannot be complied with given the excessive density proposed.</p>	<p>Complies with numerical minimum requirement.</p> <p>Notwithstanding this is not consistent with the clause objectives.</p> <p>Discussion is provided below this table.</p>

	(c) To ensure the scale of residential development is compatible with the character of the precinct and adjoining land		
4.3 Height of Buildings (as per HOB Map)	<p>1) The objectives of this clause are as follows:</p> <p>(a) To establish the maximum height of building,</p> <p>(b) to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,</p> <p>(c) to facilitate higher density development in and around commercial centres and major transport routes.</p> <p>2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map – 12m for this site.</p>	<p>14.19m at highest point.</p> <p>The objectives of this clause cannot be complied with given the excessive height proposed.</p>	<p>Does not comply</p> <p>Discussion provided below this table.</p>
4.6 Exceptions to Development Standards	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.	4.6 Exceptions to Development Standards written request received from applicant.	Discussion is provided below this table
5.9 Preservations of trees or vegetation	Provided when consent is required to be granted subject to the provision of this clause to remove trees or vegetation.	<p>The location of the proposed works is identified as 'certified' pursuant to the Sydney Region Growth Centres 2006 Biodiversity Certification Order.</p> <p>Although enabling the removal of vegetation under this Biodiversity Certification Order to</p>	Does not comply

		<p>accommodate the development, the applicant has not made any attempt to incorporate any existing trees within the development, which would be considered a reasonable response to the site, given the large size of the lot and the ability to orientate new development around such vegetation. The submitted arborist report does not sufficiently explain why the trees cannot be retained, instead reporting that only 34 of the 164 trees are in poor conditions, and that only 4 are to be retained. The report also recommends the removal of 18 trees on adjoining site for which there is no adjoining owner's consent provided.</p>	
6.1 Public Utility Infrastructure	<p>The consent authority must not grant development consent to development on land to which this Precinct Plan applies unless it is satisfied that any public utility infrastructure (supply of water, electricity and disposal/management of sewage) that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required</p>	<p>A referral was sent to Sydney Water, however a response was not received confirming the availability of public utility infrastructure (water supply and sewer). Council would usually provide a condition of consent to ensure the developer connects each the development in accordance with Sydney Water Requirements, however in this instance, given the scale of development and as the applicant has not provided any evidence of connection to existing infrastructure, Council cannot be certain if the development would be viable with respect to the need to upgrade existing Sydney Water infrastructure.</p> <p>Comments have not been received from Endeavour Energy. Even so, given previous comments confirming the availability of public utility infrastructure in the locality on Fifth Avenue, Council would condition any consent to ensure the developer connects the land in accordance with their</p>	Does not comply

		requirements.	
6.3 Development Controls – Existing Native Vegetation	The consent authority must not grant development consent to development on land to which this clause applies unless it is satisfied that the proposed development will not result in the clearing of any existing native vegetation (within the meaning of the relevant biodiversity measures under Part 7 of Schedule 7 to the Threatened Species Conservation Act 1995)	The proposed development would not result in the clearing of any existing native vegetation (within the meaning of the relevant biodiversity measures under Part 7 of Schedule 7 to the Threatened Species Conservation Act 1995).	Complies

(1) Non-compliance with Clause 4.1B Residential Density

The objectives of this clause cannot be complied with given the excessive density proposed, such that;

- objective (b) cannot be complied with as the development would likely result in a completely inefficient use of land in that it would result in the burdening of the level of infrastructure planned for (and which are not yet in place) in the precinct,
- objective (c) cannot be satisfied in that the residential development proposed is not compatible in scale with the precinct as provided for in the Precinct Plan and is not in character with either the desired future character nor that of recently approved development on adjoining land.

(2) Non-compliance with Clause 4.3 Height of Buildings

The objectives of this clause cannot be complied with given the excessive height proposed, such that;

- Objective (a) cannot be complied with as the maximum height set by the height of building map in development standard (2), being 12m, is exceeded.
- Objective (b) cannot be complied with as the visual impact of the proposal and the impact to the adjoining development and land in terms of solar access to buildings and open space for future residential development, is unreasonably exacerbated by the height exceedance.
- Objective (c) cannot be complied with as the variation proposed does not result in a development that is appropriate for the locality, as the height controls seek to limit development which is not in and around a commercial centre and major transport route, where higher density development is expected.

(3) Non-compliance with objectives of 4.6 Exceptions to Development Standards

The Applicant has submitted a written request to vary Clause 4.3 – Height of Buildings (applicant's summarised comments in italics) in accordance with Clause 4.6 in Appendix 8 of the Growth Centres SEPP. The consent authority, **has not** been satisfied that the applicant's written request under Clause 4.6 in Appendix 8 of the Growth Centres SEPP has adequately addressed the following matters required to be demonstrated:

- a) that the extent of the non-compliance is reasonable;

and it is considered that the variation from the standard is warranted given that the proposed development will integrate well with the envisaged future streetscape and prospective buildings in adjacent street blocks.

As is identified earlier in the report, an approved and executed development for two storey small lot housing (located 166m to the east along Fifth Avenue), provides a streetscape consistent with the envisaged future streetscape. The proposed development is not consistent with that vision and would not integrate at all with the expected scale of development in adjacent street blocks, as informed by that approved development.

- b) that compliance with the development standard in Clause 4.3 of Appendix 8 of the Growth Centres SEPP is unreasonable or unnecessary in the circumstances of the case. To justify the variation, the applicant relies upon four of the accepted five possible approaches for determining whether compliances are unnecessary or unreasonable established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council* (2007) LEC 827, these include:

1. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
2. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
3. *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;*
4. *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.*

Council comments that only the first of these can be relied upon by the applicant as,

- there have been no consents issued by any consent authority for residential flat buildings or any other residential development approved as assessed pursuant to SEPP SRGC in the precinct which exceeds the maximum allowable height of building, thereby points 2 and 3 cannot apply.
- There is no justification by the applicant provided as to why the subject premises should not have been included in the R3 zone, and as such point 4 does not apply.

The applicant continues in the statement as follows;

It is a well-known fact that the strict application of numeric requirements in the planning process restricts the design process and often produces poor urban design outcomes.

The Department of Planning's "Guidelines for the Use of State Environmental Planning Policy No.1" (refer to DOP Circular No. B1 - issued 17th March 1989) state that:

"As numerical standards are often a crude reflection of intent, a development which departs from the standard may in some circumstances achieve the underlying purpose of the standard as much as one which complies. In many cases the variation will be numerically small and in other cases it may be numerically large, but nevertheless be consistent with the purpose of the standard..."

In deciding whether to consent to a development application the Council should test whether the proposed development is consistent with the State, regional or local planning objectives for the locality; and in particular the underlying objective of the standard. If the development is not only consistent with the underlying purposes of the standard, but also with the broader planning objectives of the locality, strict compliance with the standard would be unnecessary and unreasonable.”

The underlying purpose of the maximum height standard can be deduced from the objectives identified in Clause 4.3 (1) of the SEPP.

It is considered that strict compliance with Clause 4.3(2) of the SEPP would be unreasonable and unnecessary when adopting the abovementioned test of Justice Preston.

In summary, the underlying purpose of the maximum building height requirement is to ensure that new development is of a comparable height as other development in the locality and to maintain views, privacy and solar access. The proposed development which is located within a R3 Medium Density Residential Zone satisfies the above objectives as follows:

- 1. The masterplan for the precinct encourages a range of building forms and horizontal variation (i.e., 3 to 5 storeys).*
- 2. From an urban design viewpoint bulkier building forms are encouraged on corner site locations, which each building group will be when the road network is established.*
- 3. There are site specific constraints which need to be addressed with the proposed development, including:*
 - Flooding;*
 - Post bulk site-works with assumed ground levels; and*
 - The inclusion of basement levels to accommodate the car parking generation rates.*
- 4. Strict compliance with the numeric requirement, in this particular case, would result in a diminished range of horizontal variation (i.e., all buildings would need to be uniformly 3 storeys max), which significantly diminishes the development potential of the site, making it unfeasible.*
- 5. The proposed building heights will form a good transition between the bulkier building forms planned in the Business Development zone on the opposite side of the street.*
- 6. The design skill-fully addresses visual bulk through the effective use of design elements and colours and textures.*

The consent authority comments that the above assertions are erroneous as follows;

- The assertion in the summary that the proposed height is comparable to other development in the locality is incorrect as there are no such developments of a similar height in the entire Precinct of Austral and Leppington North.
- In response to points 1 and 2, the desired future built typology for the zone and locality is not exclusively for 3-5 storey developments, but

for medium density residential development, predominately small lot housing with the possibility of some residential flat buildings, up to a maximum of 3 storeys as per the maximum allowed in the SEPP. In reference to the Leppington Major Centre Masterplan, buildings of 3-5 storeys in height might only be considered on the south side corners of the site adjacent to Fifth Avenue, were the remainder of the residential development to be consistent with the Masterplan, that being lower scale development with large areas of open space, deep soil landscaping and significant building separation. In invoking the Masterplan to apply development above 3 storeys across the site, the applicant undermines its intent and purpose which is to provide a guideline for good design to meet the precinct vision. If the development does not meet the precinct vision, then the Masterplan as a guideline becomes (as it has in this instance) meaningless.

- The applicant suggests in point 3 that the proposed development type should not have to respond to the site constraints, but rather use those constraints as reasons as to why compliance is unnecessary. In doing this the applicant has not considered that the site may not be suitable for the scale and rationale of the proposed development, and has not demonstrated consideration that alternative and lower-scale developments would be more reasonable for such a constrained site.
- The applicant suggests in point 4 that strict compliance would diminish the range of horizontal variation and that all buildings would need to be 3 storeys in height. Horizontal variation is not relevant in considering the objectives of the development standard, and the statement is misleading as horizontal variation can be achieved with complying development through a proposed mix of single, double and three storey developments.
- Council has not received any applications for the development of the adjoining B5 zone to the south of the site, and as such it cannot be ascertained that the proposed development responds to any built form of a bulky goods development. Further, the maximum building height for the B5 zone is the same as for the subject land (12m), and any variation at this stage of the precinct's development would likely cause an undesirable precedent.
- The design merits are irrelevant given the proposed heights, as the variation would result in an impact in terms of solar access and open space of existing and future developments, greater than reasonably expected, with respect to the establishment of maximum building heights.

The applicant continues in summary that;

Overall, it is considered that the proposed development will effectively assimilate with the envisaged future streetscape, therefore, its appearance will not be in strong visual contrast, being within the environmental capacity of the zone and the variation to the maximum building height requirements is considered acceptable. The justification is based on site specific and local circumstances which have no bearing on State or Regional environmental planning interests and there are no particular benefits in strictly maintaining the maximum building height standard in this particular case, given that:

1. *It would be inconsistent with the precinct masterplan; and*
2. *The inconsequential impacts of the variation and the mitigating circumstances with the skillful design (i.e., the design achieves the intent of the development standard).*

Given the above, it is considered that the proposed development is within the environmental capacity of the R3 – Medium Density Residential zone.

In response to the applicant's submission, Council does not accept that strict compliance with the acceptable height standard is unreasonable and unnecessary, that the proposed development is consistent with the Precinct Planning vision, nor that it results in inconsequential impacts, for the following reasons;

- The site and its surrounds are to be the subject of extensive development, but only by being consistent with the R3 Medium Density Residential Zone objectives, which requires consistency with the structure of the Precinct Plan. The Precinct Plan provides target dwelling and population yields. These are to be met in being consistent with the typical characteristics for the zone and locality.

The applicant suggests that the development would have no bearing on State or Regional environmental planning interests, however, it is considered that the proposed density which the height exceedance contributes to, is excessive. As such, the applicant in essence proffers a development that undermines the planning objectives of the SEPP, SRGC rather than achieve them.

It is considered that the rationale as established by the NSW Land and Environment Court in *Wehbe vs Pittwater Council* (2007) LEC 827 for such development as proposed, would ultimately render the planning objectives impossible to achieve without significantly scaling back residential development on other land in the locality. Such an approach to the standards would have a significant impact on the development potential of that land to be developed in the future, and not as intended by the Precinct Plan.

- The subject site is not in and around a commercial centre. Objective (c) is not achieved as higher density development as set by higher maximum building limits is required to be *in and around a commercial centre and major transport route*, not either / or. The distance to Leppington Station which is to be surrounded by a future commercial centre at 1.1km is not considered to be in an around.
 - Further, exceedance of the height standard is particularly unacceptable in circumstances where the site is a green-field site that is entirely undeveloped and which does hold site constraints which can be overcome with a more sensitive design, to ensure full compliance. In that regard, the design of the proposed development should better respond to the topography and flood affectation of the site, and it is considered that compliance with the height standard is neither unreasonable nor unnecessary.
- c) that there are sufficient environmental planning grounds to justify contravening the development standard in Clause 4.3. As shall be discussed further in the report with respect to the planning controls in the DCP, the development does not comply with the desired dwelling typology and streetscape characteristic, including the desire for limited RFBs of appropriate size with a maximum of 3 storey RFBs.
- d) the proposed development is in the public interest because it is consistent with the objectives of the standard in Clause 4.3 in Appendix 8 of the Growth Centres SEPP, and with the R3 zone objectives.

The applicant proposes this as;

The proposed development will be in the public interest because it is consistent with the objectives of the R3 Medium Density Residential zone (i.e., the objectives of the zone encourage medium density housing).

The proposed development satisfies the above objectives as follows:

- The proposed development is within the range of permissible uses and will meet the housing needs of the community;*
- Consideration has been given to the desired future amenity and character of the area and*
- it is considered that the proposed development will be sympathetic and harmonious with nearby development in the precinct and wider locality in general; and*
- The proposed development will enhance the amenity of the site and immediate locality by the provision of new housing stock of a comparable scale as adjoining and nearby dwellings.*

As established in this report, it is considered that the development is inconsistent with what is expected for a medium density environment, that it should not result in an exceedance to a height standard, and that it is not consistent with the planning for the precinct which provided specific target dwelling yields.

It is considered this development is not in the public interest as it would set an undesirable precedent likely to place a burden on infrastructure not commensurate with that which has been planned for the locality, and which would ultimately result in disorderly and incoherent development, which is not envisioned or enshrined in the SEPP SRGC.

Having regard to the above assessment, the proposal although permissible in the zone is considered inconsistent with the objectives of the zone and proposes variations to the development standards in the SEPP which are unsupportable, in particular as they are inadequately addressed or justified.

Please note that the Liverpool Local Environmental Plan does not apply to this proposal as the land is located within a Growth Centre Precinct and the SEPP prevails over the LEP. It is instead assessed against the SEPP and the Growth Centre DCP.

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

The proposal has been evaluated against the provisions of SEPP 65 which aims to improve the design quality of residential apartment development. SEPP 65 requires Council to consider the development against 9 key design quality principles; and against the guidelines of the associated Apartment Design Guide (ADG). The ADG provides additional detail and guidance for applying the design quality principles outlined in SEPP 65.

The nine key design quality principles that must be considered are listed below.

- | | |
|--------------------------------------|---|
| 1. Context & Neighbourhood Character | 5. Landscape |
| 2. Built Form & Scale | 6. Amenity |
| 3. Density | 7. Safety |
| 4. Sustainability | 8. Housing Diversity & Social Interaction |
| | 9. Aesthetics |

Assessment of the application against the principles of SEPP 65 and the guidelines of the ADG, together with advice from Council's independent Design Excellence Panel (DEP) has concluded that the proposal is generally not satisfactory with respect to the provisions of SEPP 65 and the guidelines of the ADG, and that the designing Architect's (GM) Design Verification Statement does not sufficiently consider the Design Quality Principles, in particular that of Principle 3 – Density, as the proposed density is inconsistent with the area's existing or projected population, and as its basis for addressing Principle 1: Context and Neighbourhood Character, that the subject land has recently been rezoned to R4 High Density Residential, and is located within 500m of Seven Hills Rail Station, which is obviously incorrect.

The assessment of the proposal is presented in the following table.

SEPP 65 Design Quality Principles table

Principle	How does the development address the principles?
<p>Principle 1:</p> <p>Context and Neighbourhood Character</p> <p>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions. Responding to context involves identifying the desirable elements of an area's existing or future character.</p> <p>Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<ul style="list-style-type: none"> • The immediate locality is semi-rural but is in transition consistent in nature with the R3 – Medium Density Residential zoning under SEPP (Sydney Region Growth Centre). • This transition is considered to be relatively slow as approximately 10-15% of land in the suburb of Austral has been subject to development approval and development since the first approval in late 2015. As a result, services and infrastructure are not being developed at a rate considered appropriate to support such a high yielding development as proposed. • To this point in time, Council has not approved any Residential Flat Buildings in an R3 zone under that SEPP in this Precinct. Thus far, the only types of residential development approved in R3 zoned land in the locality has been detached and attached small lot housing on separate Torrens Title and rear loaded lots, with a density generally between 25-35dw/ha. • The future desired character of the immediate locality is medium density residential living as required by the zone objectives. The proposal, which is akin to development anticipated in a high density or mixed use zone, does not demonstrate how it responds to the future desired character of the neighbourhood, or even to the approved small lot housing developments on land located 166m to the east of the site. • The proposed development does not respond to the adjoining western site, in that it will restrict the potential of the site to redevelop by causing a part of it to be isolated between the property boundary and a required future road. The applicant has not responded to this specific local context and a more orderly and coherent approach would be to leave part of the proposed developable land residue until such time as an appropriately designed development can incorporate the affected land on the adjoining site.

	<p><u>Conclusion:</u></p> <p>As such it is considered the development does not respond or positively contribute to the existing, emerging and desired context. Further, as residential development in the locality is in its early stages, it is considered that the development would have the potential to create an undesirable precedent not consistent with the intent of Principle 1, which seeks that applicants propose well-conceived development in response to local context.</p>
<p>Principle 2:</p> <p>Built Form and Scale</p> <p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings. Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<ul style="list-style-type: none"> • The development does not comply with the height development standard for the site of 12m, with a maximum height of 14.19m. • Council's future vision for this area is buildings at a maximum height of 12m and to be a maximum of 3 storeys. • Exceedance of the height control is particularly unacceptable in circumstances where the site is a greenfield site that is entirely undeveloped and which does hold site constraints which can be overcome with a more sensitive design, and to ensure full compliance. In that regard, the design of the proposed development should better respond to the topography and flood affectation of the site and be reduced in size and scale. • The proposed maximum 4 storey built form is considered an overdevelopment of the site and is causal in contributing to an excessive adverse impact on adjoining residentially zoned land. It is expected that the development will result in overshadowing, privacy and visual impacts greater than that anticipated were the development to fully comply with the relevant height and building form controls. • The 4 storey built form for each of the 4 buildings proposed is inconsistent with the desired future streetscape and character which anticipates single and double storey dwellings with some 3 storey buildings. • As advised by the DEP, <ul style="list-style-type: none"> - <i>The Panel is not satisfied that the proposed built form and distribution of scale and mass on the site is the most appropriate for the site and the topography. Other alternatives and more suitable options should be considered.</i> <p><u>Conclusion:</u></p> <p>As such it is considered the development does not achieve a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p>
<p>Principle 3:</p> <p>Density</p> <p>Good design achieves a high level of amenity for residents and each</p>	<ul style="list-style-type: none"> • The proposal would provide a density of 133.44 dw/ha where the minimum required is 25 dw/ha. • The proposed density is inconsistent with the area's existing or projected population for Austral and Leppington North, and in particular for the future suburb of Leppington North (in which is

<p>apartment, resulting in a density appropriate to the site and its context. Appropriate densities are consistent with the area's existing or projected population.</p> <p>Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>located the Leppington Major Centre), the locality of this proposal.</p> <ul style="list-style-type: none"> • The target population for Leppington North is 33,000 people which equates to 12,000 dwellings as was forecast in the <i>Austral and Leppington North Precinct Plan</i>, and which informed the controls for the DCP. All attributable Developer Contributions for the delivery and projected capacity of business zones, school zones, community and public land, and for services and infrastructure is calculated upon this, at a per dwelling rate, capped by the NSW State Government. • The proposal would create an undesirable precedent which has the potential to result in a dwelling density within the locality which would place an undue impact on the existing and planned infrastructure (as provided for in the Growth Centres Contributions Plan), such that it would render the development of the precinct over time inefficient, and continually requiring infrastructure upgrade in response to excessive developments not planned for. • The DEP is not satisfied that the site is located within comfortable walking distances of a train station and essential services to warrant the types of density proposed. • The proposed density is not anticipated and therefore inappropriate with respect to the amenity of residents across the locality, in particular with respect to existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment. <p><u>Conclusion:</u></p> <p>It is considered the proposal does not adequately address whether the proposal is consistent with the intent of Principle 3 in ensuring that residential development is appropriate to the future context for the growth area.</p>
<p>Principle 4:</p> <p>Sustainability</p> <p>Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.</p>	<ul style="list-style-type: none"> • The proposal aims to provide an environmentally friendly development subject to SEPP BASIX requirements. • Irrespective of the potential to provide for sustainability measures to the proposed developments, the excessive bulk, scale and density of the development would result in an environment completely altered from its current vegetated form, with minimal deep soil zones which could otherwise be provided for in an improved design. • The proposal does not respond to the aspect of liveability of residents with respect to reducing reliance on technology and operation costs to achieve good residential amenity. It should be considered in the concept of the design, that the local climate is significantly different to that of coastal land, and that in this part of Sydney

	<p>(western localities) extreme heat conditions (with no relief from sea breezes), have been notable and have been able to persist for multiple days on end, in the time preceding the lodgement of the DA and since. This results in a reliance upon the use of technology to achieve that liveability and increases the cost of living, which is an issue the design of the development should be seeking to address.</p> <ul style="list-style-type: none"> • Further, the DEP noted the following; <ul style="list-style-type: none"> - <i>Every effort should be made to retain as many trees on the site as possible and include them as part of the proposal. Where trees are to be removed a justification should be provided, along with a landscape plan to demonstrate the replacement of the tree canopy. Urban heat island effect is a significant issue affecting western Sydney that needs to be adequately dealt with by the proposal.</i> <p><u>Conclusion:</u></p> <p>Although the proposal could theoretically comply with the minimal design requirements for energy efficiency and water management across the site, it is considered that the excessive nature and design of the development would contribute to undermining the intent of Principal 4, as stated above.</p>
<p>Principle 5:</p> <p>Landscape</p> <p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.</p>	<ul style="list-style-type: none"> • The landscape design has been prepared in co-ordination between the architect and a Landscape Architect and otherwise meets the minimum level of detail expected to assess the quality of the development in its entirety. • Irrespective of this, the excessive nature of the development renders an assessment of the virtues of the proposed landscaping meaningless, as the precinct planning for the area envisions a desired scaled back development. Such a development would result in a significantly better outcome in contributing to an attractive development with good landscaped amenity, which contributes better to the character of the streetscape and neighbourhood, rather than a development which results in a bulk and mass that dominates and overshadows any periphery landscaping as proposed. • Further, the proposed development does not take advantage of the potential to retain some existing large trees on-site (particularly near adjoining boundaries) and incorporate them into the design so as to retain some local landscaped amenity which would otherwise be removed and unnecessarily replaced. <p><u>Conclusion:</u></p> <p>Although the proposal could theoretically comply with the minimal design requirements for landscaping across the site, the excessive nature and design of the development would contribute to undermining the intent of Principal 5, as stated above.</p>
<p>Principle 6:</p>	<ul style="list-style-type: none"> • The proposal presents a design which can only effectively meet the intent of Principle 6 for this

<p>Amenity</p> <p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing. Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility</p>	<p>type of development, should it be considerably scaled back, and in that case would not be considered a similar development proposal. The excessive nature of the development including density renders an assessment to any great extent secondary in consideration, as the scope and density of the development is not supported.</p> <ul style="list-style-type: none"> The DEP provided comments indicating a particular deficiency in design suggesting; <ul style="list-style-type: none"> <i>The Panel does not support snorkel windows to bedrooms.</i> <u>Conclusion:</u> <p>Although the proposal could be adjusted to meet the intent of Principle 6, it is considered that the excessive nature and design of the development and its inconsistency with the desired strategic vision for the locality renders any rigorous review of the design meaningless.</p>
<p>Principle 7:</p> <p>Safety</p> <p>Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety. A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<ul style="list-style-type: none"> The proposal could be designed to incorporate suitable definition of the public, communal and private domains, with secure basement parking, however it is noted that as all of the building blocks are landlocked along western boundaries, that there are many units which would have no public domain interface, thus impacting on passive surveillance. (note: no adjoining owner's consent has been provided for the re-location / addition of the road on the land immediately to the west of the site). Another aspect of the proposed scheme which is not adequately addressed with the application is the possibility that adjoining land might not be developed for an indeterminate time. The Precinct Plan and DCP are required to consider development over time, not just in the ultimate scenario. Many proposed additional residences would effectively have private open space courtyards adjacent to existing large lot semi-rural private land on which are carried out a range of uses ongoing, and the locality might not be urbanised for a considerable period of time. The implications of this on the safety of residents with respect to a positive relationship between public and private spaces has not been contemplated. <p><u>Conclusion:</u></p> <p>Although the proposal could be adjusted to meet the intent of Principle 7, it is considered that the current design has not satisfactorily addressed safety in the context of the site.</p>
<p>Principle 8:</p> <p>Housing Diversity and Social Interaction</p> <p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and</p>	<ul style="list-style-type: none"> The proposal provides an adequate mix of 3 bedroom apartments, providing only 18.5% of the apartment mix. Affordable Housing is not proposed and Council generally requires that this be acknowledged and addressed in a Comprehensive Social Impact Assessment, taking into account the locality and social context of the development, and to ascertain

<p>household budgets. Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.</p>	<p>whether the development could be improved through provision of better communal open space for better resident interaction.</p> <ul style="list-style-type: none"> Communal Open Space can be better designed and dispersed throughout the development rather than focused in a few limited parts of the development site. <p><u>Conclusion:</u></p> <p>Irrespective of the key concern being that the development type and minimal dwelling diversity is causal to the unreasonably proposed density, the proposal is not supported in meeting the intent of Principle 8.</p>
<p>Principle 9:</p> <p>Aesthetics</p> <p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<ul style="list-style-type: none"> As commented on by the DEP; <i>The proposal, in terms of the design appears to be thoughtful, however the density is excessive, well beyond what is proposed for the locality and inconsistent with the R3 Medium Density Residential zoning which would broadly support development in the order of up to 40 dwellings/ha. The Panel notes that the site-specific density requires a minimum of 25 dwellings/ha but the proposal shows around 185 dwellings/ha. The panel will not support the density proposed. A new proposal in line with the density discussed above should be prepared.</i> <p>And;</p> <ul style="list-style-type: none"> <i>Any future presentations should include master plan site analysis to justify the built form, building typology or density and be considerate of existing trees, topography and the proposed context for the area, including the future provision of infrastructure.</i> <p><u>Conclusion:</u></p> <p>In support of the DEPs comments, a thorough assessment of the aesthetics of the development is meaningless, until such time as the DEP comments are satisfied by the applicant.</p>

Apartment Design Guide Compliance Table

Further to the above design quality principles, Clause 30(2) of SEPP 65 also requires residential apartment development to be designed in accordance with ADG. The following table outlines compliance of the proposed development with the ADG.

Provisions	Comment
PART 1 IDENTIFYING THE CONTEXT	
1A Apartment Building Types	
A range of apartment building designs are presented and a variety of concepts are provided with desired building types for specific development outcomes depending on orientation, location and local context.	Non-compliance The proposed development includes four Apartment Buildings across the development site, which is inconsistent (due to the excessive scale of the development) with the context of the locality as it develops through time in accordance with the Growth Area Strategic Direction.
1B Local Character and Context	
Context is to be provided in relationship with the existing and desired future character and whether the proposal relates to a strategic or local centre, or is designed within the context of an urban or suburban neighbourhood.	Non-compliance The proposed development is inconsistent with the zone requirements and objectives and controls for the subject site, as it would not result in a medium density development, which is the desired future character of the locality. Further, the development is not designed in context of the existing neighbourhood, and is not within close vicinity of a strategic centre including transport and educational facilities.
1C Precincts and individual sites	
Individual sites especially if amalgamated should be considered in terms of desired future character of the neighbourhood and street scales, and should not restrict adjoining sites by way of causing isolation. If the site is subject to a precinct plan it must consider all relevant elements of the strategic outcome expectations.	Non-compliance The site is subject to a very clear precinct plan which sets the strategic direction for the scale and size of development in providing a target population to be delivered over time. Were the proposed development approved, it would impact the administering of the Precinct Plan by jeopardising the achieving of the strategic outcome expectations. Part of the locality is currently in transition from semi-rural land on large lots, to low and medium density residential development. High density zones do not exist in the precinct. Further, the proposed development does not address the isolation issues caused by the proposal on the adjoining western site, which were this proposal to be approved, would not be able to reasonably respond and develop in a manner consistent with the desired characteristics of the R3 zoned land in the Growth Centres.
PART 2 DEVELOPING THE CONTROLS	
2A Primary Controls	
Sets out the objectives of the provisions and in the developing of the controls in assessing apartment buildings.	Non-compliance The proposed development is considered to be an overdevelopment, which exceeds the expected height, bulk and scale by not complying with the primary controls, as well as not complying with minimum required landscaping / deep soil and communal open space controls.
2B Building Envelopes	
Sets out the appropriate scale of future development in terms of bulk and height relative to streetscape, public and private	Non-compliance The building envelope proposes unreasonable height variations and the density is excessive when

open space, and block and lot size. They help to define the three dimensional form of buildings and inform decisions about density, open space and future mass and scale of new development.	considering the context of the development within the locality and with respect to adjoining sites and the desired streetscape.
2C Building Height	
Helps shape the desired future character and defines the relationship between buildings and public and private spaces in terms of physical and visual amenity. It informs the maximum number of storeys especially for residential development.	Non-compliance The design of the buildings exceeds the maximum sought number of storeys and exceeds the maximum allowed height by 2.19m. As the site is on undeveloped greenfield land it is considered there to be no significant site constraints too onerous to warrant any variation. The applicant proposes a development which would result in an undesirable development in the context of the desired future character of the locality.
2D Floor Space Ratio	
Helps ensure that optimum capacity and desired density for the site and local area is achieved. It also provides opportunities for building articulation within a building envelope.	N/A No FSR applies to the site.
2E Building Depth	
Sets out the appropriate building depth and how it relates to the maximum apartment depths, helping to ensure that natural ventilation and access to sunlight.	Complies The proposed building depths result in an overall compliance in requirements for solar access.
2F Building Separation	
Sets out minimum setbacks between buildings relative to height, communal open space, visual privacy and acoustic privacy controls.	Complies The proposed development is considered to generally be compliant with the primary controls and conditions of consent mitigate side separation variations as discussed further in the report.
2G Street setbacks	
Sets out the objectives of the front setback in ensuring a coherent threshold between the public and private realms and to promote appropriate entry points and establishing landscaped areas and a passive surveillance and outlook to the street.	Complies The building front setback complies.
2H Side and rear setbacks	
Sets out setbacks to boundaries relative to the height of buildings in helping to achieve amenity for development and buildings on adjacent sites, and also providing for open space areas and separation between buildings.	Complies The proposed development is considered to generally be compliant with the primary controls and conditions of consent mitigate side separation variations as discussed below this table. Otherwise the rear setback fully complies.
PART 3 SITING THE DEVELOPMENT	
3A Site Analysis	
Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context	Non-compliance The proposed development is not appropriate for its context, and would be the first development of its kind and density to be approved in the immediate locality, and would be undesirable in setting the tone for future development, which is to be consistent with the strategic direction of the Precinct Plan.
3B Orientation	

3B-1. Building types and layouts respond to the streetscape and site while optimising solar access within the development	Non-compliance The building layout is well designed given the opportunities the size and orientation of the site affords a development, and it is considered the development provides orientation of units to the northern aspect. However, overshadowing of neighbouring properties and future medium density development (to a maximum of 3 storeys and predominately 1 and 2 storeys) is considered excessive, especially as the proposal is not consistent with the maximum desired 3 storeys in the locality, and as it does not comply with overall maximum allowable height.
3B-2. Overshadowing of neighbouring properties is minimised during mid-winter	
3C Public Domain Interface	
3C-1 Transition between private and public domain is achieved without compromising safety and security	Complies A reasonable transition between the private and public domain is achieved through low height fencing while living area balconies are orientated towards the public domain to ensure a safe and secure transition between the private and public domain.
3C-2 Amenity of the public domain is retained and enhanced	
3D Communal and public open space	
3D-1. An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping 1. Communal open space has a minimum area equal to 25% of the site 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)	Non-compliance The proposal incorporates an area of communal open space, equivalent to the following calculations attributable to the site; 2472sqm / 12,140sqm = 20.36% The application incorrectly calculates a compliance with the control, due to an incorrect assumption that all communally trafficable space on the ground floor (including when associated with landscaped areas in front setbacks and footpaths to the main entry foyers / lift lobbies) is Communal Open Space. It is considered that given the size of the development site, that the Communal Open Space element of the design has not been well incorporated given the number of apartments and residents it is required to service. Further, the limited amount of area provided for Communal Open Space accommodates a larger than reasonably expected building footprint (in particular for the waste vehicle driveway) and is considered a direct cause to the unreasonable bulk, scale and density of the development. The proposed areas of communal open space are accessible and visible from habitable rooms and private open space areas. Public open space is not included as part of the proposed development.
3D-2. Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting	
3D-3. Communal open space is designed to maximise safety	
3D-4. Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood	
3E Deep soil zones	
Site Area > 1500m² Min. Dimensions 6m Deep soil zone (% of site area) - 15% in consideration of the site areas and context	Non-compliance The proposal incorporates an area of deep soil, equivalent to the following calculations attributable to the site;

			<p>733sqm / 12,140sqm = 6%</p> <p>The application incorrectly calculates a compliance with the control by using the minimum dimension of 3m, and in not applying the minimum dimension of 6 metres for site areas larger than 1500sqm.</p> <p>The applicant also incorrect calculates terraces and trafficable footpaths / roofed areas within communal open space as being deep soil areas.</p> <p>The size and extent of the basement car-park and the design of the communal open space areas with hard surfaces for pathways is primarily causal in there being so few deep soil areas of minimum 6m dimension.</p> <p>Further, the limited amount of area provided for deep soil to plant large trees and provide some water infiltration, accommodates a larger than reasonably expected building footprint and is considered a direct cause to the unreasonable bulk, scale and density of the development.</p>																								
3F Visual Privacy																											
<p>Requirement:</p> <table><tr><td>Building Height</td><td>Habitable Rooms and Balconies</td><td>Non Habitable Rooms</td></tr><tr><td>Up to 12m (4 Storeys)</td><td>6m to adjoining site 12m on the same site</td><td>3m to adjoining site 6m on the same site</td></tr></table>			Building Height	Habitable Rooms and Balconies	Non Habitable Rooms	Up to 12m (4 Storeys)	6m to adjoining site 12m on the same site	3m to adjoining site 6m on the same site	<p>Complies</p> <p><u>Provided:</u></p> <table><tr><td>Building Height</td><td>Habitable Rooms and Balconies</td><td>Non Habitable Rooms</td></tr><tr><td>Ground Floor</td><td>6m</td><td>6m</td></tr><tr><td>Level 1</td><td>6m</td><td>6m</td></tr><tr><td>Level 2</td><td>6m and 12m</td><td>6m</td></tr><tr><td>Level 3</td><td>6m and 12m</td><td>6m</td></tr><tr><td>Level 4</td><td>6m and 12m</td><td>6m</td></tr></table> <p>At their closest points, the setbacks of the buildings generally comply in achieving the intent of the controls for maintaining visual privacy.</p>	Building Height	Habitable Rooms and Balconies	Non Habitable Rooms	Ground Floor	6m	6m	Level 1	6m	6m	Level 2	6m and 12m	6m	Level 3	6m and 12m	6m	Level 4	6m and 12m	6m
Building Height	Habitable Rooms and Balconies	Non Habitable Rooms																									
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Level 4	6m and 12m	6m																									
3G Pedestrian access and entries																											
3G-1. Building entries and pedestrian access connects to and addresses the public domain			<p>Non-compliance</p> <p>Building access areas and pathways are clearly visible from the public domain, however, there is no adjoining owner’s consent provided for the proposed road re-location / addition on the adjoining western site, which Block B and C address. As such, it is not certain that that street frontage will ever eventuate, and as such the development currently is not viable as proposed.</p> <p>Otherwise entries and pathways from the front of the building and to the communal open areas are accessible.</p>																								
3G-2. Access, entries and pathways are accessible and easy to identify																											
3G-3. Large sites provide pedestrian links for access to streets and connection to destinations																											
3H Vehicle Access																											
Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes			<p>Non-compliance</p> <p>The proposal provides vehicle access via Selale Street which is not designed in the interim to enable two-way movement, which is considered unacceptable.</p>																								

3J Bicycle and Car Parking	
3J-1. Minimum car parking requirement for residents and visitors to comply with Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.	Complies Sufficient car-parking spaces are provided despite 30 of them being stacked and not optimal for continued access, there is a surplus of proposed car-parking to ensure the development is not deficient for the number of apartments. Dedicated undercover bike storage is provided in the basement. Access to the car parking within the basement level could be required to swipe card access with the installation of motion sensor lights were the development supportable. The vehicle access point has been integrated into the building design and the underground car park is not readily visible from the public domain. No on-grade car parking is proposed.
3J-2. Parking and facilities are provided for other modes of transport	
3J-3. Car park design and access is safe and secure	
3J-4. Visual and environmental impacts of underground car parking are minimised	
3J-5. Visual and environmental impacts of on-grade car parking are minimised	
3J-6 Visual and environmental impacts of above ground enclosed car parking are minimised	
PART 4 DESIGNING THE BUILDING	
4A Solar and Daylight Access	
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. 2. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	Complies A total of 88.27% (143 of 162) apartments achieve a minimum of two hour solar access. A maximum of 7.41% (12 of 162) apartments receive no solar access on June 21 between 9am and 3pm.
4A-2 Daylight access is maximised where sunlight is limited	
Objective 4A-3 Design incorporates shading and glare control, particularly for warmer months	Complies The site provides appropriate solar access to apartments given the orientation and advantages of designing to develop on a large greenfield site. The BASIX Certificate for the proposed development identifies that it achieves the required thermal comfort levels, however, the lack of appropriate deep soil landscaping and open space may mean this is achieved through costly use of air-conditioners rather than due to an appropriate design, especially as the minimum number of apartments meets the provisions for natural ventilation.
4B Natural Ventilation	
4B-1 All habitable rooms are naturally ventilated to create healthy indoor living environments. 1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. 2. Overall depth of a cross-over or cross-	Complies A total of 91% (147 of 162) apartments achieve natural cross ventilation.

through apartment does not exceed 18m, measured glass line to glass line.							
4B-2 The layout and design of single aspect apartments maximises natural ventilation							
4B-3 The number of apartments with natural cross ventilation is maximised							
4C Ceiling Heights							
<p>4C-1 Ceiling height achieves sufficient natural ventilation and daylight access. Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <p>Minimum ceiling height for apartment and mixed use buildings</p> <table> <tr> <td>Habitable Rooms</td><td>2.7m</td></tr> <tr> <td>Non-Habitable</td><td>2.4m</td></tr> <tr> <td>If located in mixed use areas</td><td>3.3m for ground and first floor</td></tr> </table>	Habitable Rooms	2.7m	Non-Habitable	2.4m	If located in mixed use areas	3.3m for ground and first floor	<p>Complies</p> <p>All floors achieve a minimum floor-to-ceiling height of 2.7m.</p>
Habitable Rooms	2.7m						
Non-Habitable	2.4m						
If located in mixed use areas	3.3m for ground and first floor						
4C-2 Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.	<p>Complies</p> <p>All residential apartments have a minimum ceiling height of 3m in habitable rooms and apartment layouts have been designed to provide spacious, well-proportioned rooms.</p>						
4C-3 Ceiling heights contribute to the flexibility of use over the life of the building	<p>Complies</p> <p>The floor to ceiling heights at ground floor and above is consistent with the residential use. Given the number of residential apartments on each level, following theoretical strata subdivision it is unlikely that these would be converted to commercial uses in future, as the site is zoned for residential purpose.</p>						
4D Apartment Size and Layout							
<p>4D-1 The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity</p> <p>1. Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> • Studio 35m² • 1 bedroom 50m² • 2 bedroom 70m² • 3 bedroom 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p> <p>2. 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</p>	<p>Complies</p> <p>All units meet the required minimum areas.</p>						
4D-2 Environmental performance of the apartment is maximised.	Complies						

<p>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height Based on ceiling heights of 2.7m, habitable room depths are required to be limited to 6.75m.</p> <p>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	<p>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height. Based on ceiling heights of 2.7m, habitable room depths are required to be limited to 6.75m.The scheme complies with this requirement, noting that the proposal primarily incorporates open plan layouts.</p> <p>2. No open plan layout has a habitable room depth more than 8m from a window.</p>															
<p>4D-3 Apartment layouts are designed to accommodate a variety of household activities and needs</p> <p>1. Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space)</p> <p>2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>3. Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none">• 3.6m for studio and 1 bedroom apartments• 4m for 2 and 3 bedroom apartments <p>4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	<p>Complies</p> <p>All master bedrooms and other bedrooms achieve the required areas.</p> <p>All bedrooms achieve the minimum dimension.</p> <p>All apartments achieve the minimum dimension requirements to living/dining rooms.</p> <p>Cross through apartments are 4m in width.</p>															
4E Private Open Space and Balconies																
<p>4E-1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity</p> <p>1. All apartments are required to have primary balconies as follows:</p> <table><tr><td>Dwelling type</td><td>Minimum Area</td><td>Min. Depth</td></tr><tr><td>Studio</td><td>4m2</td><td></td></tr><tr><td>1 bedroom</td><td>8m2</td><td>2m</td></tr><tr><td>2 bedroom</td><td>10m2</td><td>2m</td></tr><tr><td>3+ bedroom</td><td>12m2</td><td>2.4m</td></tr></table> <p>2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m2 and a minimum depth of 3m.</p>	Dwelling type	Minimum Area	Min. Depth	Studio	4m2		1 bedroom	8m2	2m	2 bedroom	10m2	2m	3+ bedroom	12m2	2.4m	<p>Complies</p> <p>All apartments comply with private open space and balcony size requirements.</p>
Dwelling type	Minimum Area	Min. Depth														
Studio	4m2															
1 bedroom	8m2	2m														
2 bedroom	10m2	2m														
3+ bedroom	12m2	2.4m														
<p>4E-2 Primary private open space and balconies are appropriately located to enhance liveability for residents</p>	<p>Complies</p> <p>Private open space is directly accessible from the living area of each dwelling and can be used in conjunction with these.</p> <p>The balconies are integrated into the overall design of the development and form part of the detail of the building.</p> <p>All balconies would be conditioned to comprise balustrades of 1.4m in height to ensure safety is maintained.</p>															
<p>4E-3 Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building</p>																
<p>4E-4 Private open space and balcony design maximises safety</p>																
4F Common circulation and spaces																
<p>4F-1 Common circulation spaces achieve</p>	<p>Complies</p>															

good amenity and properly service the number of apartments.	Two areas are proposed on each level of each building comprising a lift lobby.										
1. The maximum number of apartments off a circulation core on a single level is eight.	Maximum number of units serviced by one lift circulation core is a maximum of 7.										
2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40											
4F-2 Common circulation spaces promote safety and provide for social interaction between residents	Complies The proposal incorporates common foyers for all blocks.										
4G Storage											
4G-1 Adequate, well designed storage is provided in each apartment. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <table><tr><td>Dwelling Type</td><td>Storage volume</td></tr><tr><td>Studio</td><td>4m3</td></tr><tr><td>1 bedroom</td><td>6m3</td></tr><tr><td>2 bedroom</td><td>8m3</td></tr><tr><td>3+ bedroom</td><td>10m3</td></tr></table> At least 50% of the required storage is to be located within the apartment	Dwelling Type	Storage volume	Studio	4m3	1 bedroom	6m3	2 bedroom	8m3	3+ bedroom	10m3	Complies The proposal provides for storage within each apartment to comply with the minimum volume specified in the ADG.
Dwelling Type	Storage volume										
Studio	4m3										
1 bedroom	6m3										
2 bedroom	8m3										
3+ bedroom	10m3										
4G-2 Additional storage is conveniently located, accessible and nominated for individual apartments	Complies Storage is provided within each apartment and within the basement which is accessed via the lift.										
4H Acoustic Privacy											
4H-1 Noise transfer is minimised through the siting of buildings and building layout	Complies Although an Acoustic Report has not been provided, noise transfer between units and within units has been minimised through an appropriate building layout locating bedrooms mostly away from balconies and living areas.										
4H-2 Noise impacts are mitigated within apartments through layout and acoustic treatments	The apartments have been configured so that quiet spaces (e.g. bedrooms) are co-located. An acoustic report has been provided to demonstrate the proposed apartments will not be adversely affected by external or internal noise subject to recommendations.										
4J Noise Pollution											
4J-1 In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings	Not Applicable The site is not adjacent to an industrial zone or a classified road.										
4J-2 Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission											
4K Apartment Mix											
4K-1 A range of apartment types and sizes is provided to cater for different household types now and into the future.	Complies The development provides the following unit mix:										

4K-2 The apartment mix is distributed to suitable locations within the building.	<ul style="list-style-type: none">• One bedroom: 13.58% (22);• Two Bedroom: 67.9% (110);• Three Bedroom: 18.59% (30) <p>Given the number of units in the development (162), it is considered there is an appropriate mix to meet the intent of the control, as required by Principle 8: Housing Diversity and Social Interactivity.</p>
4L Ground Floor Apartments	
4L-1 Street frontage activity is maximised where ground floor apartments are located	Non-compliance The ground floor apartments which face the road reserves provide opportunities for passive surveillance while achieving privacy to the residents by way of landscaping and low-level fencing. However, there is no adjoining owner's consent provided for the proposed road re-location / addition on the adjoining western site, which Block B and C address. As such, it is not certain that that street frontage will ever eventuate, and as such the development currently is not viable as proposed.
4L-2 Design of ground floor apartments delivers amenity and safety for residents	
4M Facades	
4M-1 Building facades provide visual interest along the street while respecting the character of the local area	Complies Building façades are articulated and modulated through the use of balconies, varying windows, awnings and recessed elements. Ground floor building entries and uses are clearly defined and articulated by the façade.
4M-2 Building functions are expressed by the facade	
4N Roof Design	
4N-1 Roof treatments are integrated into the building design and positively respond to the street	Non-compliance The roof design contributes to the excessive height of the development. No roof space is proposed to be set aside for open space. The proposal complies with requirements of BASIX and will include the required thermal insulation techniques.
4N-2 Opportunities to use roof space for residential accommodation and open space are maximised.	
4N-3 Roof design incorporates sustainability features	
4O Landscape Design	
4O-1 Landscape design is viable and sustainable	Complies The landscape plan incorporates sustainable environmental design and landscaping to the site. The landscape design maximises the use of drought tolerant species.
4P Planting on Structures	
4P-1 Appropriate soil profiles are provided	Complies As demonstrated in the Landscape Plan the species selected are appropriate for the soil depths and volumes.
4P-2 Plant growth is optimised with appropriate selection and maintenance	
4P-3 Planting on structures contributes to the quality and amenity of communal and public open spaces	
4R Adaptive Reuse	
4R-1 New additions to existing buildings are contemporary and complementary and	Not Applicable The development does not propose new additions or

enhance an area's identity and sense of place	adaptations to an existing building.
4R-2 Adapted buildings provide residential amenity while not precluding future adaptive reuse	
4S Mixed Use	
4S-1 Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement	Not Applicable
4S-2 Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents	
4Q Universal Design	
4Q-1 Universal design features are included in apartment design to promote flexible housing for all community members	Complies A total of 16 apartments, which equates to 9.8%, are capable of adaptation.
4Q-2 A variety of apartments with adaptable designs are provided	
4Q-3 Apartment layouts are flexible and accommodate a range of lifestyle needs	
4U Energy Efficiency	
4U-1 Development incorporates passive environmental design	Complies The BASIX Certificate provided with the application identifies that the proposed development achieves the required levels of thermal comfort for a development of this scale. The proposed development satisfies the natural ventilation design criteria.
4U-2 Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer	
4U-3 Adequate natural ventilation minimises the need for mechanical ventilation	
4V Water Management and Conservation	
4V-1 Potable water use is minimised	Non-compliance Potable water use will be minimised where possible. The BASIX Certificate identifies that the proposed development achieves compliance with water efficiency requirements. However, insufficient detail has been provided with respect to the flood management systems and how storm-water will be treated on site, prior to being discharged into Council's stormwater system. The proposed hydraulic designs are inappropriate as assessed by Council's engineers.
4V-2 Urban stormwater is treated on site before being discharged to receiving waters	
4V-3 Flood management systems are integrated into site design	
4W Waste Management	
4W-1 Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	Complies The residential waste facilities are incorporated into the design of development and are not readily visible from the public domain. All waste collection would take place within the site and not on public street reserve. Separate residential waste rooms are provided in Basement and on Ground Floor adjacent to the loading area.
4W-2 Domestic waste is minimised by providing safe and convenient source separation and recycling	
4X Building Maintenance	
4X-1 Building design detail provides protection from weathering	Complies Building has been designed to be detailed in a

	<p>manner to provide protection from weathering.</p> <p>Systems and access enable ease of maintenance. All plant equipment is accessible, being located on the Ground Floor or in the Basement.</p> <p>Finishes selected on the basis of reducing maintenance costs.</p>
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(c) State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

Pursuant to Clause 7 of SEPP 55, a consent authority is unable to grant development consent unless it has considered whether the land is contaminated and, if so, whether the consent authority is satisfied that the land is suitable in its contaminated state, or can be remediated to be made suitable for the purposes for which the development is proposed to be carried out.

Consideration was given to this issue by Council's Environmental Health Officer with respect to the submitted *Preliminary Site Investigation Report by Benviron Group dated August 2017*, the *Detailed Site Investigation (DSI) by Benviron Group dated February 2018*, and the *Remedial Action Plan dated February 2018*.

Council's Environmental Health Officer has considered that the proposed excavation and offsite disposal of all contaminants followed by validation sampling is appropriate and that the remediation strategy is satisfactory as is the DSI it is based on.

Pursuant to Clause 7 of SEPP 55, Council is also required to undertake a merit assessment of the proposed development. The following table summarises the matters for consideration in determining development application (Clause 7).

Clause 7 - Contamination and remediation to be considered in determining development application	Comment
(1) A consent authority must not consent to the carrying out of any development on land unless:	
(a) it has considered whether the land is contaminated, and	The site is contaminated as provided in submitted reports and as considered satisfactory by Council's Environmental Health Officers.
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and	The reports submitted as part of this application and reviewed by Council's Environmental Health Staff, establish that the land is considered suitable for its proposed residential use, subject to remediation of the site in accordance with the remediation action plan as recommended by Council's Environmental Health Officer.
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	The land can be made suitable for residential use as recommended by Council's Environmental Health Officer subject to works being carried out in accordance with the remedial action plan.

Based on the above assessment, the proposal is considered to satisfy the relevant objectives and provisions of SEPP 55. Therefore, it is considered that the subject site is suitable for the proposed development given that works are carried out to remove potential contaminants in accordance with the Remediation Action Plan dated 14th February 2018.

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

The proposal is accompanied by a BASIX Certificate which is consistent with the aims and intent of the Plan.

(e) Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2 - 1997) (Deemed SEPP)

The subject land is located within the Hawkesbury Catchment and as such the Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2 - 1997) applies to the application.

The Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No 2 - 1997) generally aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.

When a consent authority determines a development application, planning principles are to be applied (Clause 4). Accordingly, a table summarising the matters for consideration in determining development applications (Clause 5 and Clause 6), and compliance with such is provided below.

Clause 5 General Principles	Comment
(a) the aims of this plan,	The plan aims to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context.
(b) the strategies listed in the Action Plan of the Hawkesbury-Nepean Environmental Planning Strategy	The strategies are applied to this planning assessment in the table under Clause 6.

<p>(c) whether there are any feasible alternatives to the development or other proposal concerned</p>	<p>Yes. Although the site is located in an area nominated for residential development, the proposed development has not demonstrated that it will not result in an unreasonable impact on downstream creek and river systems and other land adjoining the creek system due to the flood affectation and overland flows affecting the site. The proposed large scope of works and significant areas of hard-stand and impervious surfaces are likely to result in an increased stormwater runoff impact, and the details to confirm otherwise have not been provided.</p> <p>An alternative proposed design with less hard surface which includes ground-water infiltration, and complies with Council's requirements with respect to flood affectation, is considered a better response to managing the site flooding and overland flow impact on down-stream environments.</p>
<p>(d) the relationship between the different impacts of the development or other proposal and the environment, and how those impacts will be addressed and monitored</p>	<p>Council's development engineers and floodplain engineers reviewed the originally submitted details and requested additional information to enable assessment on how the development's impact on the environment could be addressed and monitored. The applicant has not provided the additional detail as requested to ensure the development can meet this principle. Further, the application requires the use of adjoining land on which to place road infrastructure (in which is required storm-water infrastructure) for which there is no adjoining owner's consent. As such, the effect of the likely impact of the development is unknown in that it depends on development of land for which it cannot obtain, as the adjoining owner does not wish to be burdened by it.</p>
<p>Clause 6 Specific Planning Policies and Recommended Strategies</p>	<p>Comment</p>
<p>(1) Total catchment management</p>	<p>Environmental Planning consideration through SEPP (Sydney Region Growth Centre) 2006 has considered the impact of the residentially zoned land within the catchment.</p>
<p>(2) Environmentally sensitive areas</p>	<p>The development area is not part of an Environmentally Sensitive area as defined in this plan.</p>
<p>(3) Water quality</p>	<p>Council's floodplain engineers reviewed the originally submitted details and requested additional information to enable assessment on how the proposed development would be able to ensure the expected quality of stormwater discharge from the site.</p> <p>This information has not been forthcoming.</p>

(4) Water quantity	<p>Council's floodplain engineers reviewed the originally submitted details and requested additional information to enable assessment on how the proposed development would be able to reduce the impact from the expected flood compensatory works, storm-water runoff and flow characteristics through the site, on down-stream aquatic ecosystems.</p> <p>This information has not been forthcoming.</p>
(5) Cultural heritage	The site is not identified as being of or containing Aboriginal / cultural heritage.
(6) Flora and fauna	The site is identified as certified land and otherwise not containing threatened species of flora and fauna.
(7) Riverine scenic quality	Not applicable.
(8) Agriculture/aquaculture and fishing	Not applicable.
(9) Rural residential development	Not applicable.
(10) Urban development	<p>The site has been rezoned to residential, however, the proposal is considered excessive and an over-development when considering the expected typology of development as provided by the strategy in the Precinct Plan. Further, Council's floodplain engineers reviewed the originally submitted details and requested additional information to ensure the development could be designed in such a way to manage flood compensatory impacts, and to improve the expected quality of stormwater discharge from the site, during and after development.</p> <p>This information has not been forthcoming.</p>
(11) Recreation and tourism	Not applicable.
(12) Metropolitan strategy	The proposal is inconsistent with the Metropolitan Strategy by proposing an excessive residential density for a greenfield development in the South West Growth Centre, which has been created with specific dwelling yield and population maximum targets as the basis of its orderly and coherent development and future function.

It is considered that due to a lack of information the proposal cannot demonstrate that it satisfies the provisions of the SREP No.20 and cannot be supported.

6.2 Section 4.15(1)(a)(ii) - Any Draft Environmental Planning Instrument

There are currently no draft planning instruments that would be applicable to the proposal.

6.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

(a) Liverpool City Council Growth Centre Precincts Development Control Plan

The application has been considered against the controls contained in the Liverpool Growth Centre Precincts Development Control Plan (Growth Centres DCP) in particular:

- Part 2: Precinct Planning Outcomes; and
- Part 3: Neighbourhood and Subdivision Design, and
- Part 4: Development in Residential Zones, and
- Schedule 1 – Austral and Leppington North Precinct
- Schedule 2 – Leppington Major Centre

The assessment has identified that the proposal generally demonstrates that the proposed development does not achieve compliance with relevant DCP requirements. The key controls are discussed in the following tables:

Part 2 Precinct Planning Outcomes		
Development Control	Provision	Comment
2.2 The Indicative Layout Plan	All development applications are to be generally in accordance with the Indicative Layout Plan.	Non-compliance Reason for refusal - see discussion below
	When assessing development applications, Council will consider the extent to which the proposed development is consistent with the Indicative Layout Plan.	
	Any proposed variations to the general arrangement of the Indicative Layout Plan must be demonstrated by the applicant, to Council's satisfaction, to be consistent with the Precinct Planning vision in the relevant Precinct Schedule.	
2.3.1 Flooding	This section controls relating to development on flood prone land	Non-compliance As presented in Section 3.2 of this report, Council's Flooding Engineering Branch requested the details to ensure compliance with this section of the DCP, as the originally submitted detail was insufficient to enable approval. This has not been forthcoming.
2.3.2 Water Cycle Management	This section contains controls relating to stormwater management.	Non-compliance As presented in Section 3.2 of this report, Council's Development Engineering Branch requested the details to ensure compliance with this section of the DCP, as the originally submitted detail was insufficient to enable approval. This has not been forthcoming.
2.3.3 Salinity and Soil Management	This section contains controls relating to salinity and soil management.	Complies by condition The site is potentially affected by a moderate level of salinity. A submitted Salinity Assessment indicates that construction management techniques are required.

Part 2 Precinct Planning Outcomes		
Development Control	Provision	Comment
		Council's Land Development Engineers have reviewed this part of the proposed development and raised no issues subject to conditions.
2.3.4 Aboriginal and European Heritage	This section contains controls relating to the management of Aboriginal heritage values and to ensure areas identified as European cultural heritage sites or archaeological sites are managed.	Complies by Condition The submitted assessment has considered the potential for Aboriginal heritage at the site and concluded it is unlikely that the site contains any significant heritage, and Council's Heritage Officer concurs. Due to the scope of works required for the subdivision, is considered pertinent that conditions of consent apply to this DA to provide direction around the unlikely event any remains or artefacts are uncovered during works, as recommended by Council's Heritage Officer.
2.3.5 Native Vegetation and Ecology	This section contains controls relating to the conservation and rehabilitation of native vegetation.	Non-compliance Opportunity exists for the retention of some of the existing vegetation and for the development to respond to the existing trees. The submitted arborist report does not satisfactorily address this part of the DCP. It also suggests that trees on an adjoining sites are required to be removed to accommodate the development, which is not considered acceptable at this stage.
2.3.6 Bushfire Hazard Management	This section contains controls relating to development on bushfire prone land.	Complies by condition The applicant has provided a Bushfire Risk Assessment to address the Bushfire Risk (Buffer zone) affectation of the site. The recommendations for mitigating construction levels are consistent with Principles of Bushfire Planning for the type of development.
2.3.7 Site Contamination	This section contains controls relating to development on potentially contaminated land.	Complies by condition View Section 6(c) of the report.
2.3.8 Development on and adjacent to electricity and gas easements	This section contains controls relating to development on and adjacent to electricity and gas easements.	Not Applicable Not identified as being land adjacent to electricity and gas easements.
2.3.9 Noise	This section contains controls relating to ensuring acoustic privacy is achieved for future residential development.	Non-compliance An acoustic report was requested and was not submitted to Council. This is required to ensure that the large scale and potential noise generation of the development are considered with respect to mitigation of noise impact on adjoining sites.
2.3.10 Odour Assessment and Control	This section relates to land deemed by Council to be affected by an odour source.	Complies There are no odour emitting sources in the immediate locality, as identified on the DPE mapping.
2.3.11 Air Quality	This section contains controls relating to preserving air quality in relation to industrial and/or	Not Applicable The DA does not propose industrial or employment development.

Part 2 Precinct Planning Outcomes		
Development Control	Provision	Comment
	employment development	
2.4 Demolition	This section contains controls relating to demolition of buildings	Complies by condition The demolition of the dwellings is to be undertaken as required by conditions of consent.
2.5 CPTED	This section contains controls relating to the principles of CPTED.	Complies The proposed development is unlikely to contravene the principles of CPTED, and this part of the DCP would defer to the ADG requirements.
2.6 Earthworks & Dam De-watering	This section contains controls relating to earthworks	Complies by condition This aspect has been reviewed by Council's Land Development Engineers, who have raised no issues to the bulk earthworks, subject to conditions. Further, there is no dam removal required as part of this DA.

Part 3 Neighbourhood and Subdivision Design		
Development Control	Provision	Comment
3.1.1 Residential Density	All applications for residential subdivision and the construction of residential buildings are to demonstrate that the proposal meets the minimum residential density requirements of the relevant Precinct Plan and contributes to meeting the overall dwelling target in the relevant Precinct.	Non-compliance The DA proposes 162 dwellings over 1.214ha resulting in a density of 133.44dw/ha in a locality targeted to deliver 25-30dw/ha. The proposal cannot meet the control requiring development to contribute to meeting the overall dwelling target as it contributes excessively to that target.
	Residential development is to be generally consistent with the residential structure as set out in the Residential Structure Figure in the relevant Precinct Schedule, the typical characteristics of the corresponding Density Band in Table 3-1.	Non-compliance Development in the 25-30dw/ha band is expected to be predominantly small lot housing with some, multi-dwelling housing, manor homes, and residential flat buildings located close to the local centre and public transport. Also, the buildings are generally to be single and double storey with some three storey. The proposal does not comply as only four residential flat buildings are proposed which are also not located close to any local centre.
3.1.2 Block and Lot Layout	Minimum lot size of 2000m ² with a	Not Applicable Subdivision of land is not proposed.
	Two or more RFB sites not to be amalgamated after principle subdivision to create the larger lot to meet the minimum lot size	Complies Not proposed.
3.1.3 Battle-axe Lots	Provides controls for Battle-axe lots	Not Applicable (none proposed)
3.1.4 Corner Lots	Corner lots, including splays and driveway location, are to be designed in accordance with AS 2890 and Council's Engineering	Non-compliance The development relies upon a road on an adjoining western boundary for which there has not been any adjoining owner's consent

Part 3 Neighbourhood and Subdivision Design		
Development Control	Provision	Comment
	Specifications.	nor any proposed design of this road.
	Corner lots are to be designed to allow dwellings to positively address both street frontages.	Non-compliance The development relies upon a road on an adjoining western boundary for which there has not been any adjoining owner's consent.
	Plans of subdivision are to show the location of proposed or existing substations, kiosks, sewer man holes and/or vents affecting corner lots.	Non-compliance Council's Land Development and Floodplain Engineers have requested additional detail which may require significant amendments to the location of infrastructure shown on the Engineering plans. This information has not been forthcoming.
3.1.5 Subdivision in the Environmental Living Zone	Provides controls for subdivision in E4 zones.	Not Applicable
3.2 Subdivision Approval Process	The land subdivision approval process is to be consistent with the requirements of Table 3-4.	Not Applicable No subdivision proposed.
	Building Envelope Plans (BEPs) to provide appropriate details as listed in the DCP.	Not Applicable None required as no lots less than 300m ² .
	Public Domain Plan to show elements of the Public Domain including Street Trees, vehicular cross-overs, and indicative building footprints.	Non-compliance Council's Land Development and Floodplain Engineers have requested additional detail which may require significant amendments to the location of infrastructure shown on the Engineering plans. This information has not been forthcoming.
3.3.1 Street Network Layout and Design	This section contains controls relating to street network layout and design, including requirements for street trees.	Non-compliance The proposed roads are not in compliance with the ILP and as such the design of the development would be required to be amended, or provide adjoining owner's consent to enable further consideration of this component of the proposal.
3.3.2 Laneways	Provides controls for laneways	Not Applicable None proposed.
3.3.4 Shared Driveways	Provides controls for shared driveways	Not Applicable None proposed.
3.3.5 Pedestrian and Cycle Network	This section contains controls relating to the implementation of pedestrian and cycle networks.	Not Applicable The ILP indicates no shared footpath/cycle-way requiring development as part of road construction.
3.3.6 Temporary Vehicular Access	Provides controls for Temporary Vehicular Access	Non-compliance The proposed temporary street access along Selale Street does not provide enough width for two-way vehicular movement as required for road safety standards.

Part 3 Neighbourhood and Subdivision Design		
Development Control	Provision	Comment
3.4 Construction Environmental Management	This section contains controls relating to the implementation of a construction environmental management plan.	Complies by condition Conditions of consent would be imposed ensuring the implementation of a construction environmental management plan, prior to issue of a CC.

Variation to Indicative Layout Plan (ILP) road locations

The ILP for the this site indicates a local road (16m width) within the eastern side boundary of the site to an extent of 10m, such that the development is expected to provide the construction of 10m of the road reserve, which includes 3.5m of footpath, verge and nature strip and 6.5m of road pavement, view Figure 17 (below).

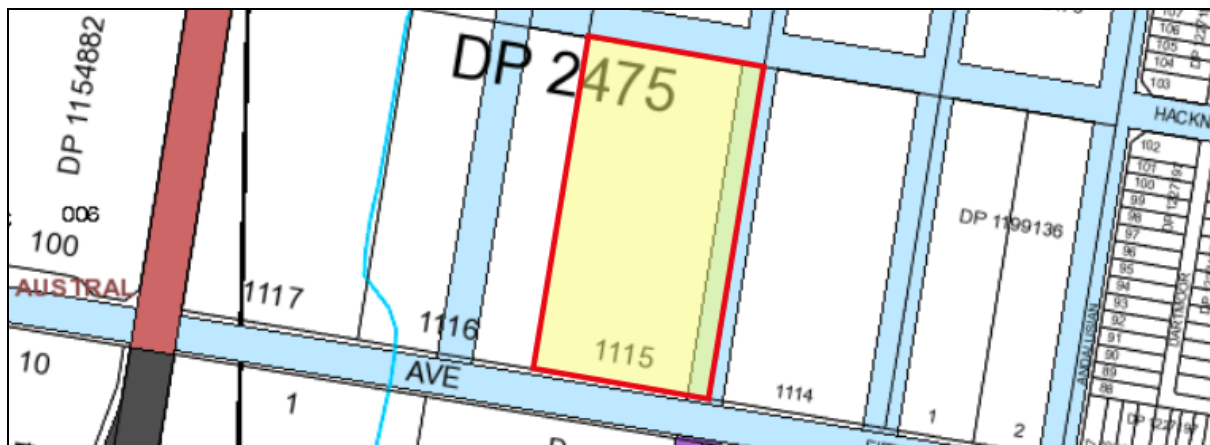


Figure 18: Extract of the ILP Road Network affecting the site

The proposal relies upon the construction of only 8m of road reserve, effectively requiring an adjoining developer to construct an additional two metres more than as shown in the ILP, and for which there is no adjoining owner's consent. Further as shown on the submitted Civil Works Plans, to make the proposed development temporarily viable, a temporary turning head is proposed on that land without such consent from the owners. Additionally, the proposed 8m road reserve would result in only 4.5m width carriage-way in the interim scenario, which does not comply with Council's policy to require two way movement (minimum of 5.5m).

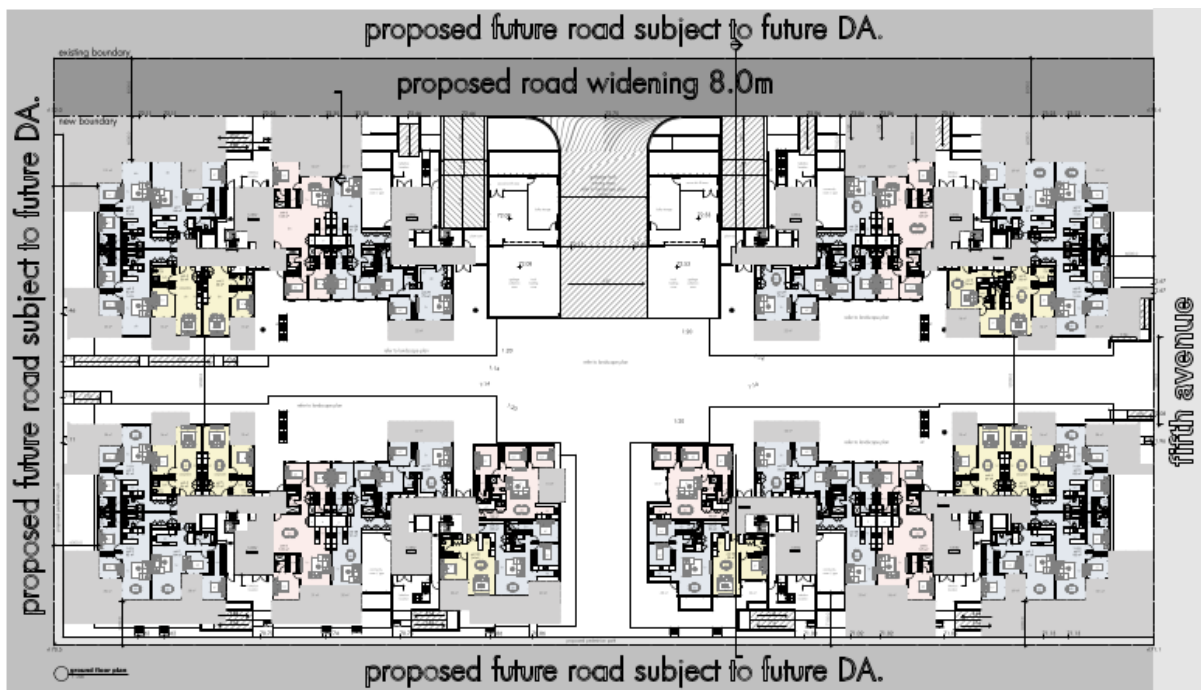


Figure 19: Extract of the Ground Level Plan showing 8m of road construction in the eastern portion of the site and a re-located future road to be constructed by a future developer on the western side of the site

Otherwise, the development proposes the relocation / addition of a road (in variation to the ILP) on the western adjoining owner's property without any consent, to make the development viable.

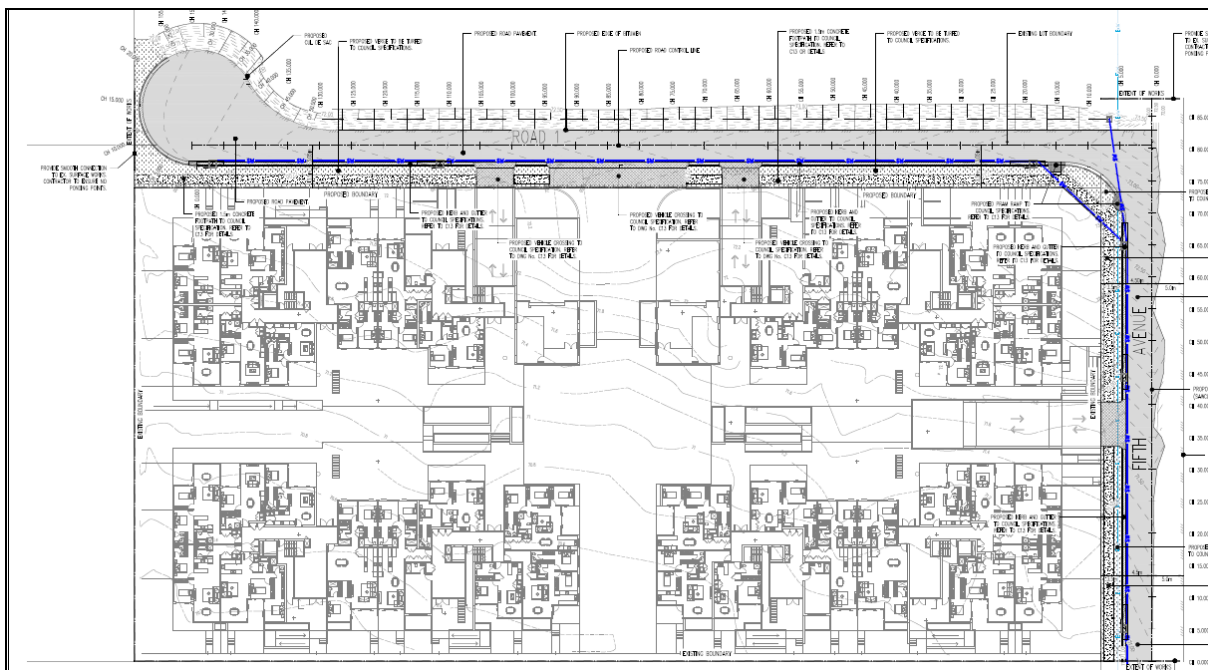


Figure 20: Extract of the Civil Works Plan showing temporary turning head on an adjoining site without obtaining any adjoining owner's consent.

The applicant has not provided appropriate justification for the variation sought and as such the development is unsupportable due to the following implications and impacts of the proposal;

- An additional 2m of road reserve would need to be constructed on the adjoining eastern site which is an additional cost impact and loss of developable land for that land owner / future developer, not anticipated by the ILP, and for which no adjoining owner's consent has been provided.
- The proposed temporary access designed at 4.5m width, is not sufficient to enable two-vehicle carriageway to the proposed development's basement and waste vehicle loading areas, and as such is not supportable, as 5.5m is required to be consistent with road safety requirements.
- The proposed temporary turning head on the adjoining eastern site would make the development temporarily viable and is proposed development for which there is no adjoining owner's consent.
- The relocation / addition of the ILP road on the western side of the site cannot be supported without the provision of adequate justification and adjoining owner's consent allowing further assessment of these implications, as and without this road the development does not comply in the provision of appropriate street frontage, and pedestrian access to the development along the western side of the property would not be viable shown in the development's rationale. Further, at a minimum, a concept plan for the development of the adjoining site in response to such a proposed amendment would be required to address the site's future development potential.
- The proposal does not demonstrate that the proposed variation to the ILP road network will result in a better planning outcome, as it is considered that it is only designed to the advantage of the subject site at the expense of the development of adjoining land. As such, it is considered that this DA cannot be supported as it fails to address all the strategic planning implications inherent in the locality's development plans.

Part 4 Development in Residential Zones		
Development Control	Provision	Comment
4.3.5 Controls for Residential Flat Buildings	Minimum Street frontage = 30m	Non-compliance The RFBs on Block C does not have temporary frontage to a street and will only do so when the adjoining street to the north is constructed by an adjoining developer. Block C cannot rely on the frontage to the western side as it requires as a minimum, adjoining owners consent to be provided by that owner.
	Direct frontage per building to a public domain	Non-compliance As above.
	Not adversely impact upon the existing or future amenity of any adjoining land upon which residential development is permitted with respect to overshadowing impact, privacy impact or visual impact.	Non-compliance The exceedance in maximum height would result in an additional overshadowing and visual impact on adjoining land beyond that provided by a complying development.
	All residential flat buildings are to be consistent with <ul style="list-style-type: none"> - the guidelines and principles outlined in SEPP No.65 - primary controls set out in Table 4-10 shown below this table, which take precedence over SEPP No.65 where there is any 	Non-compliance The RFB does not comply with SEPP No.65 and does not comply in full with the provisions and controls of Table 4-10 of this DCP.

Part 4 Development in Residential Zones		
Development Control	Provision	Comment
	inconsistency	
	Where more than 10 dwellings are proposed, at least 10% are to be adaptable / accessible	Non-compliance 9.8% are adaptable / accessible.
	Where possible, adaptable / accessible dwellings are to be located on the Ground Floor	Complies on merit Not all are located on the Ground Floor, however there are 5 units on the Ground Floor, and otherwise all other units and basement level carpark are accessible with lifts.
	The DA must be certified by an accredited Access Consultant	Complies The DA is supported by an Access consultant report which is recommended for approval by Council's Building Surveyor Section.
	Accessible Car-Spaces must comply with Australian Standards	Complies The DA is supported by an Access consultant report which is recommended for approval by Council's Building Surveyor Section.
	Landscape Plan is to be submitted	Complies Provided with expected relevant details.
	Car Parking Requirements <ul style="list-style-type: none"> - 1 space per dwelling plus 0.5 per 3 bedroom units which is $132 \text{ units plus } 30 \times 3 \text{ bedroom units}$ $= 132 + 15$ $= 147$ <ul style="list-style-type: none"> - 1 visitor space per 5 dwellings which is $162 / 5$ $= 33$ <ul style="list-style-type: none"> - 1 bicycle space per 3 dwellings which is $162 / 3$ $= 54$	Complies <ul style="list-style-type: none"> - 230 resident car-spaces proposed - 34 visitor car-spaces proposed - 80 bicycle spaces proposed

Part 4 Development in Residential Zones Table 4-10 Controls		
Development Control	Provision	Comment
Site Coverage Maximum	50%	Complies 5716sqm of structure on 12,140sqm = 42.63%
Landscaped Area Minimum	30% of site area	Complies 4247.73sqm of Landscaping on 12,140sqm

Part 4 Development in Residential Zones Table 4-10 Controls		
Development Control	Provision	Comment
		= 35%
Communal Open Space	15% of site area	Refer to SEPP No.65
Principal Private Open Space	Minimum 10sqm per dwelling with minimum 2.5m dimension	Complies
Front Setback Minimum	6m with balcony encroachment to 4.5m for the first 3 storeys and for a maximum 50% façade length	Complies Each RFB complies with the minimum setback requirements of 6m with allowable encroachments.
Corner Lot Secondary frontage	6m	Complies RFBs are setback 6m from the secondary frontages.
Side building setback	Buildings up to 3 storeys = 3m Buildings above 3 storeys = 6m	Complies Each RFB complies with the minimum side building setbacks.
Rear Setback	6m	Complies Each RFB complies with the minimum rear setback of 6m.
Zero Lot	Not permitted	Not Applicable None proposed.
Habitable room / balcony separation distance for buildings 3 storeys and above	12m	Complies Adequate building separation distances are provided between RFBs.

Schedule 1 – Austral and Leppington North Precinct

As required by Schedule 2 – Leppington Major Centre, development north of Bringelly road is also required to consider how it complies with Schedule 1.

To the extent that this schedule applies, it is considered the proposed development is inconsistent with the Precinct Planning vision as the objectives, controls and design principles for development planning and design in Part 2 of the DCP (as identified earlier in the report), cannot be achieved.

As stated;

The vision for the Austral and Leppington North Precincts is that a range of housing types will develop to meet the needs of a diverse community, supported by local services, infrastructure, facilities and employment, in an environmentally sustainable manner.

As reinforced in the assessment under the following Schedule 2 assessment, the applicant has not demonstrated how a development within a future medium density environment, with a dwelling yield 5.32 times more than the required minimum dwelling yield, can be considered development delivered in an environmentally sustainable manner, when there

are virtually no current local services, infrastructure, facilities and employment opportunities within the precinct to support it.

Schedule 2 – Leppington Major Centre

This Schedule provides limited design guidelines to development proposed in the Leppington Major Centre yet within the Austral and Leppington North Precinct. Primarily it focuses on the specific design of the public domain around Leppington Rail Station, however, it serves to reinforce that development is to take place in stages consistent with the vision for the major centre.

Instructively, the Leppington Major Centre Masterplan (see Figure 20 below), provides for a potential built form across the Centre and for the subject site, with buildings of 3-5 storeys only to be considered on the north side corners of Fifth Avenue, with lower scale development throughout the site with significant building separations, and large areas of open space and deep soil landscaping. The applicant is inconsistent with this built form guideline and as such the proposed development would undermine the intent of the Masterplan and therefore the Leppington Major Centre Planning Vision, which states that the Masterplan is *critical to creating a cohesive, functional and attractive centre*, and that the DCP focuses on ensuring that development in the centre, at all stages of its growth, is consistent with the ultimate structure and function of the Leppington Major Centre.

The planned for stages of development (see Figure 21 below) indicate that this land should be developed in the short term, with commercial and service type uses developed in the medium to long term. This indicates that development in the early stages of the centre's development, which results in a significantly larger dwelling yield and populations not supported by infrastructure and services (to be delivered in the medium to longer term), would undermine the intended structure of the centre, and would likely not *contribute to the orderly and efficient development of the centre*, as stated in this part of the DCP.

In conclusion, by proposing a built form and density which departs from the Masterplan and in consideration of the expected staging of development in the centre, the proposal undermines the intent and purpose of development in the centre such that it cannot meet the Centre's vision, and thereby it cannot be in compliance with the objectives of the DCP.

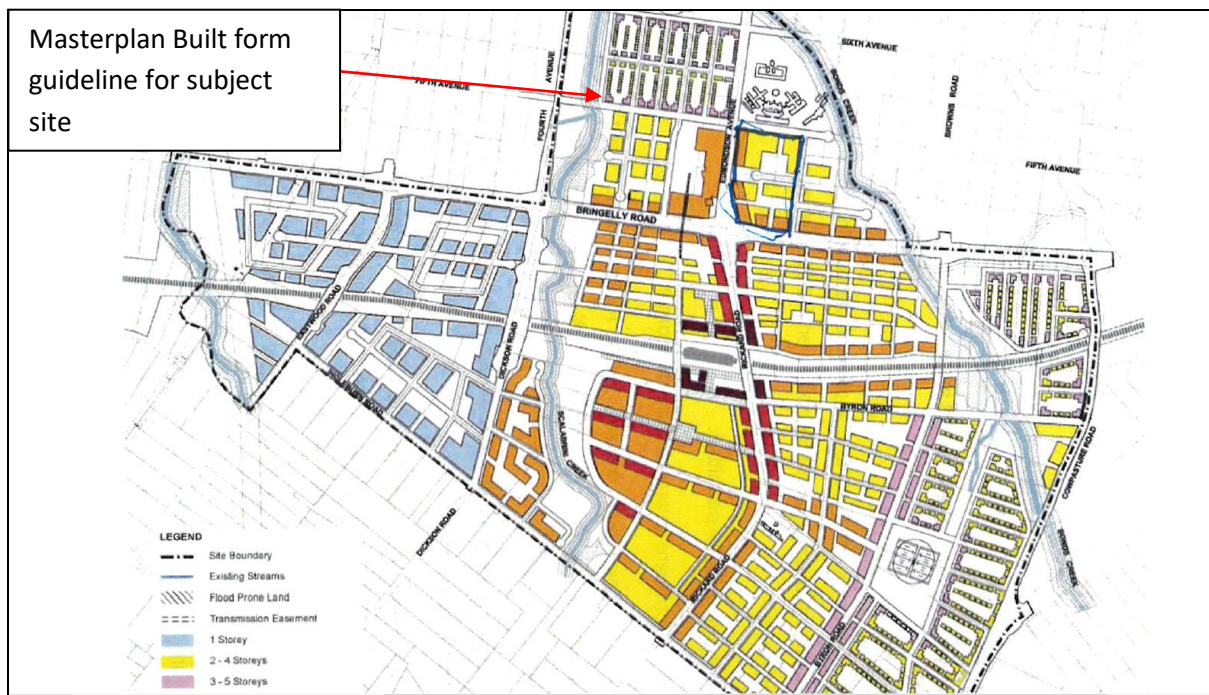


Figure 21: Extract of the Leppington Major Centre Masterplan showing built form guideline

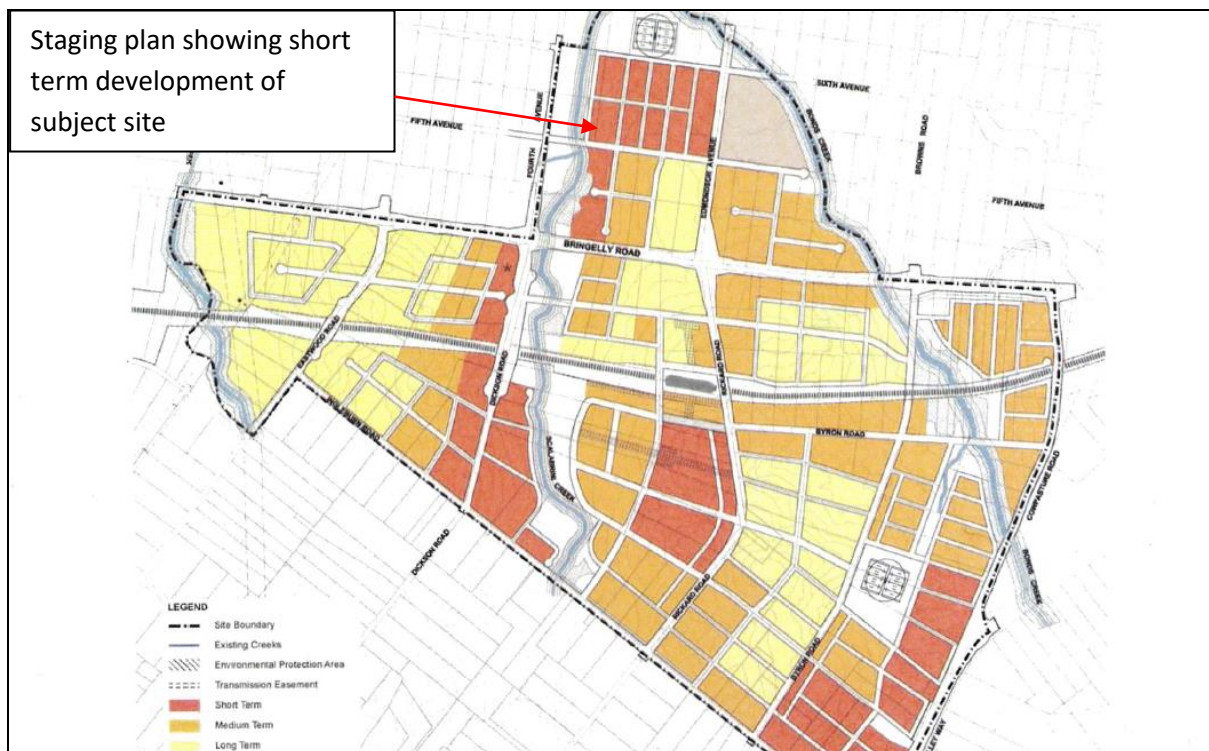


Figure 22: Extract of the Leppington Major Centre Staging plan

6.4 Section 4.15(1)(a)(iia) – Any Planning Agreement or Draft Planning Agreement

There is no planning agreement or draft planning agreement applying to the site.

6.5 Section 4.15(1)(a)(iv) –The Regulations

The Environmental Planning and Assessment Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia and requirements for demolition. Accordingly, appropriate conditions of consent would be imposed.

Additionally, it is considered that the submitted Design Verification Statement doesn't demonstrate how the design quality principles are achieved and does not demonstrate that the Apartment Design Guide objectives in Parts 3 and 4 are achieved. This is considered a reason for refusal.

6.7 Section 4.15(1)(b) – The Likely Impacts of the Development

(a) Natural Environment

The proposed removal of 160 trees and vegetation would result in a considerable and unnecessary loss of amenity from the locality, some of which could otherwise be retained and incorporated into the development design. Further, the design of the proposed development is insufficient with respect to the flood affectation of the site and the stormwater works are insufficient in meeting the water management and quality requirements for the locality and would likely result in the disruption to ecological systems and existing natural water flows to potentially impact adjoining sites. There are also trees on an adjoining site which the arborist report suggests would be required to be removed, for which consent has not been provided.

It is considered that the DA is not appropriate based on the information so far submitted, and given the likely impacts to the natural environment, the proposal is unsupportable.

(b) Built Environment

The proposed development is likely to create significant adverse impacts on the surrounding future built environment and is considered an overdevelopment due to excessive density, bulk and scale and height. It is considered an alternative design may result in reasonable impact while facilitating residential development consistent with the surrounding built form and the desired future built character of the locality.

Further, the proposal significantly impacts upon the potential built form development of the adjoining western site by isolating a part of that site within which development would be restricted, and would result in additional road construction and less developable land for the adjoining eastern site. The development should propose an amalgamation of the sites to create appropriate block depths to the west, and revert to the ILP extent of road construction within the subject site to avoid these impacts. Further, the design of the proposed development is insufficient with respect to the flood affectation of the site in particular in the assessment of any required flood compensatory works. Without this detail an assessment cannot attain whether the proposed development causes additional flood impact on existing adjoining land and Council's road infrastructure.

(c) Social Impacts and Economic Impacts

The proposal is likely to generate detrimental social and economic impact in proposing an excessive residential density, and setting an undesirable precedent by placing an increased burden on infrastructure not planned for. It would also potentially diminish the development potential and yield of adjoining sites.

The design does not provide an appropriate deep soil area and communal open space and

does not provide any affordable housing.

The likely impact of the development would place an undue strain on the existing and planned infrastructure (as provided for in the Growth Centres Contributions Plan), such that it would render the development of the precinct over time inefficient, and continually requiring infrastructure upgrade in response to excessive developments not planned for.

6.7 Section 4.15(1)(c) – The Suitability of the Site for the Development

It is considered that the applicant has not sufficiently demonstrated that the proposal is suitable for the site. In correlation with the overdevelopment of the buildings and excessive density, the proposal does not demonstrate how the site is enhanced through the development or that the development in any way responds to the site constraints including flood affectation, existing native vegetation, overland flows, and required location of roads in the locality.

6.8 Section 4.15(1)(d) – Any submissions made in relation to the Development

(a) Internal Referrals

The following comments have been received from Internal Officers:

Department	Response
Building section	No objection subject to conditions
Engineering section	Application deferred subject to additional information.
Flooding section	Application deferred subject to additional information.
Heritage Officer	No objection subject to conditions
Environmental Health Section	No objection subject to conditions
Strategic Planning	Not Supported - Raised significant issues with the application
Traffic section	No objection subject to conditions

The following comments have not been received from External agencies:

Agency	Response
Sydney Water	No response to referral
Endeavour Energy	No response to referral

(c) Community Consultation

The DA was notified for a period of 14 days between 20 February and 6 March 2018 in accordance with Liverpool Development Control Plan 2008 (LDCP 2008), and no submissions were received by Council.

6.9 Section 4.15(1)(e) – The Public Interest

It is considered that the application has not sufficiently demonstrated that the proposed development is worthy of support. It is considered that this development is not in the public interest as it would set an undesirable precedent which would result in a burden on infrastructure not commensurate with that which has been planned for in the locality, and which would ultimately result in disorderly and incoherent development, which is not envisioned or enshrined in the SEPP SRGC.

Further, the proposed development is poorly designed and would result in a multitude of deficient design outcomes demonstrating non-compliance with minimum requirements of the SEPP SRGC, SEPP No.65, Growth Centres DCP, as well as not meeting the objectives and provisions of SREP No.20.

In addition, it is considered the development would result in an unacceptable impact on the development potential of two adjoining sites (given that adjoining owner's consent has not been provided), and would set an undesirable precedent with respect to considerations of material and economic impacts of future development.

As such, it is concluded that the proposal in its current form is not in the public interest.

7 DEVELOPER CONTRIBUTIONS

Section 7.11 Contributions would be imposed in accordance with the Liverpool Contributions Plan 2014 Austral and Leppington North. A Special Infrastructure Contribution condition would also be required. The development would attract a total Section 7.11 contribution of **\$3,449,074.00** (March Quarter 2019), as confirmed by Council's Strategic planning staff.

Based upon the cap of \$30,000.00 per dwelling for the Precinct, the development should attract **\$4,830,000.00**, however the deficiency of **\$1,380,926.00** between these amounts is identified due to the limited capacity to allocate such funding for Council's infrastructure as per the Contributions Plan.

8 CONCLUSION

In conclusion, the following is noted:

The application has been assessed having regard to the provisions of Section 4.15 of the EP&A Act 1979, the applicable State Environmental Planning Policies, the Growth Centres DCP, and the relevant codes and policies of Council.

The proposed development is permissible within R3 Medium Density Residential zones under SEPP SRGC, however, the proposal is inconsistent with and does not satisfy the key considerations of SEPP SRGC, SEPP No. 65 and the Growth Centres DCP, with respect to the excessive density, height and character of the proposed development. In addition, the submitted details and information are deficient in relation to flooding impact and stormwater design / overland flow and water quality management, and in providing the required adjoining owner's consent regarding isolation of an adjoining site, construction of road reserve on adjoining sites in variation to the ILP, and removal of trees on an adjoining site.

Based on the assessment, the application is considered to be unsupportable and unsatisfactory in establishing the merits of the development and is likely to result in adverse impacts upon the desired planning outcomes and desired future built environment of the locality. Accordingly, in accordance with the reasons for refusal as stated in the report including a lack of information, it is recommended that the application be refused.

9 RECOMMENDATION

THAT pursuant to Section 4.16 of the Environmental Planning and Assessment Act, 1979, Development Application DA-43/2018 be refused for the following reasons;

REASONS FOR REFUSAL

1. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following relevant provisions of Appendix 8 Liverpool Growth Centres Precinct Plan in State Environmental Planning Policy (Sydney Region Growth Centre) 2006:
 - a) The proposed development is inconsistent with the first and second objective of the *R3 – Medium Density Residential* zone as it does not promote a medium density residential environment, and does not provide a variety of housing types within a medium density environment.
 - b) The proposed development is inconsistent with Clause 4.1B Residential Density objective (b) and (c) given the excessive density proposed, and as it is not compatible in scale with the precinct as provided for in the Precinct Plan, and is not in character with the desired future locality.
 - c) The proposed development and proposed removal in entirety of healthy native vegetation is inconsistent with the objective of Clause 5.9 Preservation of Trees or Vegetation, as it does not attempt to retain existing vegetation and incorporate it into the proposed design.
 - d) It has not been demonstrated that the development can connect to water mains and sewerage infrastructure, nor that this infrastructure can be made available when required and therefore does not meet the requirements of Clause 6.1 Public Utility Infrastructure.
2. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the development standard for maximum building height (or the objectives of the standard) in Clause 4.3 of Appendix 8 in SEPP SRGC and the consent authority is not satisfied that the written request made under Clause 4.6 of

Appendix 8 in the SEPP SRGC relating to the contravention of the development standard is adequate.

3. 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 provisions of State Environmental Planning Policy No.65 – Design Quality of Residential Apartment Development, in terms of the following:
 - a) The proposed development is inconsistent with the following Design Quality Principles;
 - i. Principle 1: Context and Neighbourhood Character as it would create an undesirable precedent not consistent with the principle;
 - ii. Principle 2: Built Form and Scale due to it excessive design;
 - iii. Principle 3: Density as the proposed density is inconsistent with the area's existing or projected population; and
 - iv. Principle 4: Sustainability due to excessive built form and significant deficiency in deep soil and landscaped areas.
 - b) The proposed development does not comply with Clause 30(2) as it is inconsistent with objectives 1A, 1B, 1C, 2A, 2B, 2C, 2E, 3A, 3B, 3D, 3E, 3G, 3H, 4L, 4N, and 4V of the Apartment Design Guide (ADG).
5. Pursuant to Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979, the proposed development does not demonstrate compliance with the relevant Sydney Regional Environmental Plan No.20 – Hawkesbury-Nepean River (No. 2 – 1997) (Deemed SEPP), Clause 4, as it has not been determined to satisfy the principles in Clause 5 and 6.
6. Pursuant to Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979, the proposed development does not comply with the following sections of Liverpool Growth Centre Precincts Development Control Plan:
 - a) Section 2.2 – indicative Layout Plan
 - b) Section 2.3.1 – Flooding
 - c) Section 2.3.2 – Water Cycle Management
 - d) Section 2.3.5 – Native Vegetation and Ecology,
 - e) Section 2.3.9 – Noise
 - f) Section 3.1.1 – Residential Density as:
 - i. the development would not to contribute to meeting the overall dwelling target, rather it would contribute to excessively exceeding that target;

- ii. only residential flat buildings are proposed in an area which is not close to a centre as required, and that the dwelling typology expected in the 25-30dw/ha band is to be predominantly small lot housing with some multi-dwelling housing, manor homes, and residential flat buildings located close to the local centre and public transport; and
 - iii. buildings are generally to be single and double storey with some three storey, and only three and four storey buildings are proposed.
 - g) Section 3.1.4 – Corner lots
 - h) Section 3.2 – Subdivision Approval Process
 - i) Section 3.3.1 – Street Network Layout and Design
 - j) Section 3.3.6 – Temporary Vehicular Access
 - k) Section 4.3.5 – Controls for Residential Flat Buildings
 - l) Schedule 1 – Austral and Leppington North Precincts – Precinct Planning Vision
 - m) Schedule 2 – Leppington Major Centre Vision and Planning Principles
7. Pursuant to Section 4.15(1)(a)(iv) of the Environmental Planning and Assessment Act 1979, the submitted Architect Design Verification Statement is inconsistent with Clause 50 of the EP&A Regulations 2000 as it does not demonstrate how the design quality principles and Apartment Design Guide objectives in Parts 3 and 4 are achieved by the proposal on the subject site.
8. Pursuant to Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, the proposed development has not adequately demonstrated the likely impacts of the development, and based on the information submitted, is likely to have an adverse impact in terms of the following:
- a) Natural Environment - the removal of vegetation results in a considerable and unnecessary loss of amenity from the locality, of which some could otherwise be retained and incorporated into the development design. In addition, the design of the proposed development is insufficient with respect to the flood affectation of the site and the stormwater works are insufficient in meeting the water management and quality requirements for the locality and would likely result in the disruption to ecological systems and existing natural water flows to potentially impact adjoining sites. There are also trees on an adjoining site which the arborist report suggests would be required to be removed, for which consent has not been provided.
 - b) Built Environment – the proposed development is likely to create significant adverse impacts on the surrounding future built

environment and is considered an overdevelopment due to excessive density, bulk and scale and height, and likely impact on existing adjoining properties and their built form development potential without adjoining owner's consent acknowledging the impact.

Additionally, the design of the proposed development is insufficient with respect to the flood affectation of the site in particular in the assessment of any required flood compensatory works. Without this detail an assessment cannot attain whether the proposed development causes additional flood impact on existing adjoining land and Council's road infrastructure.

- c) Social Impact and Economic Impact – the proposal is likely to generate detrimental social and economic impact in proposing an excessive residential density, and setting an undesirable precedent by placing an increased burden on infrastructure not planned for. The design does not provide an appropriate deep soil area and communal open space and does not provide any affordable housing. The likely impact of the development would place an undue strain on the existing and planned infrastructure (as provided for in the Growth Centres Contributions Plan), such that it would render the development of the precinct over time inefficient, and continually requiring infrastructure upgrade in response to excessive developments not planned for.
- 9. Pursuant to Section 4.15(1)(c) of the Environmental Planning and Assessment Act 1979, the proposed development has not adequately demonstrated the suitability of the site for the development, and has not satisfied Council's independent Design Excellence Panel that the site is suitable for the proposed development, as it has concluded it is generally not satisfactory with respect to the provisions of SEPP No.65 and the guidelines of the ADG.
 - 10. Pursuant to Section 4.15(1)(e) of the Environmental Planning and Assessment Act 1979, the proposal is not considered to be in the public interest, with respect to the reasons stated above.

10 ATTACHMENTS

- 1. Architectural plans
- 2. Schedule of Colours and Finishes
- 3. Statement of Environmental Effects (with Clause 4.6 Variation Written Justification to Height / ADG Compliance Table)
- 4. Draft conditions of consent (without prejudice)
- 5. SEPP 65 Verification Statement
- 6. Landscape plan
- 7. Demolition and Waste Management Plan
- 8. Traffic Report
- 9. Preliminary Site Investigation
- 10. Detailed Site Investigation

11. Remediation Action Plan
12. Geotechnical Report
13. Flooding Study
14. Drainage Plan
15. Civil Engineering Plans
16. NCC Overview Report
17. Accessibility Compliance Report
18. Acoustic Report
19. Arborist Report
20. BASIX Certificate
21. Bushfire Risk Assessment
22. Car Parking Report