

## SYDNEY WESTERN CITY PLANNING PANEL (Sydney West)

Panel Reference	2018SSW034
DA Number	DA-745/2017
LGA	Liverpool City Council
Proposed Development	<p>Construction of a six storey residential flat building comprising of 28 units, including landscaping works, associated site works and demolition of existing structures.</p> <p>The application is lodged pursuant to the State Environmental Planning Policy (Affordable Rental Housing) 2009.</p> <p>Liverpool City Council is the consent authority and the Sydney Western City Planning Panel has the function of determining the application.</p>
Street Address	19-21 Harvey Avenue, Moorebank NSW 2170 (Lots 29 & 30 DP236405)
Applicant	Andrew Hastie
Owner	Andrew Hastie
Date of DA lodgement	27 June 2017
Number of Submissions	Seven (7)
Recommendation	Approval, subject to conditions of consent
Regional Development Criteria (Schedule 4A of the EP&A Act)	The proposal is for an affordable housing development that has a capital investment value of over \$5 million. The Sydney Western City Planning Panel is therefore the determining authority.
List of all relevant s4.15(1)(a) matters	<p>1) <i>List all of the relevant environmental planning instruments: [s4.15(1)(a)(i)]</i></p> <ol style="list-style-type: none"> <li>1. State Environmental Planning Policy (Affordable Rental Housing) 2009</li> <li>2. State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development.</li> <li>3. State Environmental Planning Policy No.55 – Remediation of Land.</li> <li>4. State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.</li> <li>5. Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment.</li> <li>6. Liverpool Local Environmental Plan 2008.</li> </ol>

	<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: [s4.15(1)(a)(ii)]</i></p> <p>7. Nil</p> <p>3) <i>List any relevant development control plan: [s4.15(1)(a)(iii)]</i></p> <p>8. Liverpool Development Control Plan 2008.</p> <ul style="list-style-type: none"> <li>- Part 1 – General Controls for all Development.</li> <li>- Part 3.7 – Residential Flat Buildings in the R4 Zone</li> </ul> <p>4) <i>List any relevant planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4: [s4.15(1)(a)(iiia)]</i></p> <p>9. No planning agreement relates to the site or proposed development.</p> <p>5) <i>List any relevant regulations: [s4.15(1)(a)(iv)] e.g. Regs 92, 93, 94, 94A &amp; 288</i></p> <p>Consideration of the provisions of the Building Code of Australia and National Construction Code (NCC)</p>
List all documents submitted with this report for the Panel's consideration	<ol style="list-style-type: none"> <li>1. Recommended Conditions of Consent</li> <li>2. Architectural Plans</li> <li>3. Landscape Plan</li> <li>4. Stormwater Drainage plans</li> <li>5. Statement of Environmental Effects with Clause 4.6 Variation</li> <li>6. SEPP 65 Design Verification Statement</li> <li>7. Survey Plan</li> <li>8. Acoustic Report</li> <li>9. BASIX Certificate</li> <li>10. Geotechnical Report</li> <li>11. Design Excellence Panel Minutes</li> <li>12. Traffic Report</li> </ol>
Report prepared by	Glenn Ford
Report date	5 December 2018

#### 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 summarised 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

**Yes**

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?

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**Special Infrastructure Contributions**

Does the DA require Special Infrastructure Contributions conditions?

**No**

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

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**Conditions**

Have draft conditions been provided to the applicant for comment?

**Yes**

*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*

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## **1. EXECUTIVE SUMMARY**

### **1.1 Reasons for the report**

The Sydney Western City Planning Panel is the determining authority as the Capital Investment Value of the development is over \$5 million, pursuant to Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011.

### **1.2 The proposal**

Construction of a six storey residential flat building comprising 28 units, including landscaping works, associated site works and demolition of existing structures. The application is lodged pursuant to the State Environmental Planning Policy (Affordable Rental Housing) 2009. It is proposed to allocate 14 units (50%) as affordable rental housing pursuant to the SEPP.

The proposed unit mix is:

- 9 x 1 bedroom (32.1%)
- 15 x 2 bedrooms (53.6%)
- 4 x 3 bedrooms (14.3%)

The proposal complies with the minimum unit mix controls in the Liverpool DCP2008 and the ADG and is acceptable.

The proposed development includes 2 levels of basement parking for 36 cars and landscaping and communal open space at ground level.

### **1.3 The site**

The site is identified as 19 and 21 Harvey Avenue, Moorebank and is legally described as Lots 29 & 30 DP236405. The subject site is zoned R4 High Density Residential under Liverpool Local Environmental Plan (LLEP2008) and the proposed use is permissible with consent in the R4 zone.

The site is located in Moorebank approximately 200m from the local shopping centre, 300m from the local public school and 850m from the nearest public high school. It is approximately 3.2 km from Liverpool Railway Station with access to connecting bus services.

### **1.4 The issues**

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The main issues are identified as follows:

- Non-compliance with the Liverpool Local Environmental Plan (LLEP) 2008 - Clause 4.3 Height of Buildings;
- Non-compliance with Liverpool Development Control Plan 2008 (LDCP 2008) – rear setback control;
- Issues raised by local residents

### **Summary of Issues**

#### *Non-compliance with the Liverpool LEP 2008 – Clause 4.3 height of buildings*

The maximum building height permitted on the subject land is 18 metres. The development proposes a maximum height of 18m to the roof slab but seeks a variation of 1.3m to accommodate the lift overrun for the development and a variation of 0.9m for part of the roof over the north-western corner of the building. The variation for the lift overrun represents a numerical variation of 7.2%. The variation for the roof overhang is 5%. In both cases, it is considered both unreasonable and unnecessary to enforce compliance with the height limit as there are adequate planning and environmental grounds to support the variation. There is a separate section in this report that elaborates on the height non-compliance with respect to Clause 4.6 of LLEP 2008.

#### *Rear setback under Liverpool compared to Apartment Design Guide standard*

The development proposes a variation of the rear setback prescribed in LDCP2008 over part of the rear boundary. The LDCP requires a setback of 8m. The proposed setback of 6m complies with the building separation setback requirement of the Apartment Design Guide. The proposed variation is considered to be acceptable as the design of the building has addressed the potential impacts of the different setbacks and has demonstrated that the ADG option provides an acceptable outcome in terms of shadowing and privacy. The proposed development achieves the objectives of the setback control despite the numerical variation. There is a separate section in this report that elaborates on the DCP non-compliances with respect setbacks.

#### *Issues raised by local residents*

As the locality transitions from low to high density development, local residents have voiced concerns about the changes happening in the area. In this case, there are seven written objections raising several objections to the proposed development. Matters raised in these submissions are considered in Section 6.9(c) of this report.

All the above matters are addressed in the report.

## **1.5 Exhibition of the proposal**

The DA was notified in accordance with LDCP 2008 for a period of 14 days from 4 October 2017 to 19 October 2017. A total of seven (7) submissions were received. Matters raised in submissions are considered in this report.

## **1.6 Conclusion**

The application has been assessed pursuant to the provisions of the Environmental Planning and Assessment Act 1979. Based on the assessment of the application and the consideration of the written request to vary the Height of Buildings (HOB) development standard pursuant to Clause 4.6 of LLEP 2008, it is recommended that the application be approved, subject to conditions.

## 2. SITE DESCRIPTION AND LOCALITY

### 2.1 The Site

The site incorporates the following properties:

- Lot 30 DP 236405 which is known as 19 Harvey Avenue, Moorebank; and
- Lot 29 DP 236405 which is known as 21 Harvey Avenue, Moorebank.

The site has a street frontage of 37.53m to Harvey Avenue and a depth of 37.53m with an area of 1372.6m<sup>2</sup>.

The site is generally flat with a fall of 5% across from the south-eastern corner to the north western corner (at Harvey Avenue).

Currently situated on each lot is a single storey detached dwelling house and associated structures such as garages, carports and outbuildings. There are no significant trees located on either site.

The site is adjoined by a single storey brick dwelling houses on all sides. However, there has been interest in developing several sites in the locality to take advantage of the prevailing R4-High Density Residential Zone and R3 – Medium Density Residential Zone nearby. Some sites to the east of Harvey Avenue have been approved for redevelopment and are under construction.

An aerial photograph and photographs of the site is provided below.



**Figure 1 - Aerial photograph of the site**





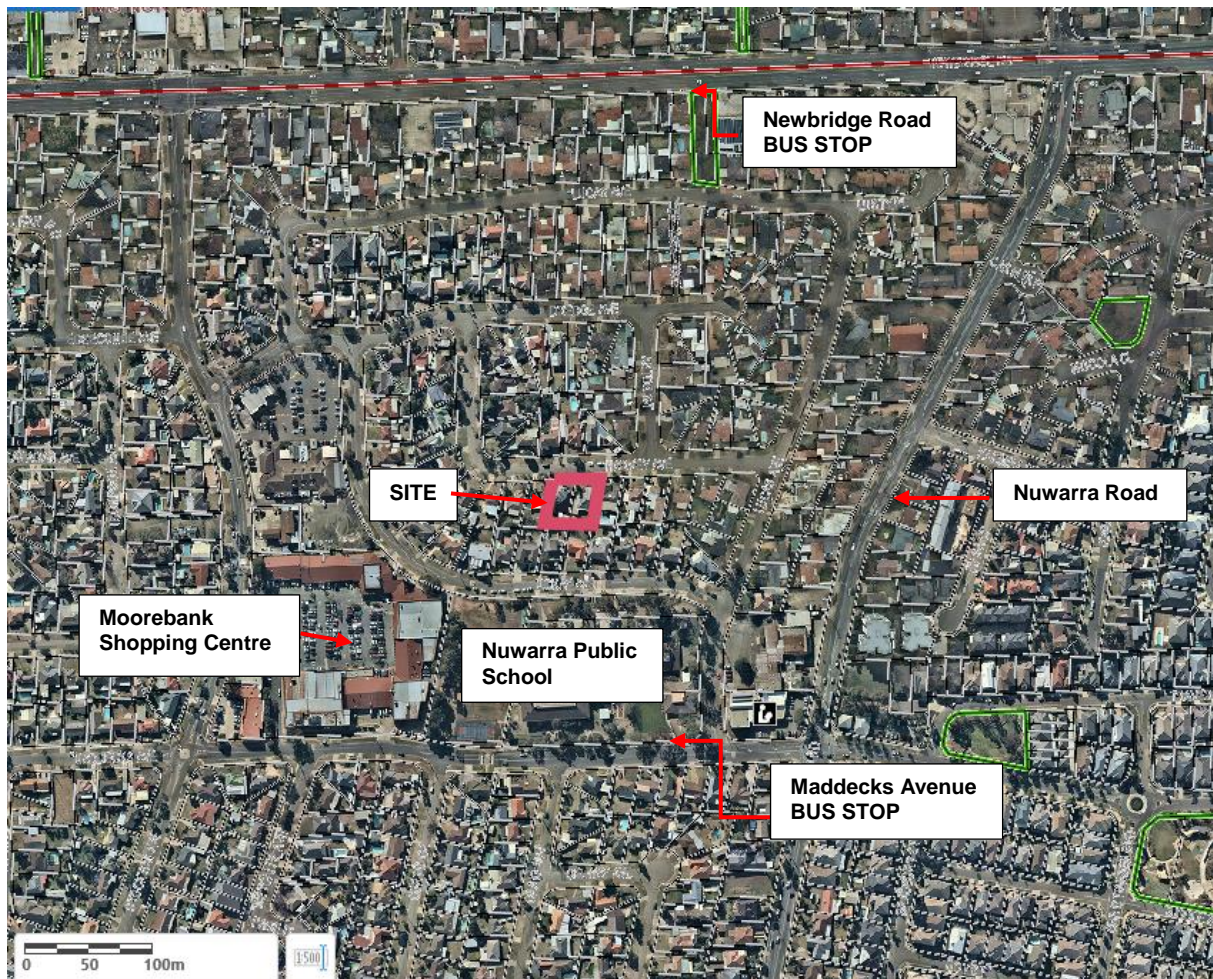
**Figure 2:** Existing houses on 19 Harvey Avenue (right) and 21 Harvey Avenue (left)  
(Google Streetview)

## **2.2 The Locality**

The site is located within the area which was subdivided in the 1970s and has a subdivision pattern that reflects some of the experimentation of those times. The street pattern is curvilinear and lots are irregular in shape. Pathways are provided to connect streets and provide pedestrian access to the local shops and school. In this case, the pedestrian network provides access to a bus stop in Newbridge Road via public open space.

Although rezoned for medium and high density residential development in 2008, the locality remains low density in character. The subject site is surrounded by single storey dwelling houses on large lots of land. The houses generally have deep front setbacks and sizeable back yards.

An aerial photograph of the locality is provided below:



**Figure 3:** Aerial Photograph of the Locality

## 2.3 Site affectations

The subject site does not have any affectations.

## 3. BACKGROUND

### 3.1 Application history

#### (a) Pre-lodgement Meeting

A pre-lodgement meeting was held on 4 May 2017 to consider a proposed development on the subject site. The meeting recognised that this project would be one of the first of its type in the area and would therefore have a significant visual impact (bulk and height) with affects on privacy and shadowing of the prevailing single storey development. Comments made were generally considered in the in preparation of plans and information for the submitted DA.

#### (b) Liverpool City Council Design Excellence Panel (DEP)

The application was considered by Council's Design Excellence Panel on 5 December 2017. Comments made by the panel are presented below:

- (i) *Communal open space should be gathered into a larger more useable section.*



- (ii) *The car park should occupy only the space under the footprint of the building, where possible so that a good amount of deep soil planting area can be provided. Deep soil areas should coincide with or be close to communal open space where possible.*
- (iii) *Any habitable space, especially bedrooms should be treated very carefully to mitigate against noise when placed near Communal Open Space*
- (iv) *Architectural elements such as the triangular sections shown in plan should be removed or further justification demonstrated*
- (v) *The colour scheme could benefit from more control and restraint.*
- (vi) *The Applicant acknowledges that the 8 metre DCP rear setback is not provided for at least a portion of the rear boundary. Where the proposal shows a 6 metre setback (ADG requirement), the Applicant should document any impacts of the 6m setback on neighbouring sites.*
- (vii) *The western façade will require more sun shading to limit internal heat gain in summer. Sun control in general should be integral to the design and considered over all facades to restrict summer sun penetration while allowing maximum access to winter sun.*
- (viii) *The proposal is acceptable subject to the incorporation of the above advice given from the panel and will not need to be seen by the panel again.*

**(c) Applicant's response to DEP comments**

In response to the DEP comments, the applicant provided a full set of revised plans and a written response addressing the amendments to the matters raised by the Panel.

The amended plans satisfactorily addressed items (i) to (vii) and as such, the proposed development was not presented to the DEP for a second time.

### **3.2 Sydney Western City Planning Panel Briefing**

A SWCPP briefing meeting was held on 5 November 2018. The following issues were raised by the Panel members:

**KEY ISSUES DISCUSSED:**

The height and setback control variations were discussed, and the Panel notes Council's preliminary consideration is that the minor departures can be accommodated.

**MATTERS TO BE ADDRESSED IN THE COUNCIL ASSESSMENT REPORT:**

The distribution of affordable units through the building (and the mix of unit sizes) requires attention and should be addressed in the determination report.

## **4. DETAILS OF THE PROPOSAL**

Demolition of existing buildings and the construction of a six storey residential flat building containing twenty eight residential units with basement car parking and ancillary site works.



The application is lodged pursuant to the State Environmental Planning Policy (Affordable Rental Housing) 2009. The proposed unit mix is:

Bedrooms	Number	Percentage
1	8	28.6%
2	16	57.1%
3	4	14.3%
Total	<b>28</b>	100%

A total of 14 units are nominated for affordable housing as per the ARHSEPP. In the submitted scheme, the distribution of affordable housing units was as follows:

***Affordable Rental Unit Allocation 1.***

Level	1 bedroom	2 bedroom	3 bedroom	Percentage of Level
Ground	Nil	Nil	Nil	Nil
First	Nil	Nil	Nil	Nil
Second	1	3	1	100%
Third	1	3	1	100%
Fourth	2 #	2	Nil	100%
Fifth	Nil #	Nil	Nil	Nil

# There is one adaptable 1 bedroom unit on Level 4 and one adaptable 1 bedroom unit on Level 5

The allocation of units was discussed with the applicant in light of the SWCPP comments and the applicant agreed to distribute the affordable housing units throughout the building. The following table is presented as an alternative for the consideration of the Panel. A condition of consent will be attached to any consent to confirm the preferred allocation.

***Affordable Rental Unit Allocation 2.***

Level	1 bedroom	2 bedroom	3 bedroom	Percentage of Level
Ground	1	1	Nil	40% (2 of 5 units)
First	Nil	2	1	60% (3 of 5 units)
Second	1	2	Nil	60% (3 of 5 units)
Third	Nil	2	1	60% (3 of 5 units)
Fourth	1	1	Nil	50% 2 of 4 units
Fifth	1	Nil	Nil	25% (1 of 4 units)

The above table retains the allocation of Affordable Housing units as

- 4 x 1 bedroom units (44.4%) or 4 of 9 units
- 8 x 2 bedroom units (53.3%) or 8 of 15 units
- 2 x 3 bedroom units (50%) or 2 of 4 units

This meets the expectation of the ARHSEPP in terms of unit numbers and allocation of gross floor area. The affordable housing units are distributed equitably within the development

**Building Form and Design**

The proposed building forms are appropriately set back from the site boundaries and have been satisfactorily articulated with the facades incorporating a variety of materials, colours and

finishes. With adjustments identified in Section 3.1(b) and (c) of this report, the Liverpool Design Excellence Panel was satisfied with the building form and design.

### **Vehicular Access**

The proposal includes construction of a driveway with access directly from Harvey Avenue at the western end of the site.

### **Pedestrian Access**

Pedestrian access is from a ground level entry in the centre of the site and building. Alternative pedestrian access is available from the basement via a lift or via stairs.

### **Parking Provisions**

There are two basement levels that provide car parking spaces, bin rooms, apartment storage, lift access and stairs to apartments, caretaker amenities and room for bicycle parking.

The proposed development will provide 36 parking spaces at basement level, including 2 accessible spaces and 4 visitor spaces. Based on Clause 14 of the ARHSEPP, Council cannot refuse the application if a minimum of 26 car spaces are provided. The proposed development has provided a superior outcome in terms of total number of spaces including 4 accessible spaces (2 for residents and 2 for visitors) and 10 spaces in excess of the minimum requirement.

### **Site Servicing Facilities**

A garbage storage room is proposed in the Basement 1 level of the proposed RFB. Transfer of bins for collection on the street can be carried out by a lift serving the basement and all floors of the building.

### **Communal Open Space and Landscaping**

The proposed development provides communal open space courtyard, located to the rear of the site and connected through the main central access of the building. Features of the communal open space include open areas at the rear and side with seating, a communal BBQ area and outdoor dining setting, paving and decking. Planting incorporates a mix of canopy trees, shrubs and hedges and accent plants of native and exotic variety. Landscaping is also provided within the front setback of the site including fencing, paving and street trees.

### **Stormwater Drainage**

A stormwater concept plan has been provided to show how runoff from the proposed development will be collected and ultimately connected to the kerb inlet pit on Harvey Avenue.

### **Demolition**

Demolition of all existing structures and vegetation on the development site.

### **Lot Consolidation**

The site is made up of two (2) Torrens title lots. Lot 30 DP 236405 & Lot 29 DP236405 will be consolidated into one lot (prior to the issue of any Occupation Certificate) as a condition of any consent for the proposed development.

Images of the proposed development are presented below:



**Figure 4 – Photomontage of the proposed development**

## **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:

- State Environmental Planning Policy (Affordable Rental Housing) 2009.
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy No.65 – Design Quality of Residential Flat 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. 2 – Georges River Catchment (deemed SEPP).
- Liverpool Local Environmental Plan 2008.

#### **Comment on Statutory Controls**

##### **(a) Liverpool Local Environmental Plan 2008 (LLEP2008)**

LLEP 2008 came into force on 29 August 2008. It rezoned the subject land to R4 – High Density Residential and introduced zone objectives, height of building and floor space ratio controls to enable the transition of the locality from low density to high density residential development.

#### **(b) State Environmental Planning Policy (Affordable Rental Housing) 2009**

The Affordable Rental Housing SEPP (ARHSEPP) came into force on 31 July 2009, less than one year after LLEP2008 came into effect. The ARHSEPP provided bonus floor space ratio for the provision of temporary affordable rental housing. For qualifying development, it increases the FSR for the site but does not alter the height of building control. Initially and over time, development standards have been introduced specifically for development under the ARHSEPP.

#### Draft Environmental Planning Instruments

- No applicable draft planning instruments apply to the site

#### Development Control Plans

- Liverpool Development Control Plan 2008
  - Part 1 – General Controls to all development
  - Part 3.7 – Residential Flat Buildings in the R4 zone

#### Contributions Plans

- Liverpool Contributions Plan 2009

### **5.2 Zoning**

The subject site is zoned R4 High Density Residential pursuant to LLEP 2008 as shown in Figure 5 below:



**Figure 5** – Extract of LLEP 2008 zoning map (Site is shown as X in the scarlet red R4 zone)



### 5.3 Permissibility

The proposed development is defined as a “Residential Flat Building”, which is permissible within the R4 - High Density Residential zone with consent.

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

## 6. ASSESSMENT

The development application has been assessed in accordance with the relevant matters for consideration prescribed by Section 4.15 of the EP&A 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 (Affordable Rental Housing) 2009

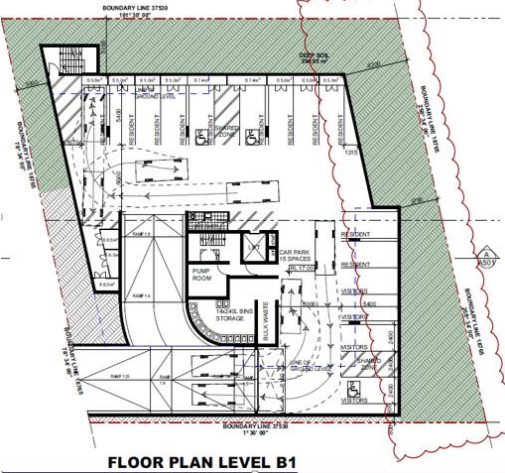
The DA has been lodged pursuant to the SEPP (Affordable Rental Housing) 2009. The proposal demonstrates full compliance with the relevant provisions, as detailed below.

Provision	Comment
<b>Part 2 New Affordable Rental Housing - Division 1 In Fill Affordable Housing</b>	
<b>Clause 10 Development to which Division Applies</b>	
<i>(1) This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if: (a) the development concerned is permitted with consent under another environmental planning instrument, and (b) the development is on land that does not contain a heritage item that is identified in an environmental planning instrument, or an interim heritage order or on the State Heritage Register under the Heritage Act 1977.</i>	<b>Complies</b>  The development is permitted with consent under LLEP 2008 and the site does not contain a heritage item.
<i>(2) Despite subclause (1), this Division does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area.  'accessible area' means land that is within 400 metres walking distance of a bus stop used by a regular bus service (within the meaning of the Passenger Transport Act 1990) that has at least one bus per hour servicing the bus stop between 06.00 and 21.00 each day from Monday to Friday (both days inclusive) and between 08.00 and 18.00 on each Saturday and Sunday</i>	<b>Complies</b>  The site is 385m from the bus stop located on Newbridge Road, Moorebank.  The bus stop is serviced by Route 903 (Liverpool to Chipping Norton) and M90 (Liverpool to Burwood) services. Both routes operate with a frequency of at least one bus per hour between 06:00 and 21:00 Monday to Friday and between 08:00 and 18:00 on Saturday and Sunday. The above bus services operate within the parameters specified in the SEPP (Affordable Rental Housing) 2009.  Figure 6 below shows the walking route from the site to the bus stop (ID: 217019)



**Figure 6:** Showing the walking route to a bus stop with the required scheduling for the site to be considered to be in an accessible area under the ARHSEPP.

Clause 13 Floor Space ratio	
(1) <i>This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent.</i>	<b>Complies</b> It is proposed that 50% of the proposed units within the development will be used for affordable housing. This equates to 14 units and 50% of gross floor area for the proposal.
(2) <i>The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus:</i>  (a) <i>if the existing maximum floor space ratio is 2.5:1 or less:</i>	<b>Complies</b> It is proposed that 14 affordable housing units will be provided which is 50% of the proposed unit yield and 50% of the gross floor area of the development.  Pursuant to Clause 13(2) of the ARHSEPP, a bonus of 0.5:1 applies. As the base FSR of the site is 1.2:1, the FSR permissible under the ARHSEPP is 1.7:1

<p>(i) 0.5:1—if the percentage of the gross floor area of the development that is used for affordable housing is 50 per cent or higher, or</p>	<p>The development proposes an FSR of 1.63:1</p> <p>It is recommended that conditions are imposed in order to ensure that the identified percentage of the gross floor area of the development will be used for affordable housing.</p>
<p><b>Clause 14 Standards that cannot be used to refuse consent</b></p>	
<p>(1) <i>Site and solar access requirements</i> A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:</p>	
<p>(b) <i>Site Area</i> If the site area on which it is proposed to carry out the development is at least 450m<sup>2</sup></p>	<p><b>Complies</b> The development site has an area of 1372.6m<sup>2</sup>.</p>
<p>(c) <i>Landscaped area: if:</i> (i) <i>in the case of a development application made by a social housing provider—a minimum 35m<sup>2</sup> of landscaped area per dwelling is provided, or</i> (ii) <i>in any other case—a minimum of 30% of the area of the site is to be landscaped,</i></p>	<p><b>Complies</b> The development provides for approximately 584m<sup>2</sup> of landscaped area which equates to 42.5%.</p>
<p>(d) <i>Deep Soil Zones</i> In relation to that part of the site area that is not built on, paved or otherwise sealed: (i) <i>there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the site area (the deep soil zone), and</i> (ii) <i>each area forming part of the deep soil zone has a minimum dimension of 3m, and</i> (iii) <i>if practicable, at least two-thirds of the deep soil zone is located at the rear of the site area,</i></p>	<p><b>Complies</b> Approximately 28.7% (394m<sup>2</sup>) of the site area is a deep soil zone.</p> <p>More than two thirds of the deep soil zone is located within the rear portion of the site as can be seen in the basement floor plan.</p> 
<p>(e) <i>Solar access: if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,</i></p>	<p><b>Complies</b> 93% of the development (i.e. 26 units) receives 2 hours of solar access or more as per ADG requirements. Given the current development pattern around this site, it is expected that the level of solar access would satisfy the ARHSEPP requirement of 3 hours for a lesser percentage of units.</p>

<p>(2) General</p> <p>A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:</p>		
<p>(a) parking</p> <p>(ii) in any other case—at least 0.5 parking spaces are provided for each dwelling containing 1 bedroom, at least 1 parking space is provided for each dwelling containing 2 bedrooms and at least 1.5 parking spaces are provided for each dwelling containing 3 or more bedrooms.</p>	<p><b>Complies</b></p> <p>A total of 26 spaces are required. A total of 36 spaces are proposed.</p> <p><math>0.5 \times 9 + 1 \times 15 + 1.5 \times 4 = 25.5</math> (26)</p>	
<p>(b) dwelling size</p> <p>if each dwelling has a gross floor area of at least:</p> <p>(i) 35m<sup>2</sup> in the case of a bedsitter or studio, or</p> <p>(ii) 50m<sup>2</sup> in the case of a dwelling having 1 bedroom, or</p> <p>(iii) 70m<sup>2</sup> in the case of a dwelling having 2 bedrooms, or</p> <p>(iv) 95m<sup>2</sup> in the case of a dwelling having 3 or more bedrooms.</p>	<p><b>Complies</b></p> <p>Minimum dwelling sizes are as follows:</p> <ul style="list-style-type: none"> <li>- 52.36m<sup>2</sup> per 1 bedroom unit;</li> <li>- 76.04m<sup>2</sup> per 2 bedroom unit; and</li> <li>- 96.40m<sup>2</sup> per 3 bedroom unit.</li> </ul>	
<p><b>15 Design Requirements – Seniors Living</b></p> <p>(1) A consent authority must not consent to development to which this Division applies unless it has taken into consideration the provisions of the <i>Seniors Living Policy: Urban Design Guidelines for Infill Development</i> published by the Department of Infrastructure, Planning and Natural Resources in March 2004, to the extent that those provisions are consistent with this Policy.</p>	<p><b>Complies</b></p> <p>Proposed development complies with this standard.</p> <p>Assessed against guidelines below.</p> <p><b>The relevant outcome of the assessment is that the proposed development provides options for Seniors seeking to move to from a more low density lifestyle to a high density lifestyle. The proposed development is not only accessible but provides good access to local services and public transport. It includes accessible car parking, adequate storage and on-site waste management.</b></p>	
<p><b>Seniors Living Policy: Urban Design Guidelines for Infill Development</b></p>		
<p><b>Clause 15 Design Requirements</b></p> <p>The <i>Seniors Living Policy: Urban design guidelines for infill development</i>, sets out a range of design principles which are to be considered in the design and assessment of seniors' housing development under the Seniors Housing SEPP. Clause 15 of the Affordable Housing SEPP requires that the provisions of the <i>Seniors Living Policy: Urban design guidelines for infill development</i> are taken into consideration in the assessment of an application.</p>		
<b>Principles</b>	<b>Required</b>	<b>Comment</b>
<p><b>1</b></p> <p><b>Responding to context</b></p>	<p><b>Street layout and hierarchy:</b></p> <p>Development be of an appropriate scale and character to reinforce existing road patterns</p>	<p>Harvey Avenue is a local street. The street is currently characterised by low density residential development.</p> <p>The proposed development is a six storey residential flat building which respond to the current planning controls which apply to the site. The</p>



		development is responding to the identified desired future character of the street.
	<b>Block and lots:</b> Have regard to block and lot patterns and suitability for intensification of use.	The site is considered suitable in terms of size and shape for intensification of residential use.
	<b>Built environment:</b> Consider pattern and massing of existing buildings and neighbourhood character.	The proposed development is responding to the current planning controls for the site and locality. As a generally compliant built form, it is not seeking to borrow amenity from adjoining sites that have not yet been redeveloped.
	<b>Trees:</b> Consider the existing patterns of plantings in front and rear gardens of area.	There are no significant trees to be removed. The site will be landscaped and will include tree planting in deep soil areas at the front and rear of the site.
	<b>Policy environment:</b> Consider desired character of area as described in Council's planning instruments.	High density development is permitted. The proposed development meets the controls and objectives outlined in LLEP and DCP and the Affordable Rental Housing SEPP.
<b>2</b> <b>Site planning and design</b>	<b>General:</b> Optimise internal amenity and minimise impacts on neighbours. Cater for broad range of needs from potential residents.	The building is designed to minimise overshadowing and privacy impacts to the extent that is possible for six storey building in a low density context.
	<b>Built form:</b> Bulk of development at front of site Development at rear to minimise impacts on adjoining properties Dwellings designed to maximise solar access and to buffer quiet areas from noise	All front units and the main entry to the site address Harvey Avenue. Side and rear units observe the building separation required by the ADG designed to minimise privacy impacts on adjoining properties. Satisfactory solar access is provided and appropriate separation of living areas in the high density context.
	<b>Trees, landscaping and deep soil zones:</b> Retain existing trees; use new mature or semi mature trees. Provide deep soil areas, at least 10% of site area as a single area at rear. Use of onsite detention and retain stormwater for re-use.	No significant trees are on site to be removed. Deep soil areas comply with SEPP Affordable Rental Housing SEPP (which is greater than 10%) and this will accommodate new trees. Satisfactory stormwater drainage plans are provided.

	<b>Parking, garaging and vehicular circulation:</b> Consider centralised parking. Maintain existing crossing and driveway location on the street.	One driveway crossover that links to basement parking is proposed. All parking is in the basements. Location of crossing is as existing for 19 Harvey Avenue
	<b>Rules of thumb:</b> Proportion of site given to landscaped area should be increased in less urban areas, on large lots, and in areas already characterised by a high proportion of open space and planting.	High density area. Landscaping areas for Affordable Housing SEPP and LDCP achieved.
<b>3</b> <b>Impacts on streetscape</b>	<b>General:</b> Respond to the desired streetscape by designing development to be sympathetic to existing streetscape.	The design responds to the desired streetscape according to the applicable controls.
	<b>Built form:</b> Reduce visual bulk.	The proposed development will create visual bulk in keeping with the controls contained in the ARHSEPP, LLEP2008, LDCP 2008 and the ADG. The proposed proportioning and articulation of the building is considered to be satisfactory.
	<b>Trees landscaping and deep soil zones:</b> Retain existing trees and planning in front and rear setbacks and road reserve.	The Landscape Plan includes tree planting in front of the building and on the road reserve
	<b>Residential amenity:</b> Define threshold between public and private space. Provide a high quality transition between the public and private domains. Provide pedestrian entry and is separate from vehicular entries. Locating and treating garbage storage areas and switchboards to visual impact is minimised.	The private open space areas of each unit are clearly defined. A separate pedestrian entry to each unit is provided, with clear front Unit entries and separate driveway entry. The bin storage area located in the basement is screened from public view.
	<b>Parking, garaging and vehicular circulation:</b> Avoid long straight driveways. Use planting to soften edges.	One driveway basement ramp is proposed on the western edge of the site. Suitable landscaping is provided next to the driveway.

	Vary materials. Limit width. Use screening.	The basement is located to the side of the site, and is not visually prominent.
	<b>Rules of thumb:</b> Respond to Council planning instruments that specify the character or desired character for the area.	The development is consistent with the controls outlined in the Liverpool Development Control Plan 2008.
<b>4</b>  <b>Impacts on neighbours</b>	<b>Built form:</b> Relationships between buildings and open space to be consistent with the existing patterns in the block. Maintain existing orientations. Setting upper stories back behind side or rear building line. Broken roof lines to reduce bulk. Minimise overlooking.	Although the bulk and scale and of the RFB are different to the adjoining single storey detached dwellings surrounding the site, the building retains the street orientation to Harvey Avenue. The upper stories are set back in accordance with the ADG and the overall design seeks to reduce the impact on current and future neighbours by observing the principle of good design and compliance with applicable controls.
	<b>Trees, landscaping and deep soil zones:</b> Use vegetation as buffer. Use species that are characteristic of the local area.	The proposal includes appropriate setbacks and landscaping
	<b>Residential amenity:</b> Protect sun access and ventilation by ensuring adequate separation. Design dwellings so they do not directly overlook neighbour's private open space.	Building elements such as balconies s limit direct overlooking of adjoining properties form units. Sliding sun screens provide shading for units and can double to provide visual privacy and separation. The shadow diagrams indicate that neighbouring properties will receive adequate solar access.
	<b>Parking, garaging and vehicular circulation:</b> Provide planting and trees to reduce visual impacts.	All car parking is underground
	<b>Rules of thumb:</b> Length of unrelieved walls alongside setback should not exceed 8m Living rooms of neighbouring dwellings should receive minimum of 3 hours of direct sunlight between 9am to 3pm in mid-winter.	The proposed building is well articulated and well-proportioned as a residential flat building The shadow diagrams for this building show that adjoining properties will receive 3 hours of sunlight. Adjoining properties may be more impacted by the cumulative effect of more development in the future.

	Solar access to the POS of neighbours should not be unreasonably reduced.	
<b>5</b> <b>Internal site amenity</b>	<b>Built form:</b> Maximise solar access to living areas and POS Clearly define entries.	Solar Access diagrams show excellent solar access to most units in the current context. The RFB has a clearly defined and centralised entry and all units have accessible access and clearly defined entries.
	<b>Parking, garaging and vehicular circulation:</b> Locate habitable rooms away from driveways and parking areas. Use physical separation where not possible. Avoid large areas of hard surface. Screen parking. Single driveways with passing bays rather than double driveways throughout.	Bedrooms are suitably located within each unit. The landscaping scheme provides a mix of hard and soft areas designed for different purposes. Basement parking is proposed, not visible from street and away from each unit.
	<b>Residential amenity:</b> Provide distinct separate pedestrian circulation to the site. Minimise opportunities for concealment. Provide private open space Provide communal open space that is accessible and includes facilities. Locate service facilities such as garbage storage to reduce visual prominence.	Separate pedestrian access from the street to all units Minimal areas for concealment. Communal open space areas will be secured for residents and guests. Private open space provided for each unit and communal open space that has variety is proposed in the Landscaping Plan. Garbage area located at basement level and is easily accessed by all tenants.
	<b>Rules of thumb:</b> Separation of 1.2m from habitable rooms and driveways or car park of other dwellings, or screen.	N/A for this building as a RFB.
<b>Clause 16 Continued Application of SEPP 65</b>		
<i>Nothing in this Policy affects the application of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development to any development to which this Division applies.</i>		<b>Complies</b> An assessment of SEPP 65 has been carried out and is found to be satisfactory. Further discussion is provided within this report.



Clause 16A Character of Local Area	
<p><i>A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.</i></p>	<p><b>Complies</b></p> <p>The current character of the area in the immediate locality generally comprises of single storey detached dwellings on sizeable lots. However, the subject site and surrounding land is zoned for high density residential development and medium density residential development. A little further afield from the subject site, there are several Residential Flat Buildings approved and or under construction. These developments include RFBs with a proportion of the units proposed for affordable housing and some that are being constructed by a Community Housing provider.</p> <p>The proposed development comprises a residential flat building that accommodates a total of 28 dwellings in six storeys, above two levels of basement car parking and is the first residential flat building in Harvey Avenue to reach this stage of assessment. However, there are several other properties within the R4 zone of Moorebank which are the subject of a development application for a similar character and style of development as that being proposed here. Some multi-storey buildings incorporating affordable housing are under construction in Lucas Avenue (which connects to Harvey Avenue) and in nearby Nuwarra Road.</p> <p>Although the proposed development does not strictly conform to the character of the area currently remaining as a low density residential area, it does represent the type of development envisaged for the prevailing R4 - High Density Residential Zone and which identifies the future desired character of the area. It is expected that over time, adjoining properties will be developed in accordance with the current LLEP 2008 and LDCP 2008 for residential flat buildings.</p> <p>The ARHSEPP enables a higher density for some residential accommodation types in 'accessible areas'. The bulk and scale of this proposal will be greater than for nearby sites that are more distant from certain bus stops. However, that additional bulk and scale also satisfies the parameters of the ARHSEPP and will be in character with other buildings in the locality that satisfy the accessibility requirements. In this regard, it is noted that the height control does not vary for affordable housing and the Apartment Design Guide applies so that the range of variation for the building envelope is limited to extra bulk.</p> <p>As such, the proposed development is in keeping with the expected future character of the area.</p>
Clause 17 Must Be Used for Affordable Housing for 10 Years	
<p><i>(1) A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that:</i></p>	
<p><i>(a) for 10 years from the date of the issue of the occupation certificate:</i></p> <p><i>(i) the dwellings proposed to be used for the purposes of affordable housing will be used for the purposes of affordable housing, and</i></p>	<p><b>Complies</b></p> <p>Conditions will be attached to any consent to ensure that the nominated dwellings will be used as prescribed for the purpose of affordable rental accommodation.</p>

<p>(ii) all accommodation that is used for affordable housing will be managed by a registered community housing provider, and</p> <p>(b) a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the Conveyancing Act 1919, that will ensure that the requirements of paragraph (a) are met.</p>	
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**(b) State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development.**

State Environmental Planning Policy No. 65 applies to the proposal, as the application involves residential flat buildings greater than 3-storeys in height and containing more than 4 units. Clause 30(2) of SEPP 65 requires residential flat development to be designed in accordance with the design quality principles contained in Part 2 of SEPP 65.

The DA as accompanied by an Urban Design Statement. The statement provided a full assessment of the proposed development against the Design Quality Principles and the ADG. Following is a table summarising the nine (9) design quality principles outlined in SEPP 65, and how they have been addressed in the design:

DESIGN QUALITY PRINCIPLE (DQP)	IS THE DQP ADDRESSED?	HOW IS THE DQP ADDRESSED IN THIS CASE?
<p><b>PRINCIPLE 1: CONTEXT AND NEIGHBOURHOOD CHARACTER</b></p> <p><i>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.</i></p> <p><i>Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</i></p> <p><i>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</i></p>	Yes.	<p>The proposed development complies with the objectives of the Liverpool LEP 2008 zone controls for R4 High Density residential development and will therefore complement the desired future character of the area.</p> <p>It is noted that the area is in transition from low and medium density housing to high density housing. The building type proposed conforms to Council's building envelope controls for RFBs.</p> <p>The building is highly articulated and provides interesting facades on each elevation.</p> <p>The proposal incorporates an attractive landscape area that surrounds the built form on ground level. This includes provisions for large tree planting in deep soil zones within front and rear setbacks. These plantings will enhance the character of the development. Generous private open spaces are provided to ground floor units, allowing for an activated and dynamic street character.</p> <p>It is considered that the proposal is appropriate for the context considering it is located within the high density residential zone and is therefore consistent with the desired future character of the area.</p>
<p><b>PRINCIPLE 2: BUILT FORM AND SCALE</b></p>	Yes.	<p>The bulk and scale of the proposal has been considered to respond to the areas transition into a high density precinct. The proposed scheme breaks up the massing on site using articulation</p>

<p><i>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</i></p> <p><i>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.</i></p> <p><i>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.</i></p>		<p>massing techniques, roof elements, massing and landscaping.</p> <p>The built form aims to reduce the perceived mass of a development of this scale by breaking up each facade with various elements and by using setbacks to narrow the building above the fourth storey and reduce its apparent bulk.</p> <p>The scale and height of the proposed development is appropriate to its location in the R4 zone.</p>
<p><b>PRINCIPLE 3: DENSITY</b></p> <p><i>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</i></p> <p><i>Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</i></p>	Yes.	<p>The proposed development is located 385m walking distance from a bus stop on Newbridge Road.</p> <p>The proposal will contribute to a high quality streetscape for the area. The unit sizes are according to the SEPP 65 standards and each unit is provided with a private open space. The density is appropriate for the site given its accessibility to public transport, local shopping and schools.</p>
<p><b>PRINCIPLE 4: SUSTAINABILITY</b></p> <p><i>Good design combines positive environmental, social and economic outcomes.</i></p> <p><i>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.</i></p>	Yes.	<p>The proposed development is consistent with the water and energy efficiency targets for BASIX.</p> <p>The roofline has been designed to provide shading from the sun in the high temperature months and allow penetration of the sun at low angles in winter.</p> <p>The proposed development has excellent solar access and natural ventilation results but they are expected to be impacted by future development at the same scale on adjoining properties. However, the proposed setbacks should help protect the amenity of the building in the long term.</p> <p>The proximity to public transport options and to local services will assist in reducing the need for car travel enable reduction in emission of greenhouse gases and cost of living. Bicycle parking is provided to further promote alternative travel options.</p>
<p><b>PRINCIPLE 5: LANDSCAPE</b></p> <p><i>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</i></p>	Yes	<p>The proposed landscaping plan is considered satisfactory. The design seeks to maximise the benefit of the generous deep soil areas provided for planting.</p> <p>Landscaping of communal open spaces wrap around the building at ground level. The proposed</p>

<p><i>contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</i></p> <p><i>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.</i></p> <p><i>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</i></p>		<p>planting schedule includes a generous amount of trees and shrubs.</p> <p>The building has been designed with the impacts of future similar development in mind. The proposed landscaped areas will aid in reducing the apparent scale of the building and help to integrate the development with the surrounding environment.</p>
<p><b>PRINCIPLE 6: AMENITY</b></p> <p><i>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</i></p> <p><i>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.</i></p>	Yes.	<p>The proposed development has a maximum of 5 units off a single core (up to Level 3) and 4 units off the single core for Level 4 and 5. This helps to provide good amenity for residents. Lobbies and corridors have a sufficient width to enable access for people with a disability and creating an open and welcoming space.</p> <p>Each core opens to the north providing natural light into the space.</p> <p>The proposed apartment layout allows adequate circulation and privacy for each room. The solar access for the development is excellent as there are no high rise buildings nearby. The northerly aspect and adherence to ADG controls should mean that satisfactory solar access is maintained into the future.</p> <p>The development also achieves a high degree of cross-ventilation with only four single aspect apartments (14%)</p> <p>Sufficient private open spaces ensure good light penetration and ventilation to each unit.</p> <p>The proposed development is considered satisfactory in terms of amenity.</p>
<p><b>PRINCIPLE 8: SAFETY</b></p> <p><i>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.</i></p>	Yes.	<p>The proposal has been designed to take into account the safety and security both externally and internally of the development. The design is considered to appropriately incorporate the CPTED principles namely surveillance, access / egress control, territorial reinforcement and space management.</p>



<i>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.</i>		
<p><b>PRINCIPLE 8: HOUSING DIVERSITY AND SOCIAL INTERACTION</b></p> <p><i>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</i></p> <p><i>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</i></p> <p><i>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</i></p>	Yes.	<p>The proposal includes a variety of different housing typologies that will be offered in different sizes and layouts. The mix in housing typologies will help meet the diverse housing needs of future residents.</p> <p>The applicant also provides 50% of apartments for the purpose of affordable housing for a minimum period of 10 years.</p> <p>The proposed development is designed to provide accessibility for access impaired and for people with prams. Sufficient accessible car parking has been provided in the basement. Passenger lifts provide easy access to all levels of the building. Two (7%) of the proposed units are adaptable.</p> <p>Good access to useable communal open space is provided enabling opportunities for the interaction of residents in a pleasant setting.</p>
<p><b>PRINCIPLE 9: AESTHETICS</b></p> <p><i>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.</i></p> <p><i>The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</i></p>	Yes.	<p>The proposed development is considered to provide an interesting and attractive design for a residential flat building. It incorporates several techniques that are considered to contribute to good design and that are expressed in the controls of the ADG and Council's DCP.</p> <p>The techniques include a variety of setbacks and articulations and an appropriate diversity of building elements, textures, materials and colours.</p> <p>It is considered that the proposed development has effectively responded to its surrounding context in terms of future streetscape appearance and the desired future character of the area.</p>

Further to the above design quality principles, Clause 30(2) of SEPP 65 also requires residential flat development to be designed in accordance with the Department of Planning Apartment Design Guide (ADG). The following table outlines compliance with the ADG, where numerical requirements ('controls') are specified.

Development Standard	Proposed	Comment
<b>2E Building Depth</b>		
<i>Suggested maximum of 12-18m ADG examples are rectangular. The subject site is square.</i>	Maximum depth is 26.2m but the building is articulated so that that unit depth is 12.4m + 6.9m + 6.9m	Complies and achieves the outcomes sought from the building depth control.

Development Standard	Proposed	Comment
<b>2F Building Separation</b>		
<p>Minimum separation distances for buildings are:</p> <p>Up to four storeys (c. 12m):</p> <ul style="list-style-type: none"> <li>• 12m between habitable rooms / balconies</li> <li>• 9m between habitable and non-habitable rooms</li> <li>• 6m between non-habitable rooms</li> </ul> <p><b>Note:</b> <i>It is generally applicable that half the building separation distance is provided, as adjoining development would provide the other half of the separation distance to ensure compliance.</i></p>	<p>For Ground to Level 3, the setbacks are a minimum of 6m.</p> <p>For Levels 4 &amp; 5, the setbacks are 9m.</p> <p>All building elements comply.</p>	Complies
<p>Five to eight storeys (12m to 25m)</p> <ul style="list-style-type: none"> <li>• 18m between habitable rooms / balconies</li> <li>• 12m between habitable and non-habitable rooms</li> <li>• 9m between non-habitable rooms</li> </ul> <p><b>Note:</b> <i>It is generally applicable that half the building separation distance is provided, as adjoining development would provide the other half of the separation distance to ensure compliance.</i></p>	<p>These separation distances apply to Levels 4 &amp; 5 and are 9m.</p> <p>All building elements comply.</p>	Complies
<b>3A Site analysis</b>		
<p><i>Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context</i></p>	<p>A detailed site analysis plan was prepared to inform the design.</p>	Complies
<b>3B Orientation</b>		
<p><i>Building types and layouts respond to the streetscape and site while optimising solar access within the development</i></p> <p><i>Overshadowing of neighbouring properties is minimised during mid-winter</i></p>	<p>The proposed RFB has been designed to address Harvey Avenue. The design makes good use of the northerly aspect of the site.</p> <p>All ground floor units are provided with private access.</p> <p>The proposal will exceed the maximum building height control to a minor degree</p>	Complies

Development Standard	Proposed	Comment									
	and this matter has been addressed in detail elsewhere in this report.										
<b>3D Communal and public open space</b>											
<p><i>Communal open space has a minimum area equal to 25% of the site</i></p> <p><i>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)</i></p> <p><i>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</i></p> <p><i>Communal open space is designed to maximise safety</i></p> <p><i>Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood</i></p>	<p>The proposal provides a communal open space area of 28.4%. The communal open space is orientated to the north of the site and achieves the required solar access.</p> <p>Communal open space is well designed and accessible. A variety of locations are provided that will enable choices to be made regarding the use of sunny or shady locations depending on preferred activities and comfort levels at different times of the year.</p>	Complies									
<b>3E Deep soil zones</b>											
7% of the site area is to be for Deep Soil zone.	28.7% of site area provided as deep soil zone.	Complies									
<b>3F Visual Privacy</b>											
<p><i>Minimum separation distances from buildings to the side and rear boundaries are as follows:</i></p> <table border="1"> <thead> <tr> <th><b>Building Height</b></th><th><b>Habitable Rooms and Balconies</b></th><th><b>Non Habitable Rooms</b></th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> <tr> <td>12m to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr> </tbody> </table>	<b>Building Height</b>	<b>Habitable Rooms and Balconies</b>	<b>Non Habitable Rooms</b>	Up to 12m (4 storeys)	6m	3m	12m to 25m (5-8 storeys)	9m	4.5m	Building separation complies.	Complies  Refer to 2F Building Separation.
<b>Building Height</b>	<b>Habitable Rooms and Balconies</b>	<b>Non Habitable Rooms</b>									
Up to 12m (4 storeys)	6m	3m									
12m to 25m (5-8 storeys)	9m	4.5m									

Development Standard				Proposed	Comment
Over 25m (9+ storeys)	12m	6m			
3G Pedestrian Access and Entries					
Building entries and pedestrian access connects to and addresses the public domain			Primary access to the building will be from Harvey Avenue for both pedestrians and vehicles. The pedestrian and vehicle access points have been clearly separated to minimise conflicts.	Complies	
Access, entries and pathways are accessible and easy to identify					
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			Vehicle access points are located to achieve safety and minimise conflict.	Complies	
3J Bicycle and Car Parking					
For development in the following locations:  - on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or  - on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre  The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street			Car parking has been provided in excess of the requirements of the SEPP (Affordable Rental Housing) 2009.  All car parking is provided in a basement. There are no above ground spaces.  There is room in the basement for bicycle parking and capacity for motorcycle parking to be provided.	Complies	
Parking and facilities are provided for other modes of transport					
Car park design and access is safe and secure					
Visual and environmental impacts of underground car parking are minimised					

Development Standard	Proposed	Comment
<i>Visual and environmental impacts of on-grade car parking are minimised</i>		
<i>Visual and environmental impacts of above ground enclosed car parking are minimise</i>		
4A Solar and Daylight Access		
<i>Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</i>	The proposed development currently provides 93% solar compliance.	Complies
<i>In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter</i>		
<i>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</i>	Less than 15% units receive no direct sunlight between 9am – 3pm on the winter solstice.	Complies
4B Natural Ventilation		
<i>All habitable rooms are naturally ventilated</i>	The proposed development provides 86% of units with natural cross ventilation. Only 4 units are single aspect (14%)  No apartment depth exceeds 18m.	Complies
<i>The layout and design of single aspect apartments maximises natural ventilation</i>		
<i>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</i>		
<i>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</i>		
4C Ceiling Heights		



Development Standard	Proposed	Comment										
<i>Measured from finished floor level to finished ceiling level, minimum ceiling heights are 2.7m for habitable rooms and 2.4m for non-habitable rooms.</i>	The development only proposes single storey apartment units each with a minimum ceiling height of 2.7 metres for all rooms.	Complies										
4D Apartment Size and Layout												
<p>Apartments are required to have the following minimum internal areas:</p> <table><tr><th>Apartment Type</th><th>Minimum Internal Area</th></tr><tr><td>Studio</td><td>35m<sup>2</sup></td></tr><tr><td>1 bedroom</td><td>50m<sup>2</sup></td></tr><tr><td>2 bedroom</td><td>70m<sup>2</sup></td></tr><tr><td>3 bedroom</td><td>90m<sup>2</sup></td></tr></table>	Apartment Type	Minimum Internal Area	Studio	35m <sup>2</sup>	1 bedroom	50m <sup>2</sup>	2 bedroom	70m <sup>2</sup>	3 bedroom	90m <sup>2</sup>	<p>The apartments comply with the minimum areas.</p> <p>Minimum dwelling sizes are as follows:</p> <ul style="list-style-type: none"><li>- 52.36m<sup>2</sup> per 1 bedroom unit;</li><li>- 76.04m<sup>2</sup> per 2 bedroom unit; and</li><li>- 96.40m<sup>2</sup> per 3 bedroom unit.</li></ul>	Complies
Apartment Type	Minimum Internal Area											
Studio	35m <sup>2</sup>											
1 bedroom	50m <sup>2</sup>											
2 bedroom	70m <sup>2</sup>											
3 bedroom	90m <sup>2</sup>											
<p><i>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each.</i></p> <p><i>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each</i></p>	Additional bathroom areas are factored into 2 bedroom and 3 bedroom units.											
<i>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</i>	Habitable rooms are provided with windows of sufficient glass areas.	Complies										
<i>Habitable room depths are limited to a maximum of 2.5 x the ceiling height</i>	Habitable rooms are generally limited to 2.5m x the ceiling height (6.75m).	Complies										
<i>In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</i>	Kitchens are within 8m from a window.	Complies										
<i>Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m<sup>2</sup> (excluding wardrobe space)</i>	Bedrooms are of sufficient size.	Complies										
<i>Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</i>	Bedrooms have a minimum dimension of 3m.	Complies										
<p><i>Living rooms or combined living/dining rooms have a minimum width of:</i></p> <ul style="list-style-type: none"><li>- 3.6m for studio and 1 bedroom apartments</li></ul>	Sufficient widths are provided to living rooms and dining rooms.	Complies										

Development Standard	Proposed	Comment															
- 4m for 2 and 3 bedroom apartments																	
<b>4E Private Open Space and Balconies</b>																	
<p><i>All apartments are required to have primary balconies as follows:</i></p> <table border="1"> <thead> <tr> <th>Dwelling Type</th><th>Minimum Area</th><th>Minimum Depth</th></tr> </thead> <tbody> <tr> <td>Studio</td><td>4m<sup>2</sup></td><td>-</td></tr> <tr> <td>1 bedroom</td><td>8m<sup>2</sup></td><td>2m</td></tr> <tr> <td>2 bedroom</td><td>10m<sup>2</sup></td><td>2m</td></tr> <tr> <td>3 bedroom</td><td>12m<sup>2</sup></td><td>2.4m</td></tr> </tbody> </table> <p><i>The minimum balcony depth to be counted as contributing to the balcony area is 1m</i></p>	Dwelling Type	Minimum Area	Minimum Depth	Studio	4m <sup>2</sup>	-	1 bedroom	8m <sup>2</sup>	2m	2 bedroom	10m <sup>2</sup>	2m	3 bedroom	12m <sup>2</sup>	2.4m	The development provides balconies with sufficient size and depth.	Complies
Dwelling Type	Minimum Area	Minimum Depth															
Studio	4m <sup>2</sup>	-															
1 bedroom	8m <sup>2</sup>	2m															
2 bedroom	10m <sup>2</sup>	2m															
3 bedroom	12m <sup>2</sup>	2.4m															
<i>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 15m<sup>2</sup> and a minimum depth of 3m</i>	More than 15m <sup>2</sup> of private open space is provided to ground floor units.	Complies															
<b>4F Common Circulation and Spaces</b>																	
<i>The maximum number of apartments off a circulation core on a single level is eight</i>	There is no more than 4 or 5 units off any single service core.	Complies															
<i>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40</i>	Not Applicable	Not Applicable															
<b>4G Storage</b>																	
<p><i>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</i></p> <table border="1"> <thead> <tr> <th>Dwelling Type</th><th>Storage Volume</th><th>Size</th></tr> </thead> <tbody> <tr> <td>Studio</td><td>4m<sup>3</sup></td><td></td></tr> <tr> <td>1 bedroom</td><td>6m<sup>3</sup></td><td></td></tr> <tr> <td>2 bedroom</td><td>8m<sup>3</sup></td><td></td></tr> </tbody> </table>	Dwelling Type	Storage Volume	Size	Studio	4m <sup>3</sup>		1 bedroom	6m <sup>3</sup>		2 bedroom	8m <sup>3</sup>		Sufficient storage space is provided within each unit with space within the unit and within the basement.	Complies			
Dwelling Type	Storage Volume	Size															
Studio	4m <sup>3</sup>																
1 bedroom	6m <sup>3</sup>																
2 bedroom	8m <sup>3</sup>																

Development Standard		Proposed	Comment
3 bedroom	10m³		
At least 50% of the required storage is to be located within the apartment.			
4H Acoustic Privacy			
Noise transfer is minimised through the siting of buildings and building layout		Appropriate noise mitigation measures will be implemented in accordance with the recommendations provided within the Acoustic Report.	Complies
Noise impacts are mitigated within apartments through layout and acoustic treatments			
4K Apartment Mix			
A range of apartment types and sizes is provided to cater for different household types now and into the future		The proposed unit mix is: <ul style="list-style-type: none"><li>9 x 1 bedroom (32.1%)</li><li>15 x 2 bedrooms (53.6%)</li><li>4 x 3 bedrooms (14.3%)</li></ul> Different sized units are satisfactorily distributed over different levels.	Complies
The apartment mix is distributed to suitable locations within the building			
4L Ground Floor Apartments			
Street frontage activity is maximised where ground floor apartments are located		The proposal includes landscaping at ground level to provide visual interest. Fences and pathways clearly delineate areas of public and private open space.  Private entries are also proposed to all ground floor units.	Complies
Design of ground floor apartments delivers amenity and safety for residents			
4M Facades			
Building facades provide visual interest along the street while respecting the character of the local area		The overall design including building façade has been endorsed by the Design Excellence Panel.	Complies
Building functions are expressed by the facade			
4N Roof Design			
Roof treatments are integrated into the building design and positively respond to the street		The roof design is satisfactory.  The roof space is not proposed to be use for any other purpose.	Complies
Opportunities to use roof space for residential accommodation and open space are maximised			

Development Standard	Proposed	Comment
<i>Roof design incorporates sustainability features</i>		
4O Landscape Design		
<i>Landscape design is viable and sustainable</i>	The development is in accordance with these objectives.	Complies
<i>Landscape design contributes to the streetscape and amenity</i>		
4P Planting on Structures		
<i>Appropriate soil profiles are provided</i>	The development is in accordance with these objectives.	Complies
<i>Plant growth is optimised with appropriate selection and maintenance</i>		
<i>Planting on structures contributes to the quality and amenity of communal and public open spaces</i>		
4Q Universal Design		
<i>Universal design features are included in apartment design to promote flexible housing for all community members</i>	Two (7%) units are adaptable.  Universal design features have been included in the development.  The apartments use a variety of layouts.	Complies
<i>A variety of apartments with adaptable designs are provided</i>		
<i>Apartment layouts are flexible and accommodate a range of lifestyle needs</i>		
4R Adaptive Reuse		
<i>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place</i>	The DA is for the development of a new building and not the adaptive reuse of an existing building.	Not Applicable
<i>Adapted buildings provide residential amenity while not precluding future adaptive reuse</i>		
4S Mixed Use		
Mixed use developments are provided in appropriate locations and provide active street frontages	The DA does not propose a mixed use development.	Not Applicable

Development Standard	Proposed	Comment
that encourage pedestrian movement		
Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents		
4T Awnings and Signage		
Awnings are well located and complement and integrate with the building design	Not Applicable	Not Applicable
Signage responds to the context and desired streetscape character		
4U Energy Efficiency		
Development incorporates passive environmental design	The development is in accordance with these objectives.  Sliding sun screens are included on balconies to provide passive shading.  Good cross ventilation is provided as part of the development.	Complies
Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer		
Adequate natural ventilation minimises the need for mechanical ventilation		
4V Water Management and Conservation		
Potable water use is minimised	Potable water use is minimised in accordance with BASIX water efficiency targets and water efficient devices will be provided in accordance with the requirements of the BASIX Certificate.	Complies
Urban stormwater is treated on site before being discharged to receiving waters	The stormwater concept plan for the development has been reviewed by Council's Land Development Engineers who have raised no objections to the proposed development subject to conditions.	Complies
Flood management systems are integrated into site design	Not Applicable	Not Applicable
4W Waste Management		
Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	Waste storage facilities are provided and will be maintained by the caretaker.	Complies



Development Standard	Proposed	Comment
Domestic waste is minimised by providing safe and convenient source separation and recycling		
<b>4X Building Maintenance</b>		
<i>Building design detail provides protection from weathering</i>	The development is in accordance with these objectives.	Complies
<i>Systems and access enable ease of maintenance</i>		
<i>Material selection reduces ongoing maintenance costs</i>		

Based on the above assessment, the proposed development satisfies the design criteria will provide

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

The objectives of SEPP 55 are:

- *To provide for a state wide planning approach to the remediation of contaminated land.*
- *To promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.*

Pursuant to clause 7 the above SEPP, Council must consider:

- Whether the land is contaminated.
- If the land is contaminated, whether it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the proposed use.

Lots 29 & 30 DP 236405 were registered in 19 March 1968. The sites have been used for low density residential activities for 50 years.

Aerial images from 2002 in Council's Geocortex GIS system show the dwellings on each lot, which confirms the site has principally been used for residential purposes for at least the past 16 years.

Council's internal record and customer request system (pathway) includes no records of any dumping or contamination complaints or activities associated with the subject site.

With consideration to the above mentioned points there is not sufficient evidence to suggest that the land is contaminated and therefore a land contamination assessment is not considered to be necessary.

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

A BASIX certificate and report has been submitted with the development application. The proposal meets or exceeds the targets set by the Policy in relation to water efficiency, energy efficiency and thermal comfort.

In addition, the proposed development has been assessed under the Nationwide House Energy Rating Scheme (Nat HERS) and has achieved a rating of 6.3 stars (out of 10). The ratings for individual units range from 4.8 to 7.9 stars.

**(f) Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (deemed SEPP)**

The Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment generally aims to maintain and improve the water quality and river flows of the Georges River and its tributaries. When a consent authority determines a development application planning principles are to be applied (Clause 7(2)).

Stormwater Concept Plans have been submitted with the DA that provide a scheme for capturing, detaining and treating stormwater flow and connecting to Council's system in Harvey Avenue. The plans have been assessed by Council's Land Development Engineers and are considered satisfactory for the purpose of dealing with stormwater on site and protecting the quality of water discharging to the Georges River.

It is considered that the proposal satisfies the provisions of the GMREP No.2 subject to appropriate sedimentation and erosion controls being implemented during construction, the development will have minimal impact on the Georges River Catchment.

**(g) Liverpool Local Environmental Plan 2008**

The subject site is zoned R4 – High Density Residential under Liverpool LLEP 2008. The proposed development is defined as a *Residential Flat Building* and is a permitted form of development in the zone, subject to Council consent.

**(i) Zone Objectives**

The objectives of the R4 – High Density Residential zone are:

- |  |
|--|
| <ul style="list-style-type: none"><li>• <i>To provide for the housing needs of the community within a high density residential environment.</i></li><li>• <i>To provide a variety of housing types within a high density residential environment.</i></li><li>• <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></li><li>• <i>To provide for a high concentration of housing with good access to transport, services and facilities.</i></li><li>• <i>To minimise the fragmentation of land that would prevent the achievement of high density residential development.</i></li></ul> |
|--|

The proposed development satisfies the objectives of the R4 zone as follows:

- It will provide for housing needs within a high density residential environment. While established development around the site consists of low density residential development; the area has been zoned for high density residential development and it is therefore envisioned that any redevelopment be in a form that establishes the higher density of residential buildings and other uses that are permitted in that zone;

- It will contain a mix of different sized units providing a variety of housing opportunities in a high density form;
- It will not hinder the opportunity for other land uses that provide facilities or services to meet the day to day needs of residents;
- The site is within close proximity to required services and facilities required to support higher density development including public transport, shops, schools and employment opportunities; and
- The proposal will provide high density residential development that will not result in the fragmentation of land that would otherwise hinder the opportunity for other high density residential development within the area.

## (ii) Principal Development Standards

The following principal development standards of LLEP2008 apply to the proposal:

Development Provision	Requirement	Proposed	Comment
2.7 Demolition	The demolition of a building or work may be carried out only with development consent.	Demolition is proposed as part of the development.	<b>Complies</b>
4.3 Height of Building	The maximum building height permitted on the subject land is 18 metres on the Heights of Buildings map	The majority of the building is below the 18m height maximum except for: <ul style="list-style-type: none"> <li>• a lift overrun in a mid-section of the roof (19.3m); and</li> <li>• the corner of the roof over the north-western corner of the building (18.9m)</li> </ul>	<b>Does not comply</b>  <b>Variation is considered minor and acceptable</b>  (Refer to Clause 4.6 variation request below)
4.4 Floor Space Ratio	The permitted FSR for the site is 1:2:1 under LLEP2008  The ARH SEPP permits a bonus of 0.5:1 where 50% of the proposed units are used for Affordable Rental Housing  Total FSR available is 1:7:1	FSR proposed is 1.63:1	<b>Complies</b>  <b>LLEP2008 is superseded by ARHSEPP standard</b>
7.14 Minimum building street frontage	Development consent must not be granted to development, unless the site on which the buildings is to be erected has at least one street	Site provides 37.53m to Harvey Avenue	<b>Complies</b>

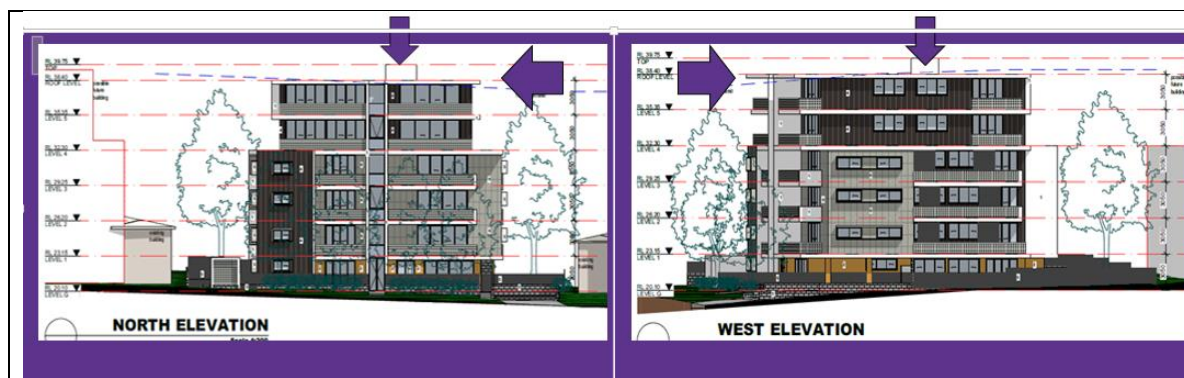
	frontage to a public street (excluding service lanes) of at least 24 metres.		
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### Non-compliance with the Liverpool LEP 2008 – Clause 4.3 height of buildings

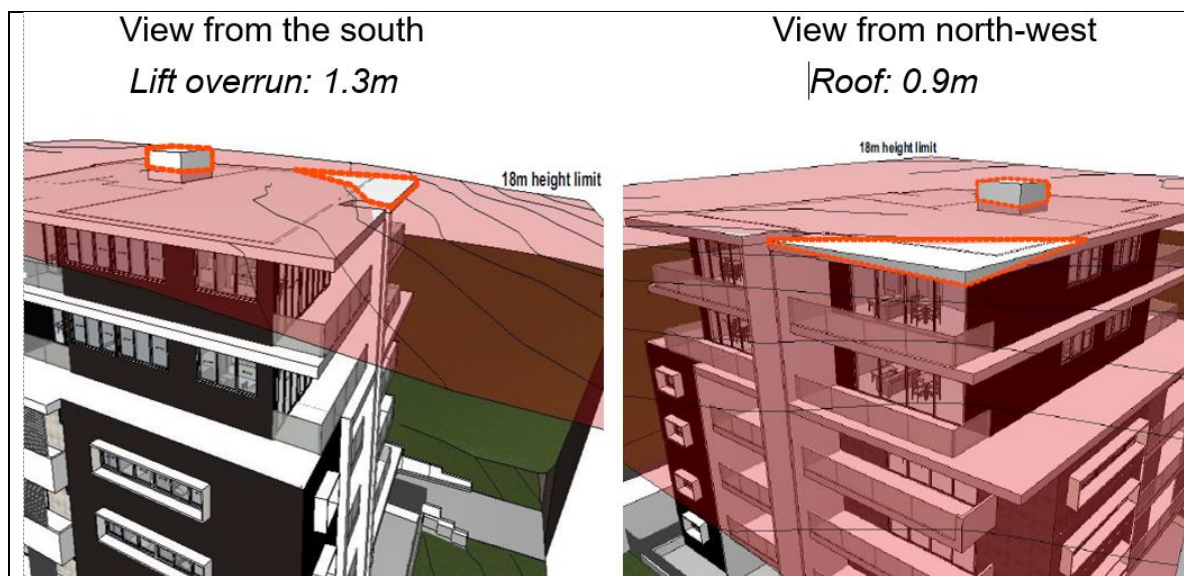
The maximum building height permitted on the subject land is 18 metres.

The development proposes a maximum height of 18m to the roof slab but seeks a variation of 1.3m to accommodate the lift overrun for the development and a variation of 0.9m for part of the roof over the north-western corner of the building. The variation for the lift overrun represents a numerical variation of 7.2%. The variation for the roof overhang is 5%.

The only means to vary a development standard such as height is through the provisions of Clause 4.6 of the operative planning scheme, in this case Liverpool Local Environmental Plan 2008. The following discussion elaborates on the height non-compliance with respect to Clause 4.6 of LLEP 2008. In this case, it is accepted that it is unreasonable and unnecessary to enforce compliance with the height limit as there are adequate planning and environmental grounds to support the variation.



**Figure 7** – Extract of the section plan showing the building elements which exceed the height limit.



**Figure 8** – Extract of the height limit exceedance

The applicant has provided a clause 4.6 variation to justify the non-compliance. The submitted written request to vary Clause 4.3 - height of buildings has been assessed against the provisions of Clause 4.6; the objectives of the Clause being varied; and the objectives of the R4 zone are discussed below:

The applicable objectives and standards of Clause 4.6 of the Liverpool Local Environmental Plan (LEP) 2008 are:

- (1) The objectives of this clause are as follows:*
  - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
  - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
  - (a) the consent authority is satisfied that:*
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out...*

**A written request addressing why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are**

**sufficient planning grounds to justify the contravening of the development standard has been submitted by the applicant.**

The applicant has provided the following comments addressing why compliance with the development standard is unreasonable or unnecessary in this case:

*The building is proposed to be erected 19.3m above natural ground level (measured to the lift overrun) at the northern elevation. The variation is not consistent across the site and the variation is at its greatest when measured from the northern elevation. This presents a 1.3m or building with frontage to Harvey Avenue exceeds the maximum height of building development.*

- The variation to the height within this small portion of the site still results in an application with a compliant FSR under SEPP ARH, which protects the density of the development;*
- Full compliance with the height control would result in a poor urban design outcome granted that the development meets the ceiling height standards under the ADG. The proposed design and setbacks ensures a design that exhibits design excellence by providing an appropriate corner treatment to the development;*
- Strict compliance with the height control would be unreasonable and unnecessary where it is considered that the exceedance is largely due to the lift overrun*
- The proposed development is nevertheless consistent with the objectives of the height standard and R4 High Density Residential zone as described below;*
- The proposed development has overall environmental planning merit as demonstrated (in compliance with all other controls including additional car parking and landscaping);*
- The contravention of the height standard does not raise any matter of State or regional planning significance; and*
- There is no public benefit in maintaining the standard in the circumstances of the case as explained below.*

*There are sufficient environmental planning grounds for the contravention to the height standard as follows:*

- In this instance "Wehbe test No. 1" applies. Wehbe Test No. 1 holds that an objection will be well founded where - the objectives of the standard are achieved notwithstanding non-compliance with the standard.*
- The development meets the objectives of clause 4.3 (of LLEP2008 for Height of Buildings). The additional height in this instance provides a better urban design outcome. The proposed design provides a better treatment for the site by emphasising physical treatments of the building façade... The proposed development is supported by Shadow Diagrams prepared by Algorry Zappia and Associates which demonstrate that buildings and public areas continue to receive satisfactory exposure to sunlight. The development will provide an appropriate transition in built form and land use intensity in the R4 High Density Residential zone along the Harvey Avenue frontage when it is considered that the future development in the locality is likely to be up to 18m. The building is considered to be located appropriately in relation to view corridors and view impacts and in a*



*manner that is complementary to the natural topography of the area... Furthermore it is considered that the development as proposed will not impact on any public open space insofar as it will not result in any overshadowing or restrict views to identify natural topographical features.*

- It is considered that objectives of the standard are achieved notwithstanding non-compliance with the standard....(T)he Court accepted a similar approach in “Panarea Investments v Manly Council (2015)” where a taller building which exceeded the height control via a clause 4.6 variation was held to provide a better planning outcome than a strictly compliant scheme which would have had greater impacts. ...*
- The proposed development satisfies the relevant objectives of the (R4) zone. The proposed six (6) establishes a maximum height limit in which buildings can be designed and floor space is achieved in accordance with (LLEP 2008) ... (T)he bulk of the building sits below the 18m height limitation with only a minor exceedance of a portion of the building and lift overrun.*
- The development is considered to be of a height that encourages high quality urban form. The development is supported by a Future Character Design Statement, prepared by Algorry Zappia and Associates and an Urban Design Statement prepared by Villa + Villa Registered Architects that confirms that the development is of a high quality urban form.*
- The proposed development is supported by shadow diagrams prepared by Algorry Zappia and Associates that indicated that the proposed development is capable of achieving satisfactory exposure to the sky and sunlight.*
- The proposed building height is considered to be largely consistent with the nominated maximum building height of 18m and the development provides an appropriate transition in built form and land use intensity of the surrounding land uses. The development represents one of the first development in Harvey Avenue to take advantage of the R4 zoning. It is considered that the proposed development is consistent with the future use of lots within Harvey Avenue as the locality transitions from low density detached dwellings to high density residential flat buildings.*
- (T)he proposal is considered in the public interest as it is consistent with the objectives of the development standard and the R4 High Density Residential zone. Furthermore, there is no significant benefit in maintaining the height standard as the proposed encroachment of the building into the 18m height control is a relatively minor contravention of the height standard, which facilitates a better planning outcome with an improved urban design for the site and no significant adverse environmental or amenity impacts.*

In response to the applicant’s submission, Council accepts that strict compliance with the applicable height control is unreasonable and unnecessary having regard to the following:

- The proposed development provides 3.05m floor to floor heights in keeping with a general recommendation made by the Design Excellence Panel. No overshadowing impact is due to the non-compliance in height as the additional shadow cast fall within the shadow cast by the building as a whole.*
- The roof line is an extension of the whole roof which provides shading to the rooms and balcony of the top most unit on the north-western corner of the building. Cutting back the roof in this location would provide a deleterious outcome for that unit in*

terms amenity and appearance. It would do the same for the building as a whole without providing any compensatory environmental or visual benefit.

- The provision of lift access to each floor level is an integral feature of the building and is consistent with the first zone objective. In this regard, the lift, including its overrun is essential for residential development to provide for the variety of housing needs of the community. The overrun structure itself measures 10m<sup>2</sup> and is centrally located within the building's roof top – being setback between 7m to 14m from the building edge. Given the overall height of the building results in the lift overrun having negligible visibility from ground level and the lift overrun delivers negligible contribution to the overall bulk and the building.
- The subject site will accommodate a six storey residential flat building which is characteristic of development that is to be anticipated in a zone that permits a height of buildings of 18m. Removing the breach in height would not mean that a sixth storey would not be possible but it would have to be achieved by providing two storey units for Levels 4 and 5 and possibly by additional excavation at ground level – which would not be beneficial to the ground floor units.
- It is considered that there is adequate environmental grounds to support a variation to Clause 4.3 of the LLEP 2008. The development responds to the site constraints without resulting in exceeding the available density or contravening ADG controls or other additional impacts compared to a complaint scheme. On the other hand, achieving a fully compliant building height at the risk of reducing the social benefit of affordable rental housing is not supported
- The development proposes a maximum height of 19.3m to lift overrun which represents a numerical variation of 1.3m over approximately 1.8% of the total roof area. The lift overrun is located close to the centre of the development and does not result in any adverse impacts to surrounds in terms of streetscape character or overshadowing. The lift itself is important as a means to provide vertical accessibility in the building. On balance, the lift overrun is a breach of the height limit that is considered to be reasonable in the circumstances of the case and compliance is not necessary in this instance.
- The proposed non-compliant building height was reviewed in the presentation of the design to the Liverpool Design Excellence Panel. The panel found that with some variations to the design which did not include removing the lift overrun or deleting the roof over the north-western corner of the building, the proposed development exhibits design excellence when assessed against the design principles of SEPP 65 such as context, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics.
- Given the large site area, it is considered that the proposed development is of an appropriate bulk and scale.

**Consistency with objectives of the development standard Clause 4.3 Height of Buildings, the objectives of the R4 zone and the objectives of Clause 4.6 of LLEP2008.**

The objectives of Clause 4.3 are

- (a) *to establish the maximum height limit in which buildings can be designed and floor space can be achieved*
- (b) *to permit building heights that encourage high quality urban form,*

- (c) *to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
- (d) *to nominate heights that will provide an appropriate transition in built form and land use intensity.*

The proposed development is considered to be consistent with the objectives of Clause 4.3 of LLEP 2008, in that notwithstanding the height exceedance, it will provide a built form that is compatible with the intended future character of the area.

The subject site accommodates a six storey building which is characteristic of development that is to be anticipated in a zone that permits a height of buildings of 18m. The proposed development is considered modern in its design with an appropriately proportioned building base and recessed upper storeys, good street presentation and articulation and landscaping.

The proposal allows for a development that encourages high quality urban form with the inclusion of extensive communal open space and landscaped areas at ground level. In addition, the proposed development has been well articulated at the street frontage and proposes varying setbacks to both side boundaries to ensure that the actual and perceived bulk of the building is minimised when viewed from the adjoining properties.

The shadows cast by the development do not significantly alter from a compliant scheme.

Given the above, it is considered that the proposed development is consistent with the objectives of Clause 4.3 of LLEP 2008.

The objectives of the R4 zone are as follows;

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

The proposal will provide for 28 new residential units which is reflective of the high density zone. It is acknowledged that there is a demand for more affordable housing within the Liverpool local government area and the proposed development responds to this need by offering at 50% of the dwellings as affordable rental housing for a period of at least 10 years, as per the requirement under the Affordable Rental Housing SEPP.

The development provides for a mix of units, in terms of size, layout, orientation and number of bedrooms. The proposed development is consistent with other high density residential development in the LGA. Also, regular bus services are available. Shopping, schools and services are all nearby.

It is considered the objectives of the R4 zone are satisfactorily met.

As detailed above, the request to vary the development standard of Clause 4.3 - Height of Buildings is considered to be well founded and justified under the circumstances. It is

considered appropriate in this instance to apply a degree of flexibility when applying the maximum height development standard applicable to the subject site.

It is considered that the variations are minor in extent but result in a better planning outcome and enable design of a high quality development which represents a design outcome that is suitable for the locality.

It is considered that the proposed height variation is in keeping with the objective of Clause 4.6 of LLEP 2008.

## 6.2 Section 4.15(1)(a)(ii) - any draft environmental planning instrument

There are no draft Environmental Planning Instruments that apply to the site.

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

Part 1 - General Controls for all Development and Part 3.7 – Residential Flat Buildings in the R4 Zone of the Development Control Plan apply to the proposed development and prescribe standards and criteria relevant to the proposal.

The following compliance table outlines compliance with these controls.

Controls	Comment	Complies
<b>PART 1 - GENERAL CONTROLS FOR ALL DEVELOPMENT</b>		
TREE PRESERVATION	Removal of garden trees to be replaced as per landscape plan.	Yes
LANDSCAPING	42.5% of the site is provided as landscaped area and 28.7% of the site is provided as deep soil planting area.	Yes
BUSHLAND AND FAUNA HABITAT PRESERVATION	N/A	N/A
BUSH FIRE RISK	N/A	N/A
WATER CYCLE MANAGEMENT	The proposal was referred to Council's Land Development Engineers for comments. No objection raised to the proposed development subject to conditions.	Yes
DEVELOPMENT NEAR A WATERCOURSE	Subject site is not near a watercourse or river.	N/A
EROSION AND SEDIMENT CONTROL	Plans submitted. Condition will be attached to any consent.	Yes
FLOODING RISK	Subject site is not flood affected.	N/A
CONTAMINATION LAND RISK	Site not recognised as being contaminated.	N/A

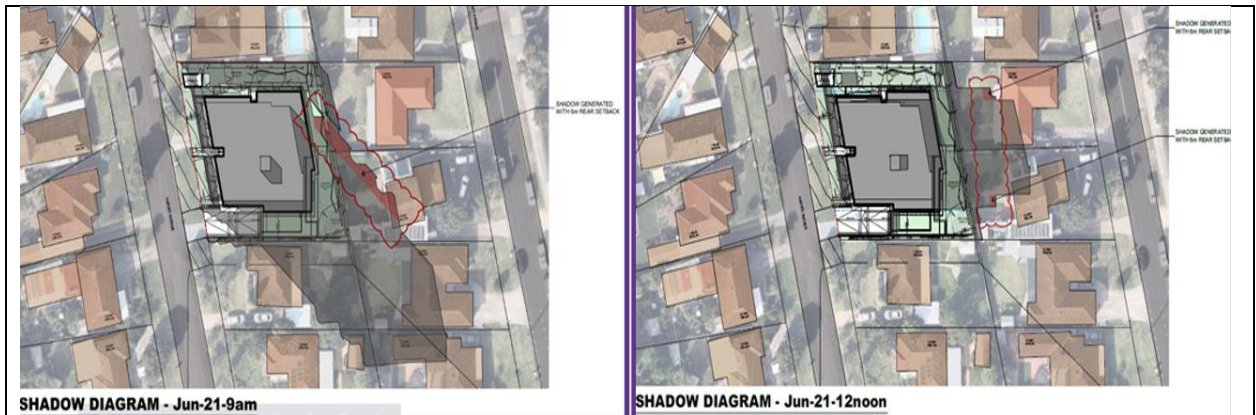
SALINITY RISK	The proposal was referred to Council's Land Development Engineers for comments. No objection raised to the proposed development subject to conditions.	Yes
ACID SULPHATE SOILS	Site is not affected by Acid Sulphate Soils.	N/A
WEEDS	No identifiable noxious weeds are on site.	N/A
DEMOLITION OF EXISTING DEVELOPMENT	Existing detached dwelling houses to be demolished at the site.	Yes
ON-SITE SEWERAGE DISPOSAL	Site is connected to water and sewer services. Sydney Water approval is required for new and upgraded connections.	N/A
ABORIGINAL ARCHAEOLOGICAL SITES	No items identified.	N/A
HERITAGE AND ARCHAEOLOGICAL SITES	Not a heritage item or site.	N/A
NOTIFICATION OF APPLICATIONS	Application was notified in accordance with DCP. Seven submissions were received and the issues raised are considered in this report.	Yes
USED CLOTHING BINS	N/A	N/A
CARPARKING AND ACCESS	The parking rates prescribed in the SEPP (ARH) 2009 override those provided in the DCP.  However, the proposal provides car parking in excess of the ARHSEPP requirement to the extent that 10 more spaces are provided including off-street visitor parking.	N/A  Council cannot refuse an application under the ARHSEPP if 26 spaces are provided.  36 spaces are provided.
SUBDIVISION OF LAND AND BUILDINGS	No subdivision proposed by this DA.	N/A
WATER CONSERVATION	Proposed development has provided a BASIX Certificate which meets the required Water Efficiency target.	Yes
ENERGY CONSERVATION	Proposed development has provided a BASIX Certificate which meets the required Energy Efficiency and Thermal Comfort targets.	Yes
WASTE DISPOSAL & RE-USE FACILITIES	Waste management facilities are provided on site.	Yes

OUTDOOR ADVERTISING AND SIGNAGE	N/A	N/A
SOCIAL IMPACT	It is considered that the proposed development is generally consistent with the objectives of Chapter 27 of Part 1 LDCP 2008, in that the development will result in positive social impacts by encouraging communities where people want to live and enjoy due to the good amenity provided by the proposed development, proximity to shopping services and transport and access to community facilities and services and job opportunities.	Yes

Part 3.7 – Residential Flat Buildings in the R4 Zone		
Frontage and Site Area		
	Minimum frontage of 24m	<b>Complies</b> A frontage of 37.53m is provided.
Site Planning		
	The building should relate to the site's topography with minimal earthworks, except for basement car parking.	<b>Complies</b> Other than excavation to the basement level under the footprint of the building, minimal earthworks are proposed. A geo-technical report has been provided that confirms that excavation can be undertaken on the site.
	Siting of buildings should provide usable and efficient spaces, with consideration given to energy efficiency in the building design	<b>Complies</b> Application is accompanied by a BASIX certificate.
	Site layout should provide safe pedestrian, cycle and vehicle access to and from the street.	<b>Complies</b> Safe access is provided.
	Siting of buildings should be sympathetic to surrounding development, taking specific account of the streetscape in terms of scale, bulk, setbacks, materials and visual amenity.	<b>Complies</b> The development is in accordance with the objectives of the zone.
	Stormwater from the site must be able to be drained satisfactorily. Where the site falls away from the street, it may be necessary to obtain an easement over adjoining property to drain water satisfactorily to a Council stormwater system. Where stormwater drains directly to the street, there may also be a need to incorporate on-site detention of	<b>Complies</b> This aspect has been reviewed by Council's Development Engineering officers, who have recommended approval subject to conditions.



	stormwater where street drainage is inadequate	
	The development will need to satisfy the requirements of State Environmental Planning Policy No 65—Design Quality of Residential Flat Development.	<b>Complies</b> As demonstrated within this report, the development mostly demonstrates compliance with SEPP 65.
<b>Setbacks</b>		
<b>Front Setback</b>	Front building setback of 5.5m is required from the street.	<b>Complies</b> A front setback of 5.5m is provided to the building.
	Verandahs, eaves and other sun control devices may encroach on the front and secondary setback by up to 1m.	<b>Complies</b> No encroachments into the front setback are made.
<b>Side Setback</b>	Boundary to land in R4 zone: 3m building setback required for a building height up to 10m	<b>Complies</b> A 6m side setback is provided to the building for a height of 10m
	Boundary to land in R4 zone: 8m building setback required for a building height up greater 10m.	A 9m setback is provided to the building for the upper storeys.
<b>Rear Setback</b>	Boundary to land in R4 zone: 8m building setback required for all building heights	<b>Does not comply with LDCP requirement but complies with ADG requirement</b> <b>Variation acceptable – see below</b>
<b>Rear setback under Liverpool compared to Apartment Design Guide standard</b>  <p>The development proposes a variation of the rear setback prescribed in LDCP2008 over part of the rear boundary. The LDCP requires a setback of 8m. The proposed setback of 6m complies with the building separation setback requirement of the Apartment Design Guide. The proposed variation is considered to be acceptable as the design of the building has addressed the potential impacts of the different setbacks and has demonstrated that the ADG option provides an acceptable outcome in terms of shadowing and privacy. The proposed development achieves the objectives of the setback control despite the numerical variation.</p> <p>The mid-winter shadow diagrams below show the differential impact of the 6m and 8m setbacks. The difference at 9am is shown at left coloured brown. As the sun moves higher towards noon, the impact diminishes and has almost disappeared. After noon, the shadow effect is the same for both setbacks.</p>		



As the ADG is linked to SEPP 65, its controls have precedence over the Council's DCP controls, Given the minor difference in overall impact, it is considered that application of the ADG control is satisfactory. It is noted that the above example represents the worst case scenario for any year and so the impact will be less at any other time.

Landscaped Area and Private Open Space		
<b>Landscaped Area (Deep Soil Zone)</b>	A minimum of 25% of the site area shall be landscaped area.	<b>Complies</b> Approximately 42% of the site area is landscaped area.
	A minimum of 50% of the front setback area shall be landscaped area	<b>Complies</b> Majority of front setback area is landscaped area.
	Optimise the provision of consolidated landscaped area within a site by: - The design of basement and sub-basement car parking, so as not to fully cover the site. - The use of front and side setbacks. - Optimise the extent of landscaped area beyond the site boundaries by locating them contiguous with the landscaped area of adjacent properties.	<b>Complies</b> Landscaped areas are generally consolidated within the front, rear and side setbacks.
	Promote landscape health by supporting for a rich variety of vegetation type and size	<b>Complies</b> A variety of native plant species are provided.
<b>Open Space</b>	Provide communal open space, which is appropriate and relevant to the context and the building's setting.	<b>Complies</b> Communal open space is provided.
	Where communal open space is provided, facilitate its use for the desired range of activities by: - Locating it in relation to buildings to optimise solar access to dwellings.	<b>Complies</b> The communal open space is well located and varied. The design provides a range of options for use.

	<ul style="list-style-type: none"> <li>- Consolidating open space on the site into recognisable areas with reasonable space, facilities and landscape.</li> <li>- Designing its size and dimensions to allow for the range of uses it will contain.</li> <li>- Minimising overshadowing.</li> <li>- Carefully locating ventilation duct outlets from basement car parking.</li> </ul>	
	Locate open space to increase the potential for residential amenity.	<b>Complies</b> The communal open space is directly connected to the ground floor lobby and adds to the residential amenity of the development.
<b>Private Open Space</b>	Private open space shall be provided as follows: - 10m <sup>2</sup> for a dwelling size less than 65m <sup>2</sup> - 12m <sup>2</sup> for a dwelling size over 65m <sup>2</sup>	<b>Complies</b> Private open space requirements are provided in accordance with the requirements of the ADG.
	Private open space may be provided as a courtyard for ground floor dwellings or as balconies for dwellings above the ground floor.	<b>Complies</b> Private courtyards are provided for units on the ground floor.
	Private open space areas should be an extension of indoor living areas and be functional in size to accommodate seating and the like.	<b>Complies</b> The POS acts as an extension of the internal living rooms.
	Private open space should be clearly defined for private use.	<b>Complies</b> The POS is clearly defined.
<b>Building Design, Style and Streetscape</b>		
<b>Building Appearance and Streetscape</b>	Objectives of the controls are as follows: a) To ensure an attractive streetscape that is consistent with the environment of residential flat buildings. b) To promote high architectural quality in residential flat buildings. c) To ensure that new developments have facades which define and enhance the public domain and desired street character. d) To ensure that building elements are integrated into the overall building form and facade design.	<b>Complies</b> The composition of building elements, materials, textures and colours is satisfactory.  The building addresses ADG requirements and is in keeping with the likely future character of the area in terms of height, bulk, scale, built form and roof design.  The proposed building is highly articulated and designed to suit the site.
<b>Roof Design</b>	Objectives of the controls are: a) To provide quality roof designs, which contribute to the overall	<b>Complies</b> The proposed roof design contributes positively to the design of the building.

	<p>design and performance of residential flat buildings;</p> <p>b) To integrate the design of the roof into the overall facade, building composition and desired contextual response;</p> <p>c) To increase the longevity of the building through weather protection.</p>	
<b>Building Entry</b>	<p>Objectives of the controls are:</p> <p>a) To create entrances which provide a desirable residential identity for the development.</p> <p>b) To orient the visitor.</p> <p>c) To contribute positively to the streetscape and building facade design.</p>	<p><b>Complies</b></p> <p>The main entry is centrally located, well defined and connected to the streetscape and provide an obvious and safe entry point for residents and visitors.</p>
<b>Balconies</b>	<p>Objectives of the controls are:</p> <p>a) To ensure that balconies contribute positively to the façade of a building.</p> <p>b) To ensure balconies are functional and responsive to the environment thereby promoting the enjoyment of outdoor living for dwelling residents.</p> <p>c) To ensure that balconies are integrated into the overall architectural form and detail of residential flat buildings.</p> <p>d) To contribute to the safety and liveliness of the street by allowing for casual overlooking and address.</p>	<p><b>Complies</b></p> <p>Balconies are integrated into the architectural form of the development and will complement the facade and are fit for purpose.</p>
<b>Daylight Access</b>	<p>Objectives of the controls area:</p> <p>a) To ensure that daylight access is provided to all habitable rooms and encouraged in all other areas of residential flat development.</p> <p>b) To provide adequate ambient lighting and minimise the need for artificial lighting during daylight hours.</p> <p>c) To provide residents with the ability to adjust the quantity of daylight to suit their needs.</p>	<p><b>Complies</b></p> <p>The majority of the units and the communal open space will receive adequate solar access.</p>
<b>Internal Design</b>	<p>Objectives of the controls are:</p> <p>a) To ensure that the internal design of buildings provide a pleasant environment for the occupants and residents of adjoining properties.</p>	<p><b>Complies</b></p> <p>The building is designed with optimal amenity for future occupants, providing pleasant living spaces, solar access, and natural ventilation.</p>
<b>Ground Floor Dwellings</b>	<p>Objectives of the controls are:</p> <p>a) To contribute to the desired streetscape of an area and to create active safe streets.</p>	<p><b>Complies</b></p> <p>The ground floor units address the street and will complement the future streetscape.</p>

	b) To increase the housing and lifestyle choices available in dwelling buildings.	
<b>Security</b>	<p>Objectives of the controls are:</p> <p>a) To ensure that buildings are orientated to allow surveillance from the street and adjoining buildings.</p> <p>b) To ensure that entrances to buildings are clearly visible and easy to locate in order to minimise the opportunities for intruders.</p> <p>c) To ensure buildings are safe and secure for residents and visitors.</p> <p>d) To contribute to the safety of the public domain.</p>	<p><b>Complies</b></p> <p>Entrances to buildings are clearly defined, causal surveillance opportunities exist, and the development provides a safe and secure building for future occupants and visitors.</p>
<b>Natural Ventilation</b>	<p>Objectives of the controls are:</p> <p>a) To ensure that dwellings are designed to provide all habitable rooms with direct access to fresh air and to assist in promoting thermal comfort for occupants.</p> <p>b) To provide natural ventilation in non-habitable rooms, where possible.</p> <p>c) To reduce energy consumption by minimising the use of mechanical ventilation, particularly air conditioning.</p>	<p><b>Complies</b></p> <p>All units have direct access to natural ventilation.</p>
<b>Building Layout</b>	<p>Objectives of the controls are:</p> <p>a) To provide variety in appearance.</p> <p>b) To provide increasing privacy between dwellings within the building.</p> <p>c) To assist with flow through ventilation.</p> <p>d) To improve solar access.</p>	<p><b>Complies</b></p> <p>Proposed building layout is optimised for natural light and ventilation, whilst presenting an articulated presentation.</p>
<b>Storage Areas</b>	A secure storage space is to be provided for each dwelling with a minimum volume of 8m <sup>3</sup> (minimum dimension 1m <sup>2</sup> ). This must be set aside exclusively for storage as part of the basement or garage.	<p><b>Complies</b></p> <p>Storage spaces are provided within each apartment and within the basement.</p>
	Storage areas must be adequately lit and secure. Particular attention must be given to security of basement and garage storage areas.	<p><b>Complies</b></p> <p>Storage areas within the basement will be adequately lit.</p>
<b>Landscaping and Fencing</b>		
<b>Landscaping</b>	<p>Objectives of the controls are:</p> <p>a) To ensure that the development uses 'soft landscaping' treatments to soften the appearance of the buildings and complement the streetscape.</p>	<p><b>Complies</b></p> <p>The use of landscaping elements is appropriate to the scale of the development and provides a variety of native species in varying heights to complement the development.</p>

	<p>b) To ensure that the relation of landscape design is appropriate to the desired proportions and character of the streetscape.</p> <p>c) To ensure that the use of planting and landscape elements are appropriate to the scale of the development.</p> <p>a) To retain existing mature trees within the site in a way which ensures their ongoing health and vitality.</p> <p>b) To provide privacy, summer shade and allow winter sun.</p> <p>c) To encourage landscaping that is appropriate to the natural, cultural and heritage characteristics of its locality.</p> <p>d) To add value to residents' quality of life within the development in the forms of privacy, outlook and views.</p>	
<b>Fencing</b>	Maximum height of front fence is 1.2m. The front fence may be built to a maximum height of 1.5m if the fence is setback 1m from the front boundary with suitable landscaping in front of the proposed fence.	<b>Complies</b> The landscape plan provides fencing details which provide definition of space, function interest and security.
	Fences should not prevent surveillance by the dwelling's occupants of the street or communal areas.	<b>Complies</b> Casual surveillance is not hindered by fencing.
	The front fence must be 30% transparent.	<b>Complies</b> The fence is masonry with horizontal timber slats.
	Front fences shall be constructed in masonry, timber, metal pickets and/or vegetation and must be compatible with the proposed design of the dwelling.	<b>Complies</b> The front fence will complement the overall design of the building.
	The maximum height of side boundary fencing within the setback to the street is 1.2m.	<b>Complies</b> Only front fencing is proposed across the frontage of the site.
	Boundary fences shall be lapped and capped timber or metal sheeting.	<p><b>Complies</b></p> <p>Boundary fences are to be lapped and capped timber excluding the western fence where in accordance with the Acoustic Report, a 1.8m solid boundary fence at least 10kg/m<sup>2</sup> mass-per-unit-area will be installed between the site and adjoining property at 17 Harvey Avenue.</p> <p>A condition will be attached to any consent to cover this matter.</p>
<b>Car Parking and Access</b>		
<b>Car Parking</b>	Visitor car parking shall be clearly identified and may not be stacked car parking.	<p><b>Complies</b></p> <p>Although not mandated by the ARHSEPP visitor spaces have been provided and are well located and clearly identified.</p>

	Visitor car parking shall be located between any roller shutter door and the front boundary.	<b>Variation preferred</b> Visitor parking spaces are provided in the basement with all other spaces and with access to the lift. They are the first available spaces.  Visitors will have the option to park in the street but in any case, entry to the building will require passing security doors.
	Pedestrian and driveways shall be separated.	<b>Complies</b> Pedestrian and driveways are separated.
	Driveways shall be designed to accommodate removalist vehicles.	<b>Variation preferred</b> On-street parking is available for removalist vehicles. The driveway width accommodates two cars passing and provides for better safety and visibility if unencumbered by other purposes.
	Where possible vehicular entrances to the basement car parking shall be from the side of the building. As an alternative a curved driveway to an entrance at the front of the building may be considered if the entrance is not readily visible from the street.	<b>Not Applicable</b> The proposed driveway is the best option in this case.
	Give preference to underground parking	<b>Complies</b> Underground parking is provided.
<b>Pedestrian Access</b>	Objectives of the controls are: a) To promote residential flat development that is well connected to the street and contributes to the accessibility of the public domain. b) To ensure that residents, including users of strollers and wheelchairs and people with bicycles, are able to reach and enter their dwelling and use communal areas via minimum grade ramps, paths, access ways or lifts.	<b>Complies</b> Pedestrian entry is clearly defined and accessible.
<b>Amenity and Environmental Impact</b>		
<b>Overshadowing</b>	Adjoining properties must receive a minimum of three hours of sunlight between 9am and 5pm on 21 June to at least: - One living, rumpus room or the like; and - 50% of the private open space.	<b>Complies</b> Shadow diagrams of the proposed development have been prepared for 21 June (winter solstice). The shadow diagrams show that the main impact will be on properties in McKay Street to the south but that the impact will not prevent sufficient solar access is provided as all properties will receive solar access for 3 hours or more.
<b>Privacy</b>	Objectives of the controls are: a) To locate and design buildings to meet projected user requirements for visual and acoustic privacy and to protect privacy of nearby residents.	<b>Complies</b> Consideration has been given to privacy having regard to disparity in permitted height and density compared to the height and density of existing development.



	b) To avoid any external impacts of a development, such as overlooking of adjoining sites. c) To provide reasonable levels of visual privacy externally and internally, during the day and at night. d) To maximise outlook and views from principal rooms and private open space.	While it is recognised that initially there will be potential for existing residents to feel they are being overlooked and for new RFB residents to feel they are visually exposed, the expectations of various residents are expected to change as the locality transitions from low to high density. In the meantime, it is considered that the design of the proposed development has given appropriate consideration to preserving residential privacy.
<b>Acoustic Impact</b>	Objectives of the controls are: a) To ensure a high level of amenity by protecting the privacy of residents within residential flat buildings.	<b>Complies</b> As discussed previously within this report, the development should achieve a high level of amenity, subject to the implementation of noise attenuation measures outlined in the submitted acoustic report.
<b>Site Services</b>		
	Objectives of the controls are: a) To ensure that the required services are provided. b) To ensure that the services provided are easily protected or maintained.	<b>Complies</b> All required site services will be provided to the site and maintained.

Notwithstanding the numerical variation to the rear setback, the development is considered to be acceptable and is supported.

#### **6.4 Section 4.15(1)(a)(iia) - any planning agreement or any draft planning agreement**

No planning agreement relates to the site or proposed development.

#### **6.5 Section 4.15(1)(a)(iv) – the regulations**

The Environmental Planning and Assessment Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. If approved appropriate conditions of consent will be imposed requiring compliance with the National Construction Code.

#### **6.6 Section 4.15(1)(b) – the likely impacts of the development**

##### **(a) Natural Environment**

The impacts of the development on the natural environment have been assessed and the development is considered to be acceptable and unlikely to cause any adverse impact to the natural environment. The temporary removal of vegetation will be replaced trees and shrubs in new landscaping for the site.

Construction of the building will include excavation to 6m but good separation of 6m from adjoining boundaries is proposed which should provide a buffer to established development. A Geotechnical Report has accompanied the DA which concludes that site is suitable for the proposed works.

##### **(b) Built Environment**

The impacts of the development on the built environment have been assessed and as the proposal represents the future character for development in the R4 zone, is considered to be acceptable. Consideration has been given to issues such as acoustic impact and waste

management and it is considered that the site and proposed development is suited for the locality transitioning to a high density context. Conditions of consent will be imposed to ensure that an agreement with Council is reached regarding the best approach for collection of waste.

**(c) Social Impacts**

The development is considered beneficial from a social aspect as it will be providing 50% of the dwellings within the development as affordable housing. Further to this, the applicant is attempting to increase housing variety in the locality by providing a diverse unit mix. The development will also result in a positive economic impact through the employment opportunities generated during the construction phase and on-going maintenance of the development.

**(d) Economic Impacts**

The short term positive economic impacts development that result from construction spending and employment opportunities generated during the construction phase are generally recognised. Other, more enduring impacts should come as the local population increases and use local shopping and services.

**(e) Section 7.11 of the EP&A Act / Liverpool Contributions Plan 2009**

The Liverpool Contributions Plan 2009 provides information on the extent of anticipated new development, the extent of new public services and amenities needed to support the new development and the contributions that the new development must make to fund the public services and amenities.

Accordingly, the payable Section 7.11 Contribution fee for the development proposed is \$79,711, subject to the Consumer Price Index (CPI) increases applicable at the time of payment. The calculation has been confirmed as correct by Council's Assets and Infrastructure Engineer,

**6.8 Section 4.15(1)(c) – the suitability of the site for the development**

The site was rezoned to R4 – High Density Residential in 2008 following a strategic assessment of the suitability of the locality to support a higher residential density. The proposal development has been designed in line with the applicable planning controls which describe the desired future character of the site and surrounding locality. The proposed development is a permitted use and has a bulk, scale and appearance which also takes account of the site attributes and constraints. The proposed development is therefore considered suitable for the site.

**6.9 Section 4.15(1)(d) – any submissions made in accordance with the Act or the regulations**

**(a) Internal Referrals**

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

Internal Department	Status and Comments
Natural Environment & Landscaping	No objection, subject to conditions
Land Development Engineering	No objection, subject to conditions
Traffic Engineering	No objection, subject to conditions
Community Services	Acknowledged the issues for an area in transition including the impacts on local residents. Also identified the need for affordable rental housing to contribute to a shortage of available housing in that sector.

**(b) External Referrals**

The following comments have been received from External agencies:

External Department	Status and Comments
Sydney Water	Reviewed the application and determined that this development does not require assessment by Sydney Water at this stage.
Endeavour Energy	No response within specified period.

**(c) Community Consultation**

The DA was notified in accordance with LDGP 2008 for a period of 14 days from 4 October 2017 to 19 October 2017.

Seven (7) submissions were received during notification period objecting to the proposed development on various grounds. Matters raised in those submissions are considered below.

***Issue: Additional traffic, vehicle conflicts, car parking, narrow roads***

**Comment:** The traffic impact of the proposed development has been assessed by Council Traffic section. Additional traffic movements will be generated and it has been determined that the surrounding road network has capacity to accommodate the projected net traffic generation of 17 vehicle trips per hour.

The proposed development has provided car parking in excess of the number of spaces required to satisfy the ARHSEPP controls and has included accessible parking and visitor parking in the basement design. This provides the opportunity for people with a disability to park on site and for visitors to do so as well.

The development proposes a single driveway (6 metres or 2 cars wide) so that the remaining frontage of the site will be available if on-street parking is required.

***Issue: Garbage collections for additional 56 bins***

**Comment:** A weekly bin collection service will be provided for the proposed development. Bins will be stored in the basement at other times. The available frontage for bin collection is 29m. There is capacity for 56 bins to be accommodated for general waste (red) and recycling (yellow) collection. In the intervening week, it is not expected that the green waste pickup will involve 28 bins given the high-rise nature of the development and the shared management of landscaping for residential flat buildings. Overall, it is expected that waste management of site

will be coordinated by the future Owners' Corporation including the delivery and retrieval of bins for pick-up.

***Issue: Rubbish in the street***

**Comment:** The observation is made that there has been an increase in rubbish in local streets. At this stage, the additional rubbish cannot be attributed to the proposed development but may be derived from a variety of sources in the locality. For example, the Moorebank Shopping centre is 200m away. In future, the proposed development will be responsible for collection of rubbish on its site and presentation of bins for collection. A bulk waste room is also proposed to ensure that large items are not left on the street. It is not expected that occupancy of the proposed building will generate rubbish in the street.

***Issue: Impact on services including water, sewerage, electricity and stormwater***

**Comment:** The proposed development has been assessed by Council's Development Engineers and it is considered that drainage and stormwater can be satisfactorily handled for the site. Sydney Water has identified that it will deal with water and sewer connections at Construction Certificate stage. Construction of the proposed development will include liaison with the responsible energy providers and will include appropriate street lighting. It is considered that adequate infrastructure is available or will be provided to service the proposed development.

***Issue: Impact on local character. High rise development is not supported***

**Comment:** As a residential flat building, the proposed development will present a very different character to the existing single storey dwellings currently in Harvey Avenue. However, the locality was rezoned in 2008 to enable a higher and denser built form and the proposed development meets the expectations and parameters of the R4 zone. Sites in nearby Lucas Avenue and Nuwarra Road are starting to provide an expression of the character of buildings proposed under the R4 zone. The proposed development is considered to provide a quality expression of high density development in accordance with the R4 zone.

***Issue: Impact on shadowing of properties***

**Comment:** The difference in scale now permitted for development in the R4 zone compared to the established single storey development means that there will be shadow impacts as the area transitions from low to high density development. In this case, the main impact will be to the south east of the site as shown in the submitted shadow diagrams for the midwinter solstice. However, the proposed development has respected the building separation requirements of the Apartment Design Guide and side setbacks in Council's DCP. In amending the design to address comments by the Design Excellence Panel, the extent of non-compliance with Council's DCP rear setback has been reduced compared to the original design. As such, the shadow impact has been mitigated almost to the maximum possible extent.

***Issue: Impact on privacy of neighbours***

**Comment:** The difference in height and scale also means that there is potential for high rise development to overlook established development as the area transitions from low to high density. Design features of the proposed development aim to mitigate that impact in the meantime and for future high rise neighbours. For example:

- units at the front face the street and therefore face the street address of neighbours opposite;
- pedestrian entry for the site is located in the middle of the building so that residents and visitors enter and leave as far as possible from the neighbouring properties;
- balconies meet the ADG setback requirements;
- deep soil areas have been provided to support vegetation that in time can provide visual relief and separation to adjoining sites; and
- On the ground floor (west) a courtyard attached to a unit has been provided to the side boundary instead of a communal open space.

It is recognised that in the transition period, established properties will be overlooked by new development. It is considered that the subject design provides a quality precedent for future development.

***Issue: Noise***

**Comment:** The proposed development was accompanied by an acoustic assessment report which considered the impact of local noise sources on the units and the potential impact of the new residential flat building on the existing aural environment. The report concluded that all *potential acoustic issues can be managed to comply with published guidelines and that the development will not cause a noise nuisance.*

***Issue: Lack of facilities such as parks and schools for additional population***

**Comment:** The subject land was zoned for high density residential development in 2008. The change in zoning would have been based on a strategic assessment of the capability of the land to support an increase in population density to the scale proposed. The precinct is within the walking catchment of a local primary school and high school. Several private schools can be accessed from the site.

It is noted that there has been interest expressed in providing uses to service the needs of the increasing population including a proposal for a childcare centre.

If approved, the proposal will pay a Section 7.11 levy which, among other things, will contribute to the provision of local and district parks and facilities.

***Issue: Concern about “affordable housing”***

**Comment:** There is a common misperception that “affordable rental housing” is a type of itinerant housing and that tenants are likely to cause problems because they have less of a stake in the community. The reality is that affordable rental housing must be maintained as such for a minimum of 10 years and must be handed over to a Community Housing provider to manage for that period. Community Housing providers are regulated by the State Government and include not-for-profit organisations providing housing for people with special housing needs and for key workers who cannot obtain affordable accommodation near their place of work. In some areas, this can include teachers and junior police officers who are assigned to an area with high housing costs.

***Issue: Issue of lift overrun enabling additional (sixth) storey***

**Comment:** The observation has been made that without the proposed lift overrun, the development could not reach six storeys and accordingly would be limited to five storeys. Even so, the building would still be over 15m in height and the impacts on shadowing, privacy and other factors would be generally the same as for a building of six storeys. A sixth storey could be achieved in any case, if the top two levels were reconfigured to be two storey units with

internal staircases. Additional floor to ceiling height could be introduced which would make a five storey building closer to 18m in height.

The impact of the lift overrun and the roof over the north-western corner of the building has been assessed especially in terms of any additional overshadowing, visual appearance and privacy. It has been shown that the additional impact due to shadow is generally contained within the footprint of building shadow. Visually, the structure cannot be seen from the ground in proximity to the building and will only be observed from afar or from new and future high buildings in the locality. The lift overrun will not impact on privacy as it is fully enclosed and does not enable access to the roof.

#### **6.10 Section 4.15(1)(e) – the public interest**

The proposed development is consistent to be in the public interest as it permissible in the applicable zoning of the land and generally compliant with planning controls. The development will provide additional housing opportunities in proximity to public transport, local shopping, services and employment opportunities. It will also add to the availability of affordable rental housing in Moorebank providing an important social benefit.

### **7. CONCLUSION**

In conclusion, the following is noted:

- The subject Development Application has been assessed having regard to the matters of consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act 1979 and is considered satisfactory. Conditions will be attached to any consent to ensure that the development is carried out as proposed and to address matters raised in this report.
- The proposal provides an appropriate response to the context of the site and satisfies the SEPP 65 design principles and the requirements of the ADG. The scale and built form are consistent with the desired future character of the area envisaged under the LLEP 2008 and LDCP 2008. The transition of the locality from low to high density has been anticipated in the zoning of the land to R4 – High Density Residential.
- The proposal substantially complies with the provisions of the LLEP2008 and LDCP 2008. The variations proposed to the height of the building and rear setback are considered acceptable on merit.
- The proposal satisfies the requirements of the Affordable Housing SEPP and will generate a social benefit for the community in the form of affordable rental housing being provided for a period of at least 10 years.

### **8. RECOMMENDATION**

Based on the assessment contained in this report and subject to the attachment of conditions of consent presented below, Development Application DA-745/2017 for construction of a six storey residential flat building comprising of 28 units, including landscaping works, associated site works and demolition of existing structures be approved subject to conditions.

### **9. ATTACHMENTS**

- 1) Recommended Conditions of Consent
- 2) Architectural Plans
- 3) Landscape Plan

- 4) Stormwater Drainage plans
- 5) Statement of Environmental Effects with Clause 4.6 Variation
- 6) SEPP 65 Design Verification Statement
- 7) Survey Plan
- 8) Acoustic Report
- 9) BASIX Certificate
- 10) Geotechnical Report
- 11) Design Excellence Panel Minutes
- 12) Traffic Report