

COUNCIL ASSESSMENT REPORT

Panel Reference	2018SWC009
DA Number	DA 1225/2018/JP
LGA	The Hills Shire Council
Proposed Development	Construction of a mixed use development comprising three residential flat buildings, neighbourhood shop and road construction.
Street Address	Lot 1381 DP 1105145, Lots 136, 137, 139, 139A DP 10157 Nos. 1-5 Terry Road and No. 779 Windsor Road, Box Hill
Applicant/Owner	Box Hill Property Trust
Consultants	Kennedy Associates Architects Birds Tree Consultancy LP Consulting Australia Pty Ltd STS GeoEnvironmental Pty Ltd Design Confidence Taylor Brammer Landscape Architects Pty Ltd Varga Traffic Planning Pty Ltd Acoustic Logic DFP Planning Pty Ltd SDG (Surveyors)
Date of DA lodgement	20 December 2017
Number of Submissions	Nil
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	CIV exceeding \$30 million (\$48,490,985)
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (State and Regional Development) 2011. • State Environmental Planning Policy (Sydney Region Growth Centres) 2006. • State Environmental Planning Policy No 55 — Remediation of Land. • State Environmental Planning Policy (Infrastructure) 2007. • State Environmental Planning Policy No 65 — Design Quality of Residential Apartment Development. • State Environmental Planning Policy – Building Sustainability Index (BASIX) 2009. • Draft Amendment to SEPP (Sydney Region Growth Centres) 2006 (North West Priority Growth Area Land Use and Infrastructure Implementation Plan). • Central City District Plan. • Box Hill Development Control Plan 2017. • Environmental Planning and Assessment Act Regulation 2000.
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Clause 4.6 variation request
Report prepared by	Kate Clinton – Senior Town Planner
Report date	23 May 2019

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
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Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? <i>e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP</i>	Yes
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Clause 4.6 Exceptions to development standards

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

Does the DA require Special Infrastructure Contributions conditions (S7.24)? <i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	Yes
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Conditions

Have draft conditions been provided to the applicant for comment? <i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report.</i>	NA
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EXECUTIVE SUMMARY

The Development Application is for the construction of three residential flat buildings containing 161 apartments and a neighbourhood shop. The three residential flat buildings are between 7 to 10 storeys over a common, 3-level basement with 208 parking spaces, a shop, a central communal open space area, partial construction of a future road (Brookline Crescent) and dedication of land (approximately 632sqm) for the future road. Temporary vehicular access to the basement is proposed via Terry Road until such time as Brookline Crescent is constructed to the rear of the site.

The Development Application is accompanied by a written request to vary a development standard pursuant to Clause 4.6 of Appendix 11 of State Environmental Planning Policy (Sydney Region Growth Centres) 2006 (SEPP SRGC). Clause 4.3 of the SEPP (SRGC) prescribes a maximum height of 21 metres for the subject site. The development proposes a maximum height of 31.65 metres which results in a 50.7% (10.65 metre) variation to the development standard.

The applicant's justification maintains that compliance would result in a 'weak' built form at the intersection of Terry Road and Windsor Road due to the fall in the land adjacent to the intersection. The applicant advises that the proposal complies with the floor space ratio (2:1) and effectively relocates allowable built form from other areas on the site to the corner of Terry Road and Windsor Road in order to provide a higher corner element to the intersection whilst maintaining a building height at the edges that would be consistent with approved and future development.

The proposed variation to the building height is considered excessive given that it would result in a development that is inconsistent with the desired future character of the locality and since the development seeks to increase building height in one location without making adequate concessions elsewhere to reduce excess density. The proposed density of 244 dwellings per hectare significantly exceeds the maximum proposed under a draft amendment to the SEPP (SRGC) which proposes to introduce a density band permitting between 30 to 100 dwellings per hectare on the site. Under the draft plan a maximum of 65 dwellings would be permitted on the site. The proposed development seeks approval for 161 dwellings. The resulting density of 244 dwellings per hectare also exceeds the average approved density of six other residential flat buildings approved in the vicinity being 192.68 dwellings per hectare.

The proposed development has been assessed against the requirements of the Box Hill Development Control Plan 2017 both in relation to residential flat buildings and shop top housing. Variations to landscaped area, communal open space and front setback controls (to Windsor Road) are proposed. A reduced setback to Windsor Road is considered reasonable, however insufficient information has been submitted to assess the site's landscaped area and communal open space areas.

The applicant was requested to significantly redesign the proposal to address the building height and draft density controls and other associated matters such as comments from the Roads and Maritime Services and Council's Waste, Engineering and Tree Management / Landscaping teams that were raised during the assessment process. The applicant submitted additional information proposing a similar height and scale as originally proposed, and with the addition of one more residential unit.

To date, the applicant has not provided critical information to enable the assessment of the application, including an updated landscape plan, drainage plan, BASIX certificate, traffic report, contamination report and salinity report, requested in May 2018. Waste management, landscaping, subdivision, parking and roadworks issues also remain outstanding.

The information submitted to date has been assessed and it is considered that the proposed variations to building height and draft density controls remain excessive. Whilst it is agreed

that the site's position at the intersection could be considered prominent, it is not agreed that the proposed variation can be justified by the relocation of floor space from one part of the site to the corner without regard for density, and that a height variation that applies to the majority of the Windsor Road and Terry Road elevations of the development is appropriate. The dedication of part of the site to provide for Brookline Crescent is required as per the Box Hill Indicative Layout Plan and does not entitle the development to a transfer of yield and building height. The plans also show that variations to height within the development are not limited to the corner element with lesser height variations proposed to the south east and north east elevations at the boundaries.

The application was notified for 14 days and no submissions were received.

The Development Application is recommended for refusal.

DETAILS AND SUBMISSIONS

Owner:	Jacs Angels Pty Ltd
Zoning:	R4 High Density Residential
Area:	6,597sqm
Existing Development:	Five dwellings
Section 94 Contribution	\$5,425,000
Exhibition:	14 days
Notice Adj Owners:	Yes, 14 days
Number Advised:	Eight (8)
Submissions Received:	Nil

BACKGROUND

The site comprises five allotments and is located at Nos. 1 – 5 Terry Road and No. 779 Windsor Road, Box Hill which is legally known as Lot 1381 DP 11-5145, Lots 136, 137, 139 and 139A DP 10157 and has a total area of 6,597sqm. The site is located in the Sydney Region Growth Centres Box Hill Precinct and is positioned at the corner of Windsor Road and Terry Road. A service road runs parallel to the Windsor Road in front of the site. The service road cannot be utilised to provide access to the site as it will eventually be removed.

The subject Development Application was lodged On 20 December 2017.

On 11 May 2018, correspondence was sent to the applicant requesting that the proposal be significantly redesigned to address the building height, draft density controls, the Box Hill DCP shop top housing controls, and comments from the RMS and Council's subdivision, waste management, tree management and environmental health teams.

On 19 September 2018, an email was sent to the applicant requesting that the additional information be submitted within 14 days or that the application should be withdrawn.

On 24 October 2018, additional information was submitted by the applicant. The amended plans increased the number of units from 160 to 161 which increased the proposed density from 242 dwellings per hectare to 244 dwellings per hectare, and reducing the number of car parking spaces from 226 to 208 car spaces. The development remains a similar height and scale as originally proposed.

A number of matters remain outstanding including the submission of an updated landscape plan, drainage plan, BASIX certificate, traffic report, contamination report and salinity report which the applicant indicated would be submitted at a later date.

The applicant was requested for an update on the status of the outstanding matters on 29 March 2019 to which no response was received.

Six similar developments have been approved in the vicinity of the subject site, including the following:

- A seven storey residential flat building containing 103 units on the adjoining land to the north east at No. 7 – 9 Terry Road (DA No. 694/2017/JP – deferred commencement);
- A 6-7 storey residential flat building containing 93 units at No. 4 Alan Street (DA No. 1631/2015/JP);
- A six storey residential flat building containing 54 units at No. 17-19 Alan Street (DA No. 1230/2018/HA);
- A seven storey residential flat building containing 121 units at No. 13 Terry Road (DA No. 846/2016/JP);
- A seven storey residential flat building containing 53 units at Nos. 13-15 Alan Street (DA No. 2003/2017/JP); and
- A six storey residential flat building containing 31 units at No. 11 Alan Street (DA No. 479/2018/HA).

PROPOSAL

The Development Application is for the construction of three residential flat buildings ranging from 7 to 10 storeys containing 161 units comprising of 49 x 1 bedroom units, 90 x 2 bedroom units, 22 x 3 bedroom units, a 3-level basement accommodating 208 spaces, and a neighbourhood shop with a gross floor area of 77sqm. The shop would be located at ground level on the Terry Road frontage, adjacent to the undercover walkway providing pedestrian access to the apartments and private open spaces.

Temporary vehicular access to the basement is proposed from Terry Road to the west, which would be replaced by access from a future road, Brookline Crescent to the north-east of the site in accordance with the Box Hill Indicative Layout Plan. The proposal includes partial construction and dedication of the new road and a central communal open space area. 48 trees are also proposed to be removed.

ISSUES FOR CONSIDERATION

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

Clause 20 and Schedule 7 of SEPP (State and Regional Development) 2011 provides the following referral requirements to a Joint Regional Planning Panel:-

Development that has a capital investment value of more than \$30 million.

The proposed development has a capital investment value of \$48,490,985 thereby requiring referral to, and determination by, a Regional Planning Panel.

In accordance with this requirement the application was referred to, and listed with, the Sydney Central City Planning Panel for determination.

2. State Environmental Planning Policy No. 55 Remediation of Land

This Policy aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspects of the environment.

Clause 7 'Contamination and remediation to be considered in determining development application' of the SEPP states:-

1) *A consent authority must not consent to the carrying out of any development on land unless:*

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

Comment:

A Preliminary Site Investigation dated August 2017 has been undertaken by STS GeoEnvironmental. Council's Environmental Health Officer reviewed the Preliminary Site Investigation and concluded that it was inadequate as it does not satisfy the consent authority of the extent and degree of contamination on the subject site and whether the site is indeed, suitable for the proposed use. On 11 May 2018, the applicant was requested to undertake a Stage 2 Contamination Assessment. A Stage 2 Contamination Assessment has not been received to date.

In this regard, it is considered that insufficient information has been submitted to satisfy Council Officers that the proposal will be able to achieve compliance with the provisions of SEPP 55.

3. State Environmental Planning Policy (Infrastructure) 2007

This Policy aims to facilitate the delivery of infrastructure and identify matters to be considered in the assessment of development adjacent to particular types of infrastructure development. Specifically the SEPP contains provisions relating to development adjacent to a rail corridor, traffic generating development and development with access to a classified road.

Clause 104 'Traffic-generating development' of the SEPP states:-

(1) This clause applies to development specified in Column 1 of the Table to Schedule 3 that involves:

- (a) new premises of the relevant size or capacity, or*
- (b) an enlargement or extension of existing premises, being an alteration or addition of the relevant size or capacity.*

(2) In this clause, relevant size or capacity means:

- (a) in relation to development on a site that has direct vehicular or pedestrian access to any road—the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*
- (b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection—the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3.*

(2A) A public authority, or a person acting on behalf of a public authority, must not carry out development to which this clause applies that this Policy provides may be carried out without consent unless the authority or person has:

- (a) given written notice of the intention to carry out the development to RMS in relation to the development, and*
- (b) taken into consideration any response to the notice that is received from RMS within 21 days after the notice is given.*

(3) Before determining a development application for development to which this clause applies, the consent authority must:

- (a) give written notice of the application to the RMS within 7 days after the application is made, and*
- (b) take into consideration:*

(i) any submission that the RMS provides in response to that notice within 21 days after the notice was given (unless, before the 21 days have passed, the RMS advises that it will not be making a submission), and

(ii) the accessibility of the site concerned, including:

(A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and

(B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and

(iii) any potential traffic safety, road congestion or parking implications of the development.

(4) The consent authority must give the RMS a copy of the determination of the application within 7 days after the determination is made.

Comment:

The proposal is categorised as traffic generating development pursuant to Schedule 3 of the SEPP. The SEPP requires development to be referred to the NSW Roads and Maritime Service when residential accommodation has 75 or more dwellings with site access to a classified road or to road that connects to a classified road. The proposed development comprises 161 dwellings and connects to Windsor Road via Terry Road.

The Development Application was referred to the NSW Roads and Maritime Service for review. On 11 May 2018, comments from the RMS were forwarded to the applicant indicating that the application is not supported in its current form and additional information is required for further assessment including amended plans and an amended Traffic Report. An amended Traffic Report has not been received to date. The RMS would not provide final comments based solely on the amended plans received.

In this regard, it is considered that insufficient information has been submitted to satisfy Council Officers and NSW Roads and Maritime Service that the proposal will be able to achieve compliance with the provisions of SEPP (Infrastructure) 2007.

4. State Environmental Planning Policy (Sydney Region Growth Centres) 2006

a. Permissibility

The land is zoned R4 High Density Residential under State Environmental Planning Policy (Sydney Region Growth Centres) 2006. The proposal is defined as “Residential flat building” and ‘Shop top housing’ as follows:

“Residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling, a manor home or multi dwelling housing.”

“Shop top housing means one or more dwellings located above (or otherwise attached to) ground floor retail premises or business premises.”

“Neighbourhood shop means retail premises used for the purposes of selling small daily convenience goods such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises.”

In view of the above, it is considered that the proposed development satisfies the provisions for permissibility with respect to SEPP (SRGC) 2006.

b. Zone Objectives

The site is zoned R4 High Density Residential under SEPP (SRGC) 2006. The objectives of the R4 zone are:

- 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.

The proposed development is consistent with the above objectives of the R4 High Density Residential zone as it provides housing needs of the community and a neighbourhood shop that would provide services to meet the day to day needs of residents.

In view of the above, it is considered that the proposal satisfies the R4 High Density Residential zone objectives under SEPP (SRGC) 2006.

c. Development Standards

The following addresses the principal development standards of SEPP (SRGC) 2006:

CLAUSE	REQUIRED	PROVIDED	COMPLIES
4.1A Minimum lot sizes for development	Residential flat building – 1,000sqm	Total Site Area: 6,597sqm	Yes
4.1B Residential Density	Minimum residential densities 30 dwellings per hectare (19.79)	244 dwellings per hectare (161 units)	Yes
4.3 Height	Maximum 21 metres	31.65 metres	No – see comments below.
4.4 Floor Space Ratio	Maximum 2:1 13,194m ²	2:1 13,084m ²	Yes
4.6 Exceptions to development standards	Exceptions will be considered subject to appropriate assessment.	A variation to Clause 4.3 Height of Buildings development standard is proposed and addressed	No – see comments below.

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d. Variation to Building Height

Clause 4.3 of SEPP (SRGC) 2006 prescribes a maximum height of 21 metres for the subject site. The development proposes a maximum height of 31.65 metres which results in a 50.7% or 10.65 metre variation to the development standard. Variations to height within the development are not limited to the corner element with lesser height variations (21.84m and 23.58m) proposed to the south east and north east elevations at the boundaries respectively.

The applicant has requested a variation to the SEPP control and has submitted a detailed justification pursuant to Clause 4.6 (see Attachment 13) which is summarised as follows:

- *The additional height does not result in a breach to the FSR development standard or any other development standard.*
- *The breach of the height control is due to redistributing the floor area to the corner from the northern portion of the site to provide a better urban design outcome to emphasise the significance of this corner as the key entry to Box Hill.*
- *The height breach does not result in any adverse amenity impacts to neighbouring sites as additional overshadowing from the building height will either fall on the surrounding roads or on the development.*
- *Compliance with the building height controls would result in a weak and recessive built form outcome to the corner of Terry Road and Windsor Road as the proposal would not highlight the significance of the site as a main gateway entry into Box Hill.*
- *If the development complied with the height, the development would not reap the benefits of a taller building as the development would likely have a greater site coverage, less units receiving 2 or more hours of solar access, less communal open space and less deep soil zones.*
- *The site is located adjacent to the future Box Hill Business Park and is adjacent to bus services that run along Windsor Road which means the site will have ample access to jobs and transport which is appropriate for higher density development.*

Comment:

The objectives of Clause 4.3 Height of Buildings of SEPP (SRGC) 2006 are as follows:

- a) *to establish the maximum height of buildings on land within the Box Hill Precinct or Box Hill Industrial Precinct,*
- b) *to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,*
- c) *to facilitate higher density development in and around commercial centres and major transport routes.*

The objectives of Clause 4.6 Exceptions to Development Standards 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.*

The relevant objectives of the R4 High Density Residential zone are as follows:

- a) *to provide for the housing needs of the community within a high density residential environment.*
- b) *to provide a variety of housing types within a high density residential environment.*

- c) *to enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed variation to the height standard has been reviewed with regard to the relevant objectives, the visual impacts on and amenity of adjoining development and land, the site's position at the intersection of Windsor Road and Terry Road, the future context, built form and density of approved development in the vicinity, and the intended maximum permitted density for the site under draft amendments to the SEPP (SRGC).

A number of other development applications for residential flat buildings have been approved in the vicinity of the subject site. The outcomes of these applications are summarised below and are compared to the subject development application.

Development Application	FSR (2:1)	Height (21m)	Density p/ha (Min. 30)	No. Units	Storeys	Approval
No. 7 – 9 Terry Road 694/2017/JP	1.82:1	23.38 metres (11.33% variation)	215	103	7	Former SWCPP 6 September 2017 (Deferred commencement)
No. 4 Alan Street 1631/2015/JP	1.9:1	20.87 metres	194	93	6 - 7	Former JRRP 16 December 2015
No. 17-19 Alan Street 1230/2018/HA	1.52:1	21 metres	194.9	54	6	Land and Environment Court 5 December 2018
No. 13 Terry Road 846/2016/JP	1.97:1	21.8 metres (3.8% variation)	222	121	7	Former SWCPP 1 December 2016
Nos. 13-15 Alan Street 2003/2017/JP	2:1	22.3 metres (lift overrun) (6.1% variation)	181	53	7	Land and Environment Court 8 March 2018
No. 11 Alan Street 479/2018/HA	1.77:1	21 metres	149.2	31	6	Delegated Authority 16 February 2018
Subject Application DA 1225/2018/HA	2:1	31.65 metres (50.7% variation)	244	161	7 - 10	-

The proposed development seeks approval for a maximum height of 31.65 metres which results in a 50.7% or 10.65 metre variation to the development standard. Heights of up to 21.84m and 23.58m are also proposed to the south east and north east elevations boundaries respectively. The proposed maximum height exceeds the approved height of the similar approved developments in the vicinity by between 8.27m (Nos. 7-9 Terry Road) and 10.78m (No. 4 Alan Street). A direct result of the proposed height is a density that far exceeds the average density of nearby approved residential flat buildings (244 dwellings per hectare compared to an approved average of 192.68).

The site is located at a main intersection providing an entrance to the Box Hill Precinct. The lowest point of the site is located closest to the intersection at the northwest of the site, increasing by approximately 6m to the southeast of the site along Windsor Road. The applicant has intended to provide a built form that is similar to other approved developments, or likely future development at the boundaries of the site, however to compensate for the low point it is proposed to increase the building height at the corner (to 9-10 storeys) to provide a stronger corner element which exceeds the building height control as illustrated below.



Windsor Road Elevation



Terry Road Elevation

The application also states that the breach in building height is due to the redistribution of floor space from the north of the site, where Brookline Crescent is to be located, which would have been achievable had dedication of land for the road not been required, in order to provide a better urban design outcome.



Transfer of floor space proposed by applicant resulting in height breach

It is argued that the concentration of floor space at the corner point results in an overall better outcome in terms of solar access, deep soil zones, common open space and privacy since development is not required to have a greater footprint on the site and impact at the edges of the site.

Notwithstanding this, it appears that the site does not provide the required 30% landscaped area under the Box Hill DCP since calculations shown on the architectural plans include areas located above the basement parking area. Landscaped Area is defined in Clause 4.2.6 of the Box Hill Development Control Plan as an area of open space on the lot, at ground level, that is permeable and consists of soft landscaping, turf or planted area and the like. A final landscape plan has not been submitted to date to verify landscape area calculations. Furthermore, whilst a solar and daylight analysis has been submitted with the amended plans, amended shadow diagrams and a comparison between a compliant and non-compliant height have not been submitted to enable assessment of shadow impacts within or adjoining the site.

It is agreed that the principle of a higher built form at the corner of Windsor Road and Terry Road has merit from an urban design perspective, however it is not agreed that it can be justified partly based on the transfer of equivalent floor space from an area of the site required for road dedication and other benefits as outlined above. Furthermore, the proposed height variation has been applied to a greater extent than just the corner of the site, being more than 2/3 of both the Terry Road and Windsor Road elevations, resulting in an unacceptable visual impact. The variation sought is therefore applicable to the bulk of the development which is considered excessive and is not justifiable.

It is considered that a corner element could be achieved within a built form that does not simultaneously seek to maximise the floor space potential of the site (currently achieving the maximum of 2:1) without regard to draft density requirements and impacts on the Box Hill Precinct as a whole. It is also considered that a more appropriate outcome could be achieved by making further concessions to the built form elsewhere on the site, resulting in reduced density, greater internal amenity (ie. landscaping and solar access), and still achieving a desirable interface with adjoining future developments.

It is considered that the proposal has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard to the degree that is proposed, and has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. The proposed variation results in an unacceptable density, and it is considered that the extent of the proposed variation in height is excessive and is not compatible with the scale of recently approved residential flat building developments in the vicinity.

Clause 4.6(3) of SEPP (SRGC) 2006 states:

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

Comment: As outlined above, the applicant has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. It is not agreed that the extent of the height variation proposed is necessary to achieve a better built form. The proposed variation results in an unacceptable density, and it is considered that the extent of the proposed variation in height is excessive and is not compatible with the desired future character of the Box Hill precinct.

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

Comment: As outlined above, insufficient environmental planning grounds have been provided to justify the contravention of the height of building standard. It is considered that a good quality development can be achieved without the proposed variation to building height to the degree that is proposed in the application.

Clause 4.6(3) of SEPP (SRGC) 2006 states:

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

(a) the consent authority is satisfied that:

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

Comment: As outlined above, the applicant has not adequately addressed the matters required to be addressed by subclause (3).

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

Comment: The proposal is consistent with the objectives of the R4 High Density Residential zone since it does provide for the housing needs of the community within a high density residential environment and it does provide a variety of unit types. However, the development is not considered to result in an appropriate outcome in regard to public interest due to the excessive density proposed, the cumulative impacts of which affect the Box Hill Precinct as a whole. It is also considered the extent of the height variation proposed (ie. to the majority of each road frontage) results in a visual impact that is not compatible with the desired future character of the area.

The objectives of the building height control are in part, to minimise the visual impact and protect the amenity of adjoining development in terms of solar access to buildings and open space, and to facilitate higher density development in and around commercial centres and transport routes. Insufficient supporting information in the form of a revised landscape plan and comparative shadow diagrams have been submitted in support of the proposed variation such that it cannot be determined that the proposal results in an acceptable, or better outcome than a complying development in terms of amenity. The visual impact of the proposed variations to height is considered unacceptable given the extent of the variation on each street frontage. Furthermore, whilst the development site is located on Windsor Road, it is not in the vicinity of a major transport facility such as a T-Way stop or train station.

(b) the concurrence of the Secretary has been obtained.

Comment: Council has assumed concurrence under the provisions of Circular PS 08–003 issued by the Department of Planning and Environment.

e. Public Utility Infrastructure

Clause 6.1 Public Utility Infrastructure states that development consent must not be granted unless Council is satisfied that any public utility infrastructure (water, electricity and sewage) that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required.

The submitted Statement of Environmental Effects advises that services are currently being constructed in the Box Hill area and the development will be connected to existing stormwater pits located in Terry Road. The site will also be connected to wastewater trunk infrastructure

new drinking water supplies which form part of the Package 3B of Sydney Water's connections. The site will be connected to existing drinking water. With regard to electricity, new padmount substation would be located on the site and would connect to the existing power network.

The application was referred to Sydney Water who advised that based on the supplied information, the trunk water system has adequate capacity to service the proposed development from the existing main in Terry Road. The Developer would need to build a 200mm lead in connecting to the main to serve the lots. With regard to waste water, the proposed development can be serviced via a lead-in from the North West Priority Growth Area – Package 3C wastewater main.

The application was not referred to Endeavour Energy and the applicant has not submitted adequate evidence to prove that the site can be serviced for electricity by a provider. Insufficient information has therefore been provided to demonstrate compliance with Clause 6.1 – Public Utility Infrastructure of the SEPP (SRGC) 2006.

5. Draft Amendment to State Environmental Planning Policy (Sydney Region Growth Centres) 2006

In May 2017, the Department of Planning released the draft North West Land Use and Infrastructure Implementation Plan. In addition to a new growth centres structure plan and an infrastructure schedule the package proposes a draft amendment to State Environmental Planning Policy (Sydney Region Growth Centres) 2006 and associated draft changes to the DCP. The proposed changes include the introduction of density bands (rather than only minimum density) and reinstatement of minimum lot sizes for all residential areas (that were removed as part of the 2014 Housing Diversity changes).

The Explanation of Intended Effect states that *“a consent authority is not required to apply the provisions of the Explanation of Intended Effects to a DA lodged before May 22 2017”*. The subject Development Application was lodged on 20 December 2017. The proposed amendments are required to be taken into consideration pursuant to Section 4.15 of the EP&A Act, being a *“proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority ...”*

Clause 4.1B ‘Residential Density’ in Appendix 11 ‘The Hills Growth Centres Precinct Plan’ of the SEPP (SRGC) 2006 states the following:

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

- (a) to establish minimum density requirements for residential development within the Box Hill Precinct or Box Hill Industrial Precinct,*
- (b) to ensure that residential development makes efficient use of land and infrastructure, and contributes to the availability of new housing,*
- (c) to ensure that the scale of residential development is compatible with the character of the precincts and adjoining land.*

(3) The density of any development to which this clause applies is not to be less than the density shown on the Residential Density Map in relation to that land.

(4) In this clause:

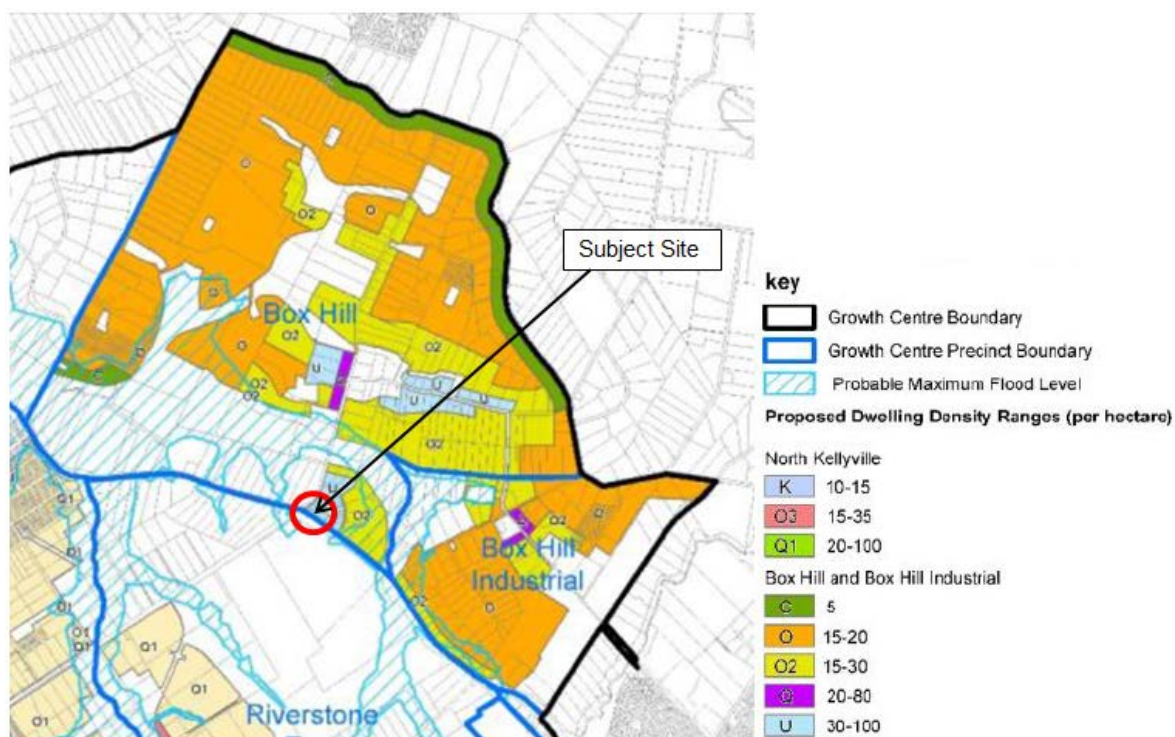
density means the net developable area in hectares of the land on which the development is situated divided by the number of dwellings proposed to be located on that land.

net developable area means the land occupied by the development, including internal streets plus half the width of any adjoining access roads that provide vehicular access, but excluding land that is not zoned for residential purposes.”

Clause 4.1B is proposed to be amended to introduce a minimum and maximum density band. The 'Explanation of Intended Effect' published by the Department of Planning which accompanies the proposed amendments to the Growth Centres SEPP states the following proposed density bands in the Box Hill and Box Hill Industrial Precincts:

Zone	Existing minimum density (dw/ha)	Proposed minimum density (dw/ha)	Proposed maximum density (dw/ha)
R1	-	20	80
R2	5	-	-
This applies to a defined area along Old Pitt Town Road. Density is controlled by the 2000m minimum lot size requirement therefore, the minimum density requirement will be removed.			
R2	15	15	20
R3	18	15	30
R4	20	20	80
This range would be applied in the R4 zoned land around the neighbourhood centre. This proposed density range reflects the lower height and floor space ratio controls in this area.			
R4	30	30	100

Appendix 1 of the 'Explanation of Intended Effect' provides an amended Residential Density Map for the North West Priority Land Release Area, which confirms that the subject site is proposed to be located in the 30-100 dwelling density range (per hectare).



The Growth Centres SEPP currently specifies a minimum density provision of 30 dwellings per hectare. The draft amendment to impose a maximum density range of between 30-100 dwellings per hectare equates to a minimum of 19 and maximum of 65 dwellings being permitted on the site. The proposal for 161 units would result in a density of 244 dwellings per hectare, being a variation of 96 units, significantly exceeding the proposed maximum density. The proposed density is also inconsistent with the densities approved in six other nearby developments as outlined in this report.

The proposed development is considered to be inconsistent with density objective (c) of Clause 4.1B of the Growth Centres SEPP as the scale of the proposed development is inconsistent with the desired character of the precinct, the approved density of residential flat buildings in the vicinity, and with the adjoining land to the west which is zoned B7 Business Park and adjoining land to the south within Blacktown City Local Government Area zoned RU4 Primary Production Small Lots.

The proposed development does not comply with the maximum density permitted under the draft amendments to the Growth Centres SEPP and Box Hill DCP 2017 and is considered unacceptable with regard to density.

6. A Metropolis of Three Cities – the Greater Sydney Region Plan

The Central City District Plan contains 'Directions for Liveability' which include:

- Housing the City – Planning Priority C5 - Providing housing supply, choice and affordability with access to jobs, services and public transport; and
- A City of Great Places – Planning Priority C6 – Creating and renewing great places and local centres, and respecting the District's heritage.

The plan seeks to provide housing supply which is diverse and affordable and which meets the needs of residents and which bring people together. The plan seeks to provide housing in locations which are easily accessible by public transport to reduce commuting time. Housing should be located in places which are liveable, walkable and cycle friendly. Housing should also respond to the changing needs of residents and consider single person and aging households. Great places are defined as areas which have a unique combination of local people, built form and natural features which reflect shared community values and which attract residents, workers and visitors. Local centres act as a focal point for neighbourhoods and provide essential access to day to day goods and services.

Implementation and monitoring of the Plan and the potential indicators are as follows:

Direction 4: Housing the City: Providing ongoing housing supply and a range of housing types in the right locations will create more liveable neighbourhoods and support Greater Sydney's growing population. Housing affordability is also a challenge that can affect job and lifestyle choices.

Direction 5: A City of Great Places: The creation and renewal of great places for people, together with better local accessibility through walking and cycling, will achieve local liveability that attracts and retains residents and workers. Great places exhibit design excellence and start with a focus on open spaces and a people-friendly realm.

The proposed development meets the intent of the Plan as follows:

- The proposal will provide a range of units types which will assist in meeting housing demands;

- The site is located in an area serviced by existing and future public transport; and
- The site development is responsive to and provides an outlook to open space located to the rear of the site.

The proposal is considered satisfactory in regard to the Central City District Plan.

7. Compliance with State Environmental Planning Policy (SEPP) No. 65 – Design Quality of Residential Apartment Development

The proposal was accompanied by a Design Verification Statement prepared by Kennedy Associates Architects (Registered Architect No. 5828) with regard to the provisions of SEPP 65. The proposal has been assessed against the provisions of the Apartment Design Guidelines (ADG) as outlined below:

Clause	Design Criteria	Compliance
Siting		
Communal open space	25% of the site with 50% of the area to achieve a minimum of 50% direct sunlight for 2 hours at midwinter.	Yes, 30.8% of the site is for communal open space (post construction of Brookline Crescent). Yes, receives minimum 2 hrs to 50% in midwinter.
Deep Soil Zone	7% of site area with minimum dimensions of 6m.	Yes, 12.5% with minimum dimensions of 6m
Separation	For habitable rooms, 12m up to 4 storeys, 18m between 5 and 8 storeys.	Yes, provided.
Visual privacy	Visual privacy is to be provided through use of setbacks, window placements, screening and similar.	Yes, provided.
Car Parking	Car parking to be provided based on proximity to public transport in metropolitan Sydney. For sites within 800m of a railway station or light rail stop, the parking is required to be in accordance with the RMS Guide to Traffic Generating Development which is: Metropolitan Sub-Regional Centres: 0.6 spaces per 1 bedroom unit. 0.9 spaces per 2 bedroom unit. 1.40 spaces per 3 bedroom unit. 1 space per 5 units (visitor parking).	N/A - the site is not located within a metropolitan sub-regional centre. The proposed 208 car parking spaces comply with the minimum DCP requirement of 205 spaces required.
Designing the Building		
Solar and daylight access	Living and private open spaces of at least 70% of apartments are to receive a minimum of 2 hours direct sunlight between 9am and 3pm midwinter.	Yes, 70%.
Natural ventilation	At least 60% of units are to be naturally cross ventilated in the first 9 storeys of a building. For buildings at 10 storeys or	Yes, 64.4%.

	greater, the building is only deemed to be cross ventilated if the balconies cannot be fully enclosed.	
Ceiling heights	<p>For habitable rooms – 2.7m. For non-habitable rooms – 2.4m. For two storey apartments – 2.7m for the main living floor and 2.4m for the second floor, where it's area does not exceed 50% of the apartment area. For attic spaces – 1/8m at the edge of the room with a 30° minimum ceiling slope. If located in a mixed use areas – 3.3m for ground and first floor to promote future flexible use.</p>	Yes, 2.7m.
Apartment size	<p>Apartments are required to have the following internal size:</p> <p>Studio – 35m² 1 bedroom – 50m² 2 bedroom – 70m² 3 bedroom – 90m²</p> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal areas by 5m² each.</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.</p>	Yes, all units exceed the criteria.
Apartment layout	<p>Habitable rooms are limited to a maximum depth of (2.5 x the ceiling height). In open plan layouts the maximum habitable room depth is 8m from a window.</p>	Yes, provided.
Balcony area	<p>The primary balcony is to be:</p> <p>Studio – 4m² with no minimum depth 1 bedroom – 8m² with a minimum depth of 2m 2 bedroom – 10m² with a minimum depth of 2m 3 bedroom – 12m² with a minimum depth of 2.4m</p> <p>For units at ground or podium levels, a private open space area of 15m² with a minimum depth of 3m is required.</p>	Yes, all balconies provide the required area and minimum depth.
Storage	<p>Storage is to be provided as follows:</p> <p>Studio – 4m³ 1 bedroom – 6m³ 2 bedroom – 8m³ 3+ bedrooms – 10m³</p> <p>At least 50% of the required storage is to be located within the apartment.</p>	Yes, provided.
Apartment mix	A variety of apartment types is to be provided and is to include flexible apartment	Yes, 49 x 1 bedroom units

	configurations to support diverse household types and stages of life.	90 x 2 bedroom units 22 x 3 bedroom units
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The Development Application has been assessed against the relevant design quality principles contained within the SEPP 65 as outlined below:

(i) Context and Neighbourhood Character

Currently, the immediate area is characterised by single rural style dwellings, market gardens, plant nurseries and similar low scale activities. The site is the 7th residential flat building site proposed for redevelopment within this area of the precinct and would contribute to the gradual redevelopment of what was previously rural / residential land. The future context and neighbourhood character of the area will be characterised by residential flat buildings in addition to a future Business Park on the opposite side of Terry Road.

The future context and neighbourhood character is to be characterised by development with a maximum height of 21m for residential development, or as approved with variations of up to only 23.38 metres. The proposal seeks approval for development of up to 31.65m high.

It is considered that the application is not consistent with the desired future context and neighbourhood character and is therefore inconsistent with Principle 1: Context and neighbourhood character of SEPP 65.

(ii) Built Form and Scale

The height of the development is not consistent with the desired future built form and character of the site. The development proposes a maximum height of 31.65 metres which results in a 50.7% or 10.65 metre variation to the development standard. The additional height proposed is not adequately justified since other areas of the site also exceed the 21m height limit and have not been sufficiently reduced to offset the impact of the proposed increase at the corner of the site. The extent of the proposed variation to building height is considered to be excessive since it applies to the majority of each street elevation.

It is considered that the proposal does not achieve a scale, bulk and height that is appropriate to the desired future character and is therefore inconsistent with Principle 2: Built form and scale of SEPP 65.

(iii) Density

SEPP (Growth Centres) 2006 has a minimum density provision of 30 dwellings per hectare. The draft amendment to the SEPP (Growth Centres) 2006 seeks to impose a maximum density range of between 30-100 dwellings per hectare. This equates to a maximum of 65 dwellings being permitted on the subject site. The proposed 161 units results in a density of 244 dwellings per hectare. It is considered that the variation to the draft density controls is excessive and is not comparable to the density approved for surrounding development which has an average of 192.68 dwellings per hectare.

The additional density on the site would detract from the amenity of residents and results in a height variation to an extent that is not appropriate to the site and its context. Amended landscape plans and site shadow diagrams have not been submitted for assessment.

It is considered that the proposal is inconsistent with Principle 3: Density of SEPP 65.

(iv) Sustainability

Amended Architectural Plans have been submitted however an amended BASIX certificate and landscape plan has not been submitted to date. In this regard, insufficient information has been received to ensure compliance with Principle 4: Sustainability of SEPP 65.

(v) Landscape

The applicant has indicated that an updated landscape plan is to be submitted, however this has not been received to date. In this regard, insufficient information has been received to ensure compliance with Principle 5: Landscape of SEPP 65.

(vi) Amenity

The key elements of the building design incorporates satisfactory access/circulation, apartment layouts, ceiling heights, private open space, energy efficiency, adaptability and diversity, safety, security and site facilities. It is considered however that a reduction in building height and density on the site would result in greater amenity within the development and a more satisfactory response to Principle 6: Amenity of SEPP 65.

(vii) Safety

Common open spaces within the proposed development are within direct view of occupants to allow passive surveillance. The design of the development also provides passive surveillance of the public open space located to the north-east of the site. Open spaces are designed to provide areas for recreation and entertainment purposes and appear to be accessible to all residents and visitors. Private spaces appear to be clearly defined with fences and landscaping. The basement car park has been appropriately designed.

(viii) Housing Diversity and Social Interaction

The location of this development provides dwellings within a precinct that will provide in the future, a range of support services. The Hills Development Control Plan 2012 Part B Section 5 – Residential Flat Buildings provides development standards in relation to unit mix. Although these controls do not apply to the site, it is noted the development complies with the control which states that no more than 25% of the dwelling yield is to comprise of one bedroom apartments. The proposed development includes 49 x 1 bedroom (30.4%), 90 x 2 bedroom (55.9%) and 22 x 3 bedroom units (13.7%) and exceeds the maximum dwelling yield for one bedroom apartments by 5.4%.

(ix) Aesthetics

An appropriate composition of building elements, material textures and colours has been used.

The proposal is considered satisfactory with respect to compliance with SEPP 65 and the Apartment Design Guide with the exception of context and neighbourhood character, built form and scale, density, sustainability, landscaping and amenity.

8. Compliance with the Box Hill Development Control Plan 2017

The proposal has been assessed against the provisions of The Box Hill Development Control Plan. Amendments to the Box Hill DCP relating to shop top housing and mixed use developments came into force on 16 March 2018 (following adoption on 13 December 2016).

Therefore the application has been assessed against the DCP controls in Table 19 relating to Residential Flat Buildings only, and to Shop Top Housing. Despite a request to do so, the application did not address compliance with the Shop Top Housing controls.

i) **Residential Flat Building controls**

DCP Table	Controls	Proposed	Compliance
Table 19 R4 zone (Residential Flat Buildings)	Site Coverage (Maximum) – 50%	43.2%	Yes
	Landscaped Area (Minimum) – 30%	24.7%*	No, refer to comments below.
	Communal Open Space – 15%	30.8%	Yes
	Principal Private Open Space (Minimum) – 10m ² per dwelling with min. dimension of 2.5m	All units comply	Yes
	Front Setback (Minimum) – 6m to building façade. Balconies may encroach 4.5m (first 3 storeys) for a max. of 50% façade length	N/A – Setback to Windsor Road applies.	NA
	Any building along Windsor Road must have a minimum setback of 20m from this road.	6m	No, refer comments below.
	Secondary Setback (Minimum) – 6m	6m to Terry Road	Yes
	Side setback (Minimum) – Buildings up to 3 storeys: 3m, Buildings above 3 storeys: 6m	6m	Yes
	Rear setback (Minimum) – 6m	Minimum 6m	Yes
	Habitable Room Separation (Minimum) – 12m	Satisfactory – no conflict between habitable rooms/balconies.	Yes
	Car parking – 1 space per dwelling plus 0.5 spaces per 3 or more bedroom Visitor – 1 per 5 units	Required – 205 Proposed – 208	Yes

* Final landscape plan not provided. Final landscaped area percentage unknown.

a. **Landscaped Area**

Table 19 of The Box Hill DCP prescribes that residential flat buildings in the R4 zone provide a minimum landscaped area of 30%.

The development proposes a landscaped area of 24.7% as stated in the Statement of Environmental Effects submitted in December 2017. The final landscaped area is unknown since an amended landscape plan has not been provided. A summary of calculations included in the Architectural Plans indicate a landscaped area of 30.1% (post construction of Brookline Crescent), however areas over the basement car park have been included in landscape calculations and should not count towards the total landscaped area. The Box Hill DCP

defines landscaped area as an area of open space on the lot, at ground level, that is permeable and consists of soft landscaping, turf or planted area and the like.

The applicant has submitted the following statement in support of the variation:

“24.7% of the site is provided as landscaped area (post road opening). In this instance the non-compliance results from the land dedication required for the new road. Pre-road opening the site provides 31.6% landscaped area. The site is located adjacent to a park and as such the residents will have ample access to landscaped open space. The site does not provide an active recreational space, but rather aims to provide the communal areas as passive spaces and clear pedestrian paths through the site to connect to Turnbull Reserve Instead.”

Comment:

An amended landscape plan has not been submitted by the applicant to date to enable a full assessment of proposed landscaping on the site. A number of issues regarding landscaping have not been resolved with the submission of an amended landscape plan including:

- Appropriate planting to shaded communal open space area;
- Additional tree planting within site and street trees in accordance with DCP;
- Landscape Planting Plan and plan for future planting of temporary vehicle access;
- Landscaped setback to front fencing on Brookline Crescent;
- Fencing / courtyard wall and planter box details and levels;
- Service Road alignment to be reflected on Landscape Plan;
- Location of storm water lines and pits;
- A Section showing the relationship of Unit B001 with any fencing, retaining walls, landscaping on the southern boundary; and
- Clarification as to why the 'Tree removal and retention plan' proposes tree removal on RMS land to the south western corner.

Insufficient information has been submitted to satisfy Council Officers that the proposal will be able to achieve appropriate landscaping outcomes and compliance with the provisions of the minimum landscaped area requirements under the Box Hill DCP.

b. Setbacks

Section 4.2.3 of The Box Hill DCP prescribes that any building along Windsor Road must have a minimum setback of 20 metres from this road.

The development proposes a front setback of 6 metres to the property boundary to Windsor Road. The reduced setback relies on the physical separation to the existing kerb of Windsor Road provided by the service road that runs parallel to Windsor Road and associated retaining wall and landscaping.

The applicant has submitted the following statement in support of the variation:

“It is unnecessary to provide a 20 metre front setback to Windsor Road on the subject site due to the location of the service road. The DA plans show a red-line which indicates 20 metre setback from the kerb line to Windsor Road. Between Windsor Road and the subject site, there is a significantly high retaining wall structure which varies in height up to 4 metres, which also contains landscaping. The service road then sits between the subject site and the carriageway of Windsor Road.

It is far more appropriate to measure the 20 metres from the kerb of Windsor Road as opposed to the front boundary. If a 20 metre front setback was required from the front property boundary, the buildings would be separated from the Windsor Road carriageway by between

31 metres at the south eastern end of the site and 42 metres at the south western part of the site.

The development has been designed on the basis of generally an average of a 20 metre front setback to the kerb of Windsor Road. Due to the splayed nature of Windsor Road, the eastern end of Building C is setback 15 metres from the kerb of Windsor Road and the south western end of the site is setback 25 metres from the kerb of Windsor Road. Due to the existence of the wall, landscaping and service road providing a 20 metre front setback is excessive. The Acoustic Report submitted with the DA demonstrated that the internal amenity of the units facing Windsor Road was acceptable.

A 20 metre front setback combined with the requirement for land dedication at the rear, would significantly compromise development on the site.

A 20 metre front setback to the front boundary would also result in a poor built form outcome as the building would not adequately address the intersection of Terry Road and Windsor Road which forms the entry to Box Hill."

Comment:

Section 4.2.3 of The Box Hill DCP contains the following objectives:

- a. To enable the integration of built and landscape elements to create an attractive, visually consistent streetscape.
- b. To encourage simple and articulated building forms.
- c. To ensure garages do not dominate the streetscape.

The proposed 6 metre setback to Windsor Road is considered reasonable in this instance. A service road runs parallel to the Windsor Road frontage of the site together with an associated retaining wall and landscaping. Together with landscaping provided to the frontage of the site, these elements are considered to provide an adequate setback to Windsor Road. The 6 metre setback is also consistent with the Court-approved development at 17-19 Alan Street which also has a 6m building setback to Windsor Road.

ii) Shop Top Housing controls

DCP Table	Controls	Proposed	Compliance
Table 19 R4 zone (Shop Top Housing and Residential flat buildings as mixed use developmen ts)	Minimum Floor to Ceiling Heights:		
	- Residential 2.7m	Complies	Yes
	- Commercial 3.3m	Complies	Yes
	Landscaping – required within setbacks and common open space areas	Provided	Yes
	Communal Open Space		
	- 20m ² per dwelling (3,220m ²)	1811m ² (post construction of Brookline Crescent)	No, refer comments below
	- 75% at ground level	100% at ground level	Yes
	- Only accessible by residents of the development.	Accessible to public	No, refer comments below

	<p>Principal Private Open Space (Minimum)</p> <ul style="list-style-type: none"> - Ground level 4 x 3m - 10m² per dwelling with min. dimension of 2.5m <p>Front Setback (Minimum)</p> <ul style="list-style-type: none"> - Zero to active frontage - 3m for non-active - 3m for residential floors above first level. <p>Any building along Windsor Road must have a minimum setback of 20m from this road.</p> <p>Secondary Setback (Minimum) – As per front setbacks</p> <p>Side setback (Minimum) – 6m where adjoining low density residential, 3m where not adjoining low density residential.</p> <p>Rear setback (Minimum) – As per side setbacks</p> <p>Habitable Room Separation (Minimum) – 12m</p> <p>Separate site and building access points are to be provided for the residential and commercial components of developments.</p> <p>Car parking – As per The Hills DCP 2012</p> <ul style="list-style-type: none"> - 1 space per 1 bedroom dwelling - 2 spaces per 2 or 3 bedroom dwelling - 2 visitor spaces per 5 units. 	<p>Does not comply (Building C and part of Building B)</p> <p>All units comply</p> <p>6m to shop 6m to non-active 6m to upper</p> <p>6m</p> <p>6m to Terry Road</p> <p>6m</p> <p>N/A</p> <p>Satisfactory – no conflict between habitable rooms/balconies.</p> <p>Front access to shop only.</p> <p>Required – 338 Proposed – 208</p>	<p>No, refer comments below</p> <p>Yes</p> <p>Yes Yes Yes</p> <p>No, refer previous comments.</p> <p>Yes</p> <p>Yes</p> <p>N/A</p> <p>Yes</p> <p>Yes</p> <p>No, refer comments below.</p>
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a. Communal Open Space

20m² per dwelling (3,220m²) is required to be provided as communal open space. The communal open space must only be accessible to residents of the development.

The application proposes a total of 1811m² (30.8%) of the site as common open space at ground level in two separate areas, which is a shortfall of 1,409m². Both areas appear to be publicly accessible from the Terry Road and Brookline Crescent frontages however this would require confirmation in an amended landscape plan.

Comment:

Whilst the proposal does not comply with the required communal open space for shop top housing, the proposal does comply with the required communal open space for residential flat buildings. Given there is only one small shop proposed on the Terry Road frontage (where the majority of the communal open space is not located), the compliance with the required area is considered unreasonable in this instance and the variation can be supported.

Additional information is required to determine whether certain areas of the communal open space are accessible only to residents of the development.

b. Private Open Space

Ground floor private open space areas are required to have dimensions of 4m x 3m. This is applicable to 13 ground floor units within the development, 8 of which do not provide the required minimum dimensions.

Comment:

Section 4.2.7 of The Box Hill DCP contains the following objectives:

- a. *To provide a high level of residential amenity with opportunities for outdoor recreation and relaxation.*
- b. *To enhance the spatial quality, outlook, and usability of private open space.*
- c. *To facilitate solar access to the living areas and private open spaces of the dwelling.*

8 of 13 units do not comply with the required dimensions. These units are located on the ground floor of Building C and part of Building B, facing the internal communal open space area and not in the vicinity of the shop. These units do provide the minimum 10m² and 2.5m minimum dimension required in Table 19 for Residential Flat Buildings. The five units in the vicinity of the shop on the Terry Road frontage do provide the minimum dimensions. Since the proposed development contains only one shop, and those units in the vicinity of that shop comply, and those that do not are compliant with the residential flat building controls, the variation is reasonable. Those units that do not comply also benefit from direct access to the common open space areas of the development. It is considered that the objectives of the control are still able to be achieved with respect to residential amenity and opportunities for outdoor recreation and relaxation.

c. Car parking

The Box Hill shop top housing control requires car parking to comply with the parking requirements of The Hills DCP Part C Section 1 – Parking. A total of 338 parking spaces would be required under this Plan and the proposed development provides 208 spaces.

Comment:

The Box Hill Residential Flat Building controls require only 205 parking spaces, which is exceeded by the proposed development. It is considered unreasonable in this instance to

require additional parking to comply with the provisions of The Hills DCP due to the inclusion of one shop and the variation should be supported.

EXTERNAL REFERRALS

ROADS & MARITIME SERVICE COMMENTS

The application was referred to the NSW Roads and Maritime Service as the proposal is categorised as traffic generating development pursuant to Schedule 3 of the SEPP.

Comments from the RMS were forwarded to the applicant indicating that the application is not supported in its current form and additional information is required for further assessment including amended plans and an amended Traffic Report. The RMS raised the following matters:

- Waste collection is not permitted from the service road as this will eventually be removed (removed in amended plans);
- Temporary access via Terry Road is to be left-in/left-out only and restricted by a median strip;
- On-street parking is not supported on the Terry Road site frontage;
- Swept paths demonstrating the longest vehicle accessing the site from Terry Road;
- Plans are requested at 1:200 showing proposed access, existing road arrangement and kerb line along the Terry Road frontage and the tie into existing arrangements;
- A traffic report including consideration of reduced parking on the site is requested.

An amended Traffic Report has not been received to date and the RMS would not provide further comments until such time as the requested information was submitted.

In this regard, it is considered that insufficient information has been submitted to satisfy Council Officers and NSW Roads and Maritime Service that the proposal will be able to achieve compliance with the provisions of SEPP (Infrastructure) 2007.

NSW POLICE COMMENTS

The application was referred to the NSW Police. No objections were raised to the proposal.

SYDNEY WATER

The application was referred to the Sydney Water. No objections were raised to the proposal.

INTERNAL REFERRALS

SUBDIVISION ENGINEERING COMMENTS

The application was referred to Council's Subdivision Engineering Section. Council's Senior Subdivision Engineer provides the following comment:

Road Works:

1. *Terry Road will be a sub-arterial road; hence the vehicular access to the development must be from the loop road Brookline Crescent to be constructed and dedicated as public road in accordance with the Box Hill DCP.*
2. *Civil works plan relating to the Brookline Crescent design and construction has not been provided with the application. The applicant is directed to a master concept plan Civil Engineering Works drawings prepared by Mance Arraj Civil & Structural Engineer that has been approved with other DAs 694/2017/JP for 5-7 Terry Road, and 479/2018/HA, 1230/2018/HA, 2003/2017/JP relate to 11, 13-15 and 19 Alan Street respectively. The*

applicant shall use this master plan, and demonstrate that the building design within the sites is compatible to the road design.

3. *The loop road construction must be a full width and dedication at no cost to council opposed to the section 4.8 of the Statement of Environmental Effects (SEE) that states, "Partial Road Construction".*

Subdivision Plan:

4. *A subdivision plan identifying the road reserve is to be requested from the applicant. The subdivision plan must also be annotated stating that 'the Brookline Crescent will be constructed and dedicated as a public road reserve at no cost to council'. This must be accompanied by a separate undertaking in this regard from the applicant.*

Stormwater Management

5. *Stormwater Management report and a set of plans prepared by LP consulting have been reviewed. The report states DRAINS and MUSIC models have been used to establish the OSD and WSUD design measures. The applicant must be requested the following:*
 - *Electronic copies of the DRAINS and MUSIC models*
 - *DRAINS models must be saved with results for various storms including 2 Yr, 10Yr and 100yr*
 - *OSD sections must provide discharge control measures (orifice, weir etc.) and respective water levels for each storm event.*
 - *Sections of the OSD must detail the floors above, below and sides to ensure the compatibility.*
 - *Details of the connection between the OSD outlet and the street system.*
 - *Architectural plans must detail the outline of the detention tank on the plan and the section.*

Vehicular Access and Car Parking:

6. *Details relating to allocation carparks respective to nominated users dimensions of carpark are required.*
7. *Detailed longitudinal driveway profiles commencing from the Terry Road for the temporary access and from the Brookline Crescent level for the ultimate condition are required. The design profiles must have existing and proposed levels, distance between changing levels, gradients and change of gradient, walls above the ramp and the clear height ensuring the design compliance of Australian standards.*

The above information was requested from the applicant and remains outstanding.

In this regard, the proposal has not adequately addressed concerns raised by Council's Senior Subdivision Engineer.

TRAFFIC MANAGEMENT COMMENTS

The application was referred to Council's Traffic Management Section. Council's Principal Traffic Coordinator has reviewed the Traffic and Parking Impact Assessment submitted with the Development Application and raises no objection.

TREE MANAGEMENT COMMENTS

The application was referred to Council's Tree Management Officer. Council's Tree Management Officer reviewed the proposal and requested an updated Landscape Plan and compliance with the required 30% landscaped area, addressing matters as outlined in Section 7 (a) of this report.

The proposal has not adequately addressed concerns raised by Council's Tree Management Officer.

HEALTH & ENVIRONMENTAL PROTECTION COMMENTS

The application was referred to Council's Environment and Health Section. Council's Environmental Health Officer reviewed the proposal and requested a Stage 2 Contamination Assessment Report and Salinity Report which have not been received to date.

In this regard, the proposal has not adequately addressed concerns raised by Council's Environmental Health Officer.

WASTE MANAGEMENT COMMENTS

The application was referred to Council's Resource and Recovery Section. Council's Resource and Recovery Project Officer provides the following comment:

1. *The waste storage room for building B and the bin presentation room must be resized to accommodate the following total number of bins:*

- *Building B - 22 x 1100 litre bulk bins*
- *Bin Presentation - 34 x 1100 litre bins & 5 x 240 litre bins*

Bin Measurements (mm):

1100L: 1245 (d) 1370 (w) 1470 (h)

240L: 735 (d) 580 (w) 1080 (h)

Additionally, the layout of the bin presentation room must ensure that each bin is easily accessible and manoeuvrable in and out of the room with minimal or no manual handling of other bins. An aisle space of 1.5m is required to access and manoeuvre bins. This must be shown on amended plans.

2. *As previously advised, the residential bulky waste rooms must be relocated to open directly onto the loading area. It is requested that the 'store' room located adjacent to Building A's waste storage room is converted into a communal bulky waste room for all buildings to utilise, and the individual bulky waste rooms for buildings A, B and C are deleted. This must be shown on amended plans.*
3. *As previously mentioned, residents are not permitted to access waste rooms that contain chute infrastructure. Given a separate waste room has not been provided for the 5 x units located on proposed level 00, it is assumed that future occupants will utilise the bins located in the bin presentation room. Given this, a separate residential access door must be provided for these residents. A suitable resident access door must be shown on amended plans.*
4. *Swept turning paths for the standard 12.5m long HRV (AS2890.2-2002) must be submitted demonstrating required manoeuvring in order for trucks to enter and leave the site in a forward direction. Reversing is limited to a single reverse entry into the dedicated loading area.*

The proposal has not adequately addressed concerns raised by Council's Resource and Recovery Project Officer.

CONCLUSION

The Development Application has been assessed under the relevant heads of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979, State

Environmental Planning Policy (Sydney Region Growth Centres) 2006, Box Hill Development Control Plan 2017 and is considered unsatisfactory.

The built form is not consistent with the building height development standard under State Environmental Planning Policy (SRGC) 2006 or the draft amendment to the SEPP which seeks to impose a density band of between 30 and 100 dwellings per hectare.

The proposal will result in a development that exceeds the permissible building height by 10.65 metres and will not be consistent with the building heights or scale of approved development within the immediate vicinity. The Clause 4.6 variation has been reviewed and it is considered that the request does not adequately demonstrate that compliance with the height development standard is unreasonable or unnecessary, or that there are adequate environmental planning grounds to justify contravening the standard. The proposed variation is considered to be excessive and would result in unacceptable density and built form outcomes.

The proposal also does not meet the provisions under the Box Hill Development Control Plan 2017 with regard to landscaped area and a revised landscape plan has not been provided to date.

Key supporting documentation has not been submitted with the proposal to enable a full assessment including an updated landscape plan, drainage plan, BASIX certificate, traffic report, contamination report and salinity report, requested in May 2018. Waste management, landscaping, subdivision, parking and roadworks issues also remain outstanding.

The Development Application is recommended for refusal.

IMPACTS:

Financial

This matter may have a direct financial impact upon Council's adopted budget as refusal of this matter may result in Council having to defend a Class 1 Appeal in the NSW Land and Environment Court.

The Hills Future - Community Strategic Plan

The proposed development is inconsistent with the planning principles, vision and objectives outlined within "Hills 2026 – Looking Towards the Future" as the proposed development provides for urban growth which would result in adverse environmental and social amenity impacts and will not ensure a consistent built form is provided with respect to the streetscape and character of the locality.

RECOMMENDATION

(i) The Development Application be refused for the following reasons:

1. The proposed development does not adequately address the provisions of Clause 4.3 Height of Buildings of Appendix 11, State Environmental Planning Policy (Sydney Region Growth Centres) 2006 and proposes an unacceptable variation to the height of buildings control.
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).
2. The Clause 4.6 variation request is inadequate and it has not been demonstrated that compliance with the development standard is unreasonable or unnecessary or that there is adequate environmental planning grounds to justify contravening the development standard.
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).

3. The proposal has not satisfied the design quality principles contained within State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development with respect to context and neighbourhood character, built form and scale, density, sustainability, landscaping and amenity.
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).
4. The proposal is inconsistent with density objective (c) of Clause 4.1B Residential Density in Appendix 11 of the Growth Centres SEPP as the scale of the proposed development is inconsistent with the desired character of the precinct, the approved density of residential flat buildings in the vicinity, and with the adjoining land.
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).
5. The proposal has not satisfied the requirements of Clause 6.1 – Public Utility Infrastructure of State Environmental Planning Policy (Sydney Region Growth Centres) 2006 since evidence that the site can be serviced for electricity has not been submitted.
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).
6. The proposal has not satisfied the requirements of Clause 104 ‘Traffic-generating development’ of State Environmental Planning Policy (Infrastructure) 2007 since insufficient information has been submitted to satisfy Council Officers and the NSW Roads and Maritime Service that the proposal will be able to achieve compliance with the provisions of the SEPP.
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).
7. The proposal has not satisfied the requirements of Clause 7 – ‘Contamination and remediation to be considered in determining development application’ of State Environmental Planning Policy (Sydney Region Growth Centres) 2006 since insufficient information has been submitted to satisfy Council Officers that the proposal will be able to achieve compliance with the provisions of SEPP 55.
(Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act, 1979).
8. The proposed development exceeds the draft maximum residential density controls under the proposed amendments to the State Environmental Planning Policy (Sydney Region Growth Centres) 2006 and to The Box Hill Development Control Plan 2017.
(Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act, 1979).
9. The proposed development does not comply with the minimum landscaped area under Table 19 of The Box Hill Development Control Plan 2017.
(Section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act, 1979).
10. The proposed built form is inconsistent with the natural, built, social and economic environment of the locality.
(Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979).
11. The proposal is not in the public interest since the proposed density and building height are considered excessive and as a result of its departure from the requirements under State Environmental Planning Policy (Sydney Region Growth Centres) 2006 and The Box Hill Development Control Plan 2017.
(Section 4.15(1)(d) and (e) of the Environmental Planning and Assessment Act, 1979).
12. The proposal has not adequately addressed landscaping, subdivision engineering, environmental health and waste management concerns previously raised by Council Officers. Insufficient information has been provided in relation to comments from the Roads and Maritime Services.
(Section 4.15(1)(a)(i), (ii), (iii), 1(b) and 1(c) of the Environmental Planning and Assessment Act, 1979).

- (ii) Council staff be delegated authority to defend a Land and Environment Court appeal should one be lodged.

ATTACHMENTS

1. Locality Plan
2. Aerial Photograph
3. SREP (SRGC) Zoning Map
4. SREP (SRGC) Height of Buildings Map
5. SREP (SRGC) Floor Space Ratio Map
6. SREP (SRGC) Indicative Road Layout Plan
7. Site Plan
8. Temporary and Future Site Access Plan
9. Floor Plans
10. Elevations
11. Solar and Daylight Analysis
12. Perspective images
13. Applicant's Clause 4.6 Variation Request

<< Insert ALL attachments below the section break >>