

SYDNEY NORTH PLANNING PANEL

Panel Reference	PPS-2019SNH016
DA Number	DA/65/2019
LGA	Hornsby Shire Council
Proposed Development	Construction of 5 x 6 storey residential flat buildings comprising 181 units with basement car parking for 219 vehicles and consolidation of 9 allotments into 1 lot
Street Address	Lot 1 and Lot 2 DP 1007710, Lot 11 DP 6852, Lot 31 and 32 DP 856384, Lot 1 and 2 DP 507307, Lot B and C DP 324923, No.22-32 Park Avenue, Waitara
Applicant	Statewide Planning Pty Ltd
Owner	Waitara Linx Pty Ltd
Date of DA Lodgement	5 February 2019
Number of Submissions	Five
Recommendation	Refusal
Regional Development Criteria) (Schedule 7 of the SEPP (State and Regional Development) 2011)	General development over \$30 million
List of All Relevant s4.15(1)(a) Matters	<ul style="list-style-type: none"> • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy No. 55 Remediation of Land • State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River (No. 2 - 1997) • State Environmental Planning Policy (State and Regional Development) 2011 • Hornsby Local Environmental Plan 2013 • Hornsby Development Control Plan 2013 • Apartment Design Guideline • Hornsby Section 7.11 Development Contributions Plan 2020-2030

List all documents submitted with this report for the panel's consideration	<ol style="list-style-type: none"> 1. Proposed Architectural Plans 2. Proposed Landscape Plans 3. Clause 4.6 Written Request – Height of Buildings 4. Design Verification Statement 5. Design Excellence Panel memos 6. Applicant letter in response to latest add info letter 7. Solar Access Assessment 8. Natural Ventilation Assessment 9. Stormwater plans 10. Flood report 11. Public submissions
Report prepared by	Matthew Miles – Team Leader Major Applications
Report date	29 September 2020

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

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

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.22)? **No**

Conditions

Have draft conditions been provided to the applicant for comment? **No**
application
recommended
for refusal

ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

- The application involves construction of 5 x 6 storey residential flat buildings comprising 181 units with basement car parking for 219 vehicles and consolidation of 9 allotments into 1 lot.
- The proposal does not comply with the maximum height of buildings development standard of 17.5m under Clause 4.3 Height of Buildings in the *Hornsby Local Environmental Plan 2013 (HLEP)*. The applicant has made a submission in accordance with Clause 4.6 'Exceptions to development standards' of the *HLEP* to vary the height of buildings development standard. The submission is not well founded and accordingly not supported.
- The recommendation from Council's Design Excellence Panel was that the design cannot be supported in its present form and has not remedied concerns raised in relation to the original proposal. The Panels comments are summarised below:
 - Visual impacts in terms of mass, scale and bulk would result in pronounced incompatibility with desired character;
 - Landscaped setbacks and areas between the proposed buildings are insufficient to accommodate canopy trees that might screen or moderate visual impacts;
 - Although communal areas are essential elements of the proposed development, they fail to provide satisfactory amenity or security and, consequently, would not encourage positive social interaction between residents of such a substantial development;
 - A substantial proportion of the proposed apartments would be exposed to unsatisfactory amenity in terms of sunlight and ventilation, outlooks, security and spatial layouts.
 - The amended proposal fails to comply with local controls that have a direct bearing upon desired character.
 - The amended proposal has not satisfied design quality principles of *SEPP 65* or the LEP's design excellence provisions.
 - Consequently, the amended proposal appears to be an overdevelopment of the site which, in terms of urban design considerations alone, would not warrant the granting of a development consent.
- 5 submissions have been received in respect of the application by way of objection.
- It is recommended that the application be refused.

RECOMMENDATION

THAT Development Application No. DA/65/2019 for construction of 5 x 6 storey residential flat buildings comprising 181 units with basement car parking for 219 vehicles and consolidation of 9 allotments into 1 lot at Lot 1 and Lot 2 DP 1007710, Lot 11 DP 6852, Lot 31 and 32 DP 856384, Lot 1 and 2 DP 507307, Lot B and C DP 324923, Nos. 22-32 Park Avenue, Waitara be refused for the reasons detailed in Schedule 1 of this report.

BACKGROUND

The subject land was rezoned from Residential A (Low Density) to R4 (High Density Residential) on 2 September 2011 as part of Council's Housing Strategy.

On 17 March 2016, Council approved DA/43/2016 for demolition of 9 existing dwellings, outbuildings and structures at Nos. 22-32 Park Avenue, Waitara. All dwellings with the exception of No. 26 Park Avenue have been demolished.

On 10 August 2017, DA/867/2017 was lodged with Council for the construction of 2x 6 storey residential flat buildings containing 140 units and basement car park at Nos. 22, 22A, 24, 26A, 26B, 28, 30 & 32 Park Avenue, Waitara. This DA was subsequently withdrawn on 12 March 2018 due to numerous non-compliances with the HDCP and inability to acquire No. 26 Park Avenue at the time.

The developer has since acquired No. 26 Park Avenue and has development consent to demolish the existing dwelling. No. 26 Park Avenue, forms part of the consolidated scheme for the subject application.

On 5th February 2019, Development Application DA/65/2019 was submitted to Council proposing the construction of a 2 x 6 storey residential flat buildings with 200 units with basement carparking.

On Thursday, 21 March 2019, the development application was considered by Council's Design Excellence Panel (DEP) and attended by the Applicant and Owner. The DEP assessed the merits of the proposal against each of the 9 Design Quality Principles, the provisions of the Apartment Design Guide (ADG), the *Hornsby Local Environmental Plan 2013* and the Hornsby Development Control Plan 2013. The DEP comments are attached at Appendix 6 and can be summarised as follows:

- *The relative bulk of the proposal was a significant concern and the panel reinforced that the proposal is an overdevelopment of the site,*
- *The proposal maximises density and yield which results in inadequate solar access, bedrooms with deep snorkels, large building floor plates, small and inaccessible communal courtyards,*
- *The Panel raised concerns regarding communal open spaces on rooftops on Level 4, as only a few units would access those areas, and with 8 lift cores it is inconvenient to go from one lift to another to access these areas.*
- *The Panel raised concerns with the 6 storey design as it does not meet the desired 5 storey character under the DCP. The Panel reinforced this by stating that the Council currently has a Planning Proposal with the Department of Planning and Environment to reduce the maximum height limit to 16.5m to prevent 6 storeys/mezzanine levels.*
- *Façade presents a very symmetric building with little variation and a repetitive 3 storey street wall with 2 storey penthouse element above,*
- *Provision of greater sustainability measures that go beyond the BASIX requirements,*
- *The double U-shape building is not supported as it results in large floor plates that are too regular and repetitive.*
- *The layout of the courtyard is a concern, with inadequate amenity, issues of visual and acoustic privacy, the U-shape building footprint creates inadequate solar access to the internal communal areas, as well as inappropriate building mass,*
- *Non-compliance with basement deep soil rear setback was not supported.*

- *The number of vehicular crossings should be reduced to enable more deep soil landscaping within the front setback.*

On 28 May 2019, Council wrote to the Applicant requesting amended plans that respond to the design excellence concerns and address concerns regarding traffic generation, construction management, waste management, Building Code of Australia issues, engineering issues and landscaping issues.

On 2 December 2019, amended plans were submitted seeking to address Council's letter dated 28 May 2019. The amended plans reduced the number of units from 200 units to 181 units and amended the 2 large U-shaped buildings to 5 detached buildings, 3 of which present to the street. The height of each proposed building was increased further above the 17.5m building height limit and the 6 storey design remained. The communal open space was redesigned from rooftops to a central communal area in the middle of the site with access to the street. Waste storage areas were removed from the front setback and integrated within the building to increase landscaping along the frontage. Units with narrow access corridors for light and ventilation 'snorkels' and shallow apartments were redesigned to promote greater solar access and ventilation.

On 26 February 2020, the amended plans and supporting documentation were considered by the DEP. The DEP's comments are attached at Appendix 6 and can be summarised as follows:

- *The amended proposal did not address previous concerns raised by the DEP in relation to the original proposal,*
- *Concerns raised regarding mass, scale and bulk of the buildings which would result in incompatibility with desired character of area,*
- *The scale and mass of the building forms accentuated by the uniformity of street setbacks, non-compliances with top-storey setbacks, non-compliances with minimum setbacks, large floor plates, heavy weight design elements, predominance of blank walls, insufficient landscaped separation, repetition of building forms, insufficient setbacks for the top most storeys, non-compliant heights;*
- *Landscaped setbacks and areas between the proposed buildings are insufficient to accommodate canopy trees that might screen or moderate visual impacts;*
- *Communal areas fail to provide satisfactory amenity or security and, consequently, would not encourage positive social interaction between residents of such a substantial development;*
- *The central Communal open space area would be extensively overshadowed during midwinter*
- *Substantial proportion of the proposed apartments would be exposed to unsatisfactory amenity in terms of sunlight and ventilation, outlooks, security and spatial layouts.*
- *The amended proposal fails to comply with local controls that have a direct bearing upon desired character;*
- *The amended proposal has not satisfied design quality principles of SEPP No. 65 or the LEP's design excellence provisions;*
- *The amended proposal appears to be an overdevelopment of the site which, in terms of urban design considerations alone, would not warrant the granting of a development.*

On 30 March 2020, Council sent a request for additional information to the Applicant requesting amended plans that respond to the DEP's concerns. Council also stated that the submitted Clause 4.6

was not acceptable as there are insufficient environmental grounds to justify a variation to the height development standard. The proposal as submitted represents an overdevelopment of the site as it does not comply with numerous DCP requirements to limit built form and scale. Council also requested amended engineering details, traffic report and amended waste details.

On 24 April 2020, the applicant submitted a letter in response to Council's request for information dated 30 March 2020. The letter critiqued the DEP's concerns of the proposal and Council's rejection of the Clause 4.6 and advised Council to assess the application on its merits and that no additional information would be forthcoming. The letter is attached in Appendix 7.

SITE

The 6,977.6m² site has a 103m street frontage to Waitara Avenue and existing improvements on the site includes an existing semi-detached dwelling located on No. 26 Park Avenue.

The southern portion of the site is affected by overland stormwater flow from an adjacent Council stormwater pipe and easement.

The site experiences a 1.5m fall towards Park Avenue.

The site is located opposite Mark Taylor Oval, the PCYC centre, Public Tennis Courts and a playground. Mark Taylor Oval is identified as a locally significant environmental heritage item in accordance with Schedule 5 Environmental heritage of the *Hornsby Local Environmental Plan 2013*. The subject site is located within 250m north of Waitara Railway Station. The site is also located 600m east of Hornsby Westfield Shopping Centre.

The properties to the eastern rear boundary and to the southern side boundary are occupied by recently completed 5 storey residential flat buildings and to the northern side boundary includes single storey residential dwellings which do not have development consent for redevelopment and there are no applications currently before Council.

The properties were previously occupied by single storey dwelling houses with various ancillary structures and outbuildings. These have since been demolished (with the exception of the semi-detached dwelling at No. 26 Park Avenue).

There are a number of trees scattered across the properties, none of which are considered to be of such significance as to be a constraint to the future development of the land.

PROPOSAL

The application proposes construction of 5 x 6 storey residential flat buildings comprising 181 units with basement car parking for 219 vehicles and consolidation of 9 allotments into 1 lot.

The unit mix would comprise 36 x 1 bedroom units, 127 x 2 bedroom units and 18 x 3 bedroom units. The units would be accessed via a lift centrally located in each building and would include balconies fronting the street, side and rear property boundaries.

The development would be accessed from Park Avenue via 2 separate 5.5m wide two-way driveways located along the northern and southern side of the site. Two, 6m wide pathways and landscaped pedestrian entrances at the front of the property would provide access to a centrally located courtyard.

A total of 219 car parking spaces would be provided via a 2 level basement car park which includes 20 accessible car spaces, 4 visitor accessible car spaces and 27 car spaces. A secure lockable bicycle storage room for 60 bicycles is provided in basement Level 1 beneath Building D.

Two temporary waste storage areas for bin collection would be located within the building, either side of the driveway entrances.

A Council owned drainage lot (easement) adjoins the southern property boundary and connects to the drainage system in Park Avenue. Upgrade works to the Council drainage line are proposed as part of the application that include the construction of a 1.05m diameter stormwater pipe along the southern boundary connecting to the existing Council drainage system and construction of a clear grassed swale. To avoid flooding into the proposed units, a 300mm retaining wall is proposed along the northern, eastern and southern boundaries of the site.

The site is proposed to drain to Park Avenue via two separate below ground detention tanks proposed at the front of the site.

ASSESSMENT

The development application has been assessed having regard to *the Greater Sydney Region Plan*, 'A Metropolis of Three Cities', the 'North District Plan' and the matters for consideration prescribed under Section 4.15 of the *Environmental Planning and Assessment Act 1979* (the Act). The following issues have been identified for further consideration.

1. STRATEGIC CONTEXT

1.1 Greater Sydney Region Plan – A Metropolis of Three Cities and North District Plan

A *Metropolis of Three Cities* has been prepared by the NSW State Government to guide land use planning decisions to the year 2056. The population of Greater Sydney is expected to grow by 3.2 million people by 2056. The Plan sets a strategy for accommodating Sydney's future population growth and demographic change, while improving liveability.

The Plan identifies that the most suitable areas for new housing are in locations close to jobs, public transport, community facilities and services.

The NSW Government will use the District planning process to define objectives and set goals for job creation, housing supply and choice in each District. The *North District Plan* is a 20 year plan to manage growth in the context of economic, social and environmental matters to achieve the 40 year vision for Greater Sydney.

Council has been grouped with Hunters Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Northern Beaches, Ryde, and Willoughby LGAs to form the North District. The *North District Plan* will be reviewed and the Government will set housing targets and monitor supply to ensure planning controls are in place to stimulate housing development. The *Metropolis of Three Cities* sets a District 20 year strategic housing target of 92,000 dwellings over the next 20 years.

The proposed development would be consistent with the Greater Sydney Region Plan - A Metropolis of Three Cities and the North District Plan by contributing to achieving the dwelling targets for the region. Notwithstanding, the proposed residential flat buildings are not supported for the reasons outlined below in this report.

2. STATUTORY CONTROLS

Section 4.15(1)(a) requires Council to consider "*any relevant environmental planning instruments, draft environmental planning instruments, development control plans, planning agreements and regulations*".

2.1 Hornsby Local Environmental Plan 2013

The proposed development has been assessed having regard to the provisions of the *Hornsby Local Environmental Plan 2013 (HLEP)*.

2.1.1 Zoning of Land and Permissibility

The subject land is zoned R4 (High Density Residential) under the *HLEP*. The objectives of the R4 zone are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To promote 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 defined as and is permissible in the zone with Council's consent.*

The proposed development is a high density residential development and complies with the R4 zone objectives by providing a variety of housing types and new housing stock. The proposed development is defined as a '*residential flat building*' under the *HLEP* and is permissible in the zone with the consent of Council.

2.1.2 Height of Buildings

Clause 4.3 of the *HLEP* provides that the height of a building on any land should not exceed the maximum height shown for the land on the Height of Buildings (HOB) Map. The maximum permissible height for the subject site is 17.5m.

The objectives of this clause are as follows:

- (a) *to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.*

All five buildings breach the maximum 17.5m building height development standard as follows:

- Building A would be 18.16m high and breaches the height standard by a maximum of 660mm or 3.7%,
- Building B would be 17.9m high breaches the height standard by a maximum of 410mm or 2.3%,
- Building C would be 18.585m high and breaches the height standard by a maximum of 1.085 metres or 6.2%,
- Building D would be 18.8m high and breaches the height standard by a maximum of 1.375mm or 7.8%,
- Building E would be 18.675m high and breaches the height standard by a maximum of 1.175m or 6.7%.

A Clause 4.6 variation request was submitted in support of the height variation which is detailed in Section 2.1.3 of this report below.

2.1.3 Exceptions to Development Standards

The proposed development does not comply with the Height of Buildings (HOB) development standard under Clause 4.6 of the *HLEP*. The objectives of the HOB standard are: *'to permit a height of buildings that is appropriate for the site constraints, development potential and infrastructure capacity of the locality.'*

The variation to the HOB standard for all five buildings are as follows:

- Building A would be 18.16m high and breaches the height standard by a maximum of 660mm or 3.7%,
- Building B would be 17.9m high breaches the height standard by a maximum of 410mm or 2.3%,
- Building C would be 18.585m high and breaches the height standard by a maximum of 1.085 metres or 6.2%,
- Building D would be 18.8m high and breaches the height standard by a maximum of 1.375mm or 7.8%,
- Building E would be 18.675m high and breaches the height standard by a maximum of 1.175m or 6.7%.

Clause 4.6 provides flexibility in the application of the development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objectives of the zone.

Clause 4.6(3) provides that 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.*

A written request to vary the HOB development standard (the Request) has been prepared by the Applicant's planning consultant (see Appendix 3). The Request argues that pursuant to cl4.6(3)(a), compliance is unreasonable and unnecessary for the following reasons:

- *The overland flooding created by the potential failure of Council drainage infrastructure in the event of a severe rain event has necessitated the need to increase the height of the building such that the ground floor levels are 300mm above the 1% AEP flood level. Were it not for this flooding constraint the development would sit below the prescribed 17.5 metre height standard preventing the need for this variation request.*
- *I note that Council has recently approved a similar building height variation (980mm) at No. 16-20 Park Avenue immediately to the south of the subject site due to the same flooding constraint with such constraint clearly accepted as an environmental planning ground to justify the variation.*

- *The building heights proposed are consistent with those established by all surrounding residential apartment development and to that extent I consider this development will reflect the reasonable and anticipated development potential of the site.*
- *Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council [2005] NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development, by virtue of its height or scale offensive, jarring or unsympathetic having regard to the existing and desired future built form characteristics of adjoining development and development generally within the sites visual catchment.*
- *Further, the minor height of building variation does not lead to a development that is inappropriate having regard to the infrastructure capacity of the locality which is well serviced as reflected by its R4 High Density zoning.*
- *The building heights proposed reflect the site constraint imposed by localised flooding, reflect the reasonable development potential of the land and result in a building form which does not exceed the infrastructure capacity of the locality.*
- *Having regard to the above, the non-compliant height components of the building will achieve the objectives of the standard to at least an equal degree as would be the case with a development that complied with the building height standard. Given the developments consistency with the objectives of the height of buildings standard strict compliance has been found to be both unreasonable and unnecessary under the circumstances.*
- *The subject application proposes the construction of a 6 storey residential flat building within a high density residential zone identified as being appropriate for increased residential densities. The proposal is consistent with this objective.*
- *The non-compliant component of the development, as it relates to building height, demonstrates consistency with objectives of the R4 High Density Residential zone and the height of building standard objectives. Adopting the first option in Wehbe strict compliance with the height of buildings standard has been demonstrated to be unreasonable and unnecessary.*
- *Sufficient environmental planning grounds exist to justify the height of buildings variation namely the overland flooding created by the potential failure of Council drainage infrastructure in the event of a severe rain event and the necessity to increase the height of the building to satisfy the flood planning level requirements. Were it not for this flooding constraint the development would sit below the prescribed 17.5 metre height standard preventing the need for this variation request.*

The Request argues that pursuant to Clause 4.6(3)(b), the environmental planning grounds to justify contravening the development standard are as follows:

- *Sufficient environmental planning grounds exist to justify the height of buildings variation namely the overland flooding created by the potential failure of Council drainage infrastructure in the event of a severe rain event and the necessity to increase the height of the building to satisfy the flood planning level requirements. Were it not for this flooding constraint the development would sit below the prescribed 17.5 metre height standard preventing the need for this variation request.*

- *I note that Council has recently approved a similar building height variation (980mm) at No. 16-20 Park Avenue immediately to the south of the subject site due to the same flooding constraint with such constraint accepted as an environmental planning ground to justify the variation.*
- *In this regard, I consider the proposal to be of a skilful design which responds appropriately and effectively to the flooding constraint. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:*
 - *The proposal promotes the orderly and economic use and development of land (1.3(c)).*
 - *The development represents good design (1.3(g)).*
 - *The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).*

State Government Guidelines on varying development standards recommend considering the provisions of Clause 4.6 of the LEP and the 'five part test' established by the Land and Environment Court as follows:

1. *the objectives of the standard are achieved notwithstanding noncompliance with the standard;*
2. *the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*
5. *the compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

The applicant's submission to vary the HOB development standard is not considered well founded for the following reasons:

- The Clause 4.6 states that the building heights reflect the site constraint imposed by localised flooding and reflects the reasonable development potential of the land. Council contends that the proposal represents an overdevelopment of the site as the buildings do not comply with ADG 3.1m floor to floor height control and numerous HDCP requirements that govern site density in lieu of no floor space ratio including significant non-compliances to building setbacks, deep soil setbacks, maximum floor plates, communal open space and building separation. Whilst flooding alone could have merit to increase the height, when combined with the many non-compliances proposed such as addition of a sixth storey, non-compliances with setbacks, building separation and bulk and scale impacts, Council is not satisfied that the written request is acceptable and that compliance with the HOB standard is unreasonable or unnecessary as the proposed built form exceeds the development potential of the site which is not a direct consequence of flooding impacts.
- The height exceedance is a result of a providing a sixth floor which was not anticipated by the desired future character of the five-storey precinct within the HDCP or the 17.5m height limit in the *HLEP*. Council is currently progressing a Planning Proposal with the Department of

Planning, Industry and Environment (DPIE) to reduce the 17.5m height control to 16.5m to maintain the desired fifth storey but avoid mezzanines. This Planning Proposal is currently under consideration by the DPIE and is being rapidly progressed through the accelerated LEP program. In accordance with Section 4.15 (1)(a)(ii) of the *Environmental Planning Assessment Act 1979* a consent authority must take into consideration any proposed instrument that has been subject to public consultation when assessing a development application.

- It is considered that the impacts of the development would be unsuitable with respect to the built environment as the proposal would not achieve a built form consistent with the desired future character of the Waitara Precinct as set out in the HDCP relating to residential flat buildings that should be five storeys.
- The Clause 4.6 contends that the form of the proposal is compatible with existing residential flat buildings (RFB) to the south at No.16-20 Park Avenue which experiences the same flooding issues. There are some key differences between the subject proposal and the RFB to the south including:
 - The adjoining RFB includes a maximum 5 storeys with the upper level and mezzanine setback 3m from the ground floor, whereas the subject proposal is 6 storeys and does not meet the current DCP setback of 6m for upper storeys recessed from the ground floor or the previous DCP setback of 3m for upper storeys recessed from the ground floor with the exception of Building D.
 - The adjoining RFB was approved under the *Residential Flat Design Code, NSW Planning Department 2002* which only required a minimum 2.7m high ceiling heights, as opposed to the 3.1m floor to floor requirements of the ADG. The subject proposal does not comply with the ADG minimum 3.1m floor to floor requirement.
 - The *SEPP 1* objection for the adjoining development noted that compliance with the standard was considered unreasonable due to flooding impacts, given the proposed development complied with all other DCP requirements (i.e. site requirements, landscape area, private open space, maximum floor plates, front and rear setbacks, top storey setbacks and articulation). The subject proposal does not comply with these DCP requirements to limit scale and increase amenity.
- No shadow analysis was provided for the adjoining site at No. 16-20 Park Avenue to assess the likely shadow impacts from the exceedance on height.

The Clause 4.6 variation request is not considered well founded and does not adequately demonstrate how the proposed development achieves the objectives of the HOB development standard, specifically the Clause 4.6 does not demonstrate that compliance with the objectives of the standard are unreasonable or unnecessary and it does not provide sufficient environmental planning grounds to justify the requested variation to the HOB standard. Accordingly, the proposal to vary the HOB standard is not considered in the public interest.

2.1.4 Floor Space Ratio

Clause 4.4 of the *HLEP* provides that the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The subject site is not located within an area with a prescribed floor space ratio requirement.

2.1.5 Heritage Conservation

Clause 5.10 of the *HLEP* sets out heritage conservation provisions for Hornsby Shire.

Whilst the site does not include a heritage item and is not located in a heritage conservation area, the site is within the vicinity of a heritage listed item at No. 20X Waitara Avenue, Waitara (Waitara Park - Mark Taylor Oval) and Nos. 28-36 Balmoral Street (Gardens). Waitara Park is located on the western side of Park Avenue and is zoned for public recreation. The Gardens at Nos. 28-46 Balmoral Street are not within the Balmoral Street, Waitara Housing Strategy Precinct.

Council's heritage assessment concluded that the proposal would not adversely affect the heritage significance or landscape setting of the nearby heritage items should it incorporate a suitable landscaped setting and comply with the HDCA requirements for desired building form, siting and design quality requirements for a 5 storey residential flat building. Accordingly, no objections are raised to the proposal on heritage grounds.

2.1.6 Earthworks

Clause 6.2 of the *HLEP* states that consent is required for proposed earthworks on site. Before granting consent for earthworks, Council is required to assess the impacts of the works on adjoining properties, drainage patterns and soil stability of the locality.

The site is relatively level. The proposal includes excavation works for a basement car park. The geology of the site is identified as black shale and laminate. Should this application be recommended for approval, a condition would be recommended requiring a detailed geotechnical assessment of the site by a chartered structural engineer, to be undertaken for the design of the basement excavation and support, groundwater drainage, basement and foundation design and to maintain the structural integrity of the adjoining properties.

Subject to the provision of this information and appropriate conditions of consent the proposal is satisfactory in respect to Clause 6.2 of the *HLEP*.

2.1.7 Clause 6.3 Flood planning

The objectives of Clause 6.3 of the *HLEP* are:

- a) *to minimise the flood risk to life and property associated with the use of land,*
- b) *to allow development on land that is compatible with the land's flood hazard, taking into account projected changes as a result of climate change,*
- c) *to avoid significant adverse impacts on flood behaviour and the environment.*

The site is subject to flooding as a result of a 1 in 100 year ARI storm flow path that affects the southern property boundary. The subject site lies at the downstream end of a 25 hectare local overland flow catchment to the east which drains into a man-made basin within the Mark Taylor Tennis Courts to Hornsby Creek.

The applicant submitted stormwater drawings prepared by SGC engineering and a flood report prepared by GRC Hydro to support the application.

Within the flood affected area, the applicant proposes construction of a 1.05m diameter stormwater pipe along the southern boundary which would run parallel to an existing Council pipe connecting to the existing Council street drainage system and construction of a clear grassed swale. To avoid flooding of

ground floor units, a 300mm retaining wall is proposed along the northern, eastern and southern boundaries of the site and a grassed swale.

Council's engineer was not satisfied with the proposed flood modelling presented and inadequate drawings to support the proposal as it does not satisfy the requirements of the HDCP. Council requested the following further detail with respect to the flood extent remains outstanding:

- The applicant has not provided a satisfactory detailed flood report for Council to determine compliance with Clause 1C.3.2 of the HDCP and Clause 5.8, Section 0074 - Stormwater drainage (Design) of Council's AUS-SPEC specifications in respect of:
 - 1% (1 in 100 year Average Recurrence Interval) overland flow meeting the safety factors not addressed.
 - Replacement of the Council pipe within the drainage easement to a box culvert is not addressed which is Council's preferred option which would connect the existing upstream stormwater infrastructure (1.5m wide x 1.2m high box culvert) between No.33 and 35 Balmoral Street which was recently upgraded to Park Avenue.
 - Floor levels of the units adjoining the overland flow are not in accordance with Council requirements to be 500mm above freeboard.
 - Flood impacts on adjoining properties as a result of the proposed stormwater works not addressed in flood report.
 - Unintended outcomes with respect to flooding and drainage impacts to neighbouring properties as a result of 300mm high retaining wall capturing drainage not addressed.
 - Cross sections of overland flow and swale not submitted.
 - Flood report modelling uses incorrect LIDAR levels and does not use current land survey levels prepared by a registered surveyor which is important as these revised levels would change the flood modelling.

These concerns remain unresolved and the Applicant has not provided additional information to address these issues.

In addition, the flood modelling provided did not include an assessment on any impacts from providing landscaping within the stormwater swale around the perimeter of the entire building which may reduce the effectiveness of reducing flooding impacts and providing canopy trees.

2.2 State Environmental Planning Policy No. 55 Remediation of Land

The application has been assessed against the requirements of *State Environmental Planning Policy No. 55*. This Policy provides State-wide planning controls requiring that consent must not be granted to the carrying out of any development on land unless it has considered whether the land is contaminated or requires remediation for the proposed use.

A search of Council's records and aerial images reveals that the property has been used exclusively for residential purposes with no record of any site contamination. Given this, the site would be suitable for the proposed use and no further assessment in relation to this SEPP is required.

2.3 State Environmental Planning Policy (Building Sustainability Index – BASIX) 2004

The application has been assessed against the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*. The proposal includes a BASIX Certificate for the proposed units and is considered to be satisfactory.

2.4 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The application has been assessed against the requirements of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP)*. This Policy seeks to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

Part 3 of the *Vegetation SEPP* states that a development control plan may make a declaration in any manner relating to species, size, location and presence of vegetation. Accordingly, Part 1B.6.1 of the Hornsby Development Control Plan 2013 (HDCP) prescribes works that can be undertaken with or without consent to trees.

Part 3.1.1 of this report provides an assessment in accordance with Part 1B.6.1 of the HDCP.

2.5 State Environmental Planning Policy (State and Regional Development) 2011

Section 4.5(b) of the EP&A Act provides that the Sydney district planning panel for the area in which the development is to be carried out is the consent authority for development of a kind that is declared by an EPI as regionally significant development. Schedule 7(2) of *SEPP SRD* provides that development that has a CIV of more than \$30 million is regionally significant development.

As the proposed development has a CIV of approximately \$60 million it is deemed to be regionally significant development and the Sydney North Planning Panel is the consent authority for the DA.

2.6 State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development

State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development (SEPP 65) provides for design principles to improve the design quality of residential flat development and for consistency in planning controls across the State.

SEPP 65 adopts the Apartment Design Guide which prevails in the event of any inconsistency with a Development Control Plan. *SEPP 65* includes objectives to meet housing and population targets, affordable housing and to facilitate timely and efficient assessment of development application. *SEPP 65* makes further provision for design review panels; include additional provisions for the determination of development application and for standards for car parking, visual privacy, solar and daylight access, common circulation and spaces, apartment size and layout, ceiling heights, private open space and balconies, natural ventilation and storage, which cannot be used as grounds for refusal of development consent.

Design Quality Principles

The applicant has submitted a “Design Verification Statement” prepared by a qualified Architect stating how the proposed development achieves the design principles of *SEPP 65*. The nine design principles of *SEPP 65* and the submitted design verification statement are addressed in the following table as well

as the DEP's independent expert advice on the design quality of the subject application with reference to the nine design quality principles.

Principle	Compliance
1. Context and Neighbourhood Character	No
<p>Principle: 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.</p> <p>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.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p> <p>Comment: The HDCP provides key development principles for guiding principles and directions for desired character within the five storey precinct which include: maximum of five storeys, supplemented by the LEP's max building height of 17.5m, minimum deep soil and built form setbacks, max floorplate dimensions, minimum separation between buildings within the same site, together with requirements for the articulation of forms and facades.</p> <p>Numerous elements of the proposed development demonstrate pronounced inconsistencies with the DCP which have a direct bearing upon achieving the desired future character. The proposal has primarily sought to comply with the ADG which applies across all residential flat developments in NSW and has disregarded the local Hornsby controls which contribute to site context and desired character of the local area. The independent DEP raised the following concerns:</p> <ul style="list-style-type: none"> <i>The proposed building forms are massive, and their scale does not comply with numeric local controls which define fundamental elements of desired character;</i> <i>Scale and mass of proposed building forms are accentuated by the uniformity of street setbacks, by the proximity of adjacent buildings (that is, by insufficient landscaped separation), by the repetition of building forms which fail to provide sufficient setbacks for the top-most storeys, and by top-most storeys which display two storey forms that are not screened by pergolas or similar elements;</i> <i>Noting that setbacks do not comply with the DCP's minimum-minus-encroachment rules, there is insufficient space for landscaping that might screen or moderate visual impacts of buildings which are approximately 18m to 19m high;</i> <i>In summary, the 'aggregated' mass and consistency of proposed building forms result in a development that displays pronounced inconsistency with the DCP's character controls which seek to avoid "the appearance of a continuous wall of development" - in particular, as a backdrop to Mark Taylor Oval which accommodates substantial community gatherings.</i> <p>The sixth storey and exceedance in height does not demonstrate design excellence and does not minimise visual impacts of a stepping transition and would not enhance the public domain environment.</p>	

2. Built form and Scale	No
<p>Principle: Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>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. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook</p> <p>Comment: The proposal does not comply with the minimum 17.5m HLEP height limit and proposes six storeys instead of the HDCP envisaged five storeys resulting in a top heavy and bulky design that does not meet the built form and scale of surrounding buildings and is a dominant element that is not visually recessive. The mass and form of the development is overbearing and will be a visually dominating element in the streetscape given the prime corner location</p> <p>Buildings D fronting Park Avenue, and buildings A and B at the rear of the site exceed the maximum 35m floor plate dimension creating long buildings with minimal articulation incorporated to break up the building mass. The proposed buildings do not comply with a number of building and landscape setback provisions which results in a larger yield for the site then what was anticipated by the DCP and a built form and scale that does not contribute to the desired character envisaged by the Hornsby DCP.</p> <p>The DEP raised the following concerns with regards to built form and scale:</p> <ul style="list-style-type: none"> • <i>The proposed building forms are massive, and their scale does not comply with numeric local controls which define fundamental elements of desired character;</i> • <i>Scale and mass of proposed building forms are accentuated by the uniformity of street setbacks, by the proximity of adjacent buildings (that is, by insufficient landscaped separation), by the repetition of building forms which fail to provide sufficient setbacks for the top-most storeys, and by top-most storeys which display two storey forms that are not screened by pergolas or similar elements;</i> • <i>Noting that setbacks do not comply with the DCP's minimum-minus-encroachment rules, there is insufficient space for landscaping that might screen or moderate visual impacts of buildings which are approximately 18m to 19m high;</i> • <i>In summary, the 'aggregated' mass and consistency of proposed building forms result in a development that displays pronounced inconsistency with the DCP's character controls which seek to avoid "the appearance of a continuous wall of development" – in particular, as a backdrop to Mark Taylor Oval which accommodates substantial community gatherings.</i> 	
3. Density	No
<p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>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.</p>	

Comment: The *HLEP* does not incorporate floor space ratio requirements for the site. The density of the development is governed by the height of the building and compliance with the DCP required setbacks. The density of the proposed development including heights, setbacks, building separation and deep soil landscaping was assessed by the DEP as being an overdevelopment for the site. The Panel raised the following concerns with regard to density:

- *All five buildings are over height, the roof plan confirms that heights are up to 1.2m taller than the maximum of 17.5m,*
- *Sections and plans confirm six storey buildings which, in terms of scale, are one storey taller than the DCP's maximum (noting that the top storey does not conform with the LEP definition of "mezzanine");*
- *Front setbacks for exterior walls of buildings C, D and E are uniformly 8m, as opposed to 10m with encroachments to 8m over one third of any facade;*
- *Side setbacks for buildings A, B, C and E are predominantly 4.5m, rather than 6m with encroachments to 4m across one third of any facade;*
- *Buildings A and B have floorplates which are 10m longer than the DCP's limit of 35m, and also do not provide 4m recesses which are the minimum for effective articulation of large floorplates;*
- *Separations between buildings A and B, A and C, C and D, D and E, E and B are 6m – significantly less than the DCP's requirement of 9m;*
- *Supplementary setbacks for top-most storeys typically range from 1.5m to 4.5m and are appreciably less than the DCP's requirement of 6m.*

4. Sustainability

No

Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs.

Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.

Comment: The DEP raised the following concerns with regard to sustainability:

- *Generally, it appears that the amended development meets minimum standards for deep soil, energy and water efficiency.*
- *However, no creative, special or extraordinary solutions have been identified*

5. Landscape

No

Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.

Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar

access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.

Comment: The rear deep soil area would be 6m wide instead of the required 7m as per the HDCP and the two basement ramps along each side boundary result in a 3.7m wide deep soil area for 37m instead of the required 4m wide minimum deep soil landscaped area which compromises landscape screening to adjoining developments and reduces the ability to plant large canopy trees. The landscaping is significantly compromised by the proposed stormwater swale and 300mm high retaining wall that wraps around the entire building which may reduce the effectiveness of reducing flooding impacts and providing canopy trees.

The DEP raised the following concerns with regard to landscaping:

- *Noting that setbacks do not comply with the DCP's minimum-minus-encroachment rules, there is insufficient space for landscaping that might screen or moderate visual impacts of buildings which are approximately 18m to 19m high;*
- *Landscaped setbacks and areas between the proposed buildings are insufficient to accommodate canopy trees that might screen or moderate visual impacts;*

6. Amenity

No

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.

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.

Comment: Units A502 and B502 on level five contain narrow kitchen areas with the nearest window located 10m from the back of the kitchen wall. Both these units do not achieve the desired open plan layout and would not achieve good amenity for future residents. Multiple units located on the ground floor including units E103, E104, A108, B108, C103, C104 and D105 do not meet Objective 4E-1 of the ADG requiring private open space for apartments at ground level having a minimum area of 15m².

The DEP raised the following concerns with regard to amenity of the proposal:

- *There is no assessment of shadow impacts for residential neighbours,*
- *The eye of sun view provided to evaluate sunlight to the proposed apartments indicate that the eastern neighbour would be overshadowed progressively from 1.45pm, and also that various apartments in the neighbouring development to the south would be affected throughout the day - however, there is no graphic or numeric evaluation provided of the likely shadow impacts.*
- *Notwithstanding a positive evaluation of solar access, the development cannot satisfy ADG or HDCP requirements for 70% solar access into living room windows and private open space areas because 'exterior' east facing apartments barely meet the two hour minimum to living areas and balconies, and because interior apartments would be exposed to overshadowing by buildings within the development, it is not possible for 70% of apartments to receive the requisite sunlight.*

- *An insufficient proportion of apartments have floorplans which are inherently suited to natural cross ventilation, and the highly technical analysis of ventilation does not clearly demonstrate how satisfactory ventilation would be achieved by more than 60% of apartments (which comprise a large number of single aspect floorplans).*
- *Due to unsatisfactory interfaces between public or communal areas and private ground floor terraces, privacy and security of ground floor apartments are likely to be compromised.*
- *A number of six storey/mezzanine apartments have narrow entries which are squeezed between kitchens and stairs.*
- *Lower storey apartments in Buildings A and B rely upon indented light wells (snorkels) which are 3m deep, and which would be likely to compromise daylighting and ventilation.*

7. Safety

Yes

Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.

A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.

Comment: The design orientates the balconies and windows of individual apartments towards the street, rear and side boundaries, providing passive surveillance of the public domain and communal open space areas. Both the pedestrian and vehicular entry points are secured and visibly prominent from Park Avenue.

The proposal includes an assessment of the development against crime prevention controls in the Statement of Environmental Effects (SEE). The SEE has regard to Crime Prevention Through Environmental Design Principles (CPTED) and includes details of surveillance, access control, territorial reinforcement and space management such as artificial lighting in public places; attractive landscaping whilst maintaining clear sight lines; security coded door lock or swipe card entry; physical or symbolic barriers to attract, channel or restrict the movement of people; security controlled access to basement car park; intercom access for pedestrians; and security cameras located at the entrance of the building. Should the Panel approve this application, appropriate conditions of consent are recommended to require compliance with the above matters.

8. Housing Diversity and Social Interaction

Yes

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment: The proposal incorporates a range of unit sizes to cater for different budgets and housing needs. The development complies with the housing choice requirements of the Hornsby DCP by

providing a component of adaptable housing and a mix of 1, 2 and 3 bedroom dwellings. The proposal responds to the social context in terms of providing a range of dwelling sizes with good access to social facilities and services as the site is located in close proximity to Waitara Railway Station and shops.

9. Aesthetics

No

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.

The visual appearance of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment: The architectural treatment of the building is not consistent with the design principles contained within the Apartment Design Guideline and Hornsby Development Control Plan 2013. The architectural treatment would result in monotonous facades and lack of articulation in the built form. The facades propose an overuse of rendered painted finish with minimal variation in materials and finishes and does not achieve the DCP minimum of 30% exposed brick or natural material cladding such as sandstone or timber resulting in a poor quality finish. As a result, the buildings would detract from the desired future character of the area. The proposal is not supported with regard to the principle “aesthetics”.

The DEP raised the following concerns with respect to aesthetics:

- *For elevations which face the street or other boundaries, mass and scale are accentuated by near-identical forms and heights, together with the repetition of design elements.*
- *Scale and bulk are accentuated by ‘heavy-weight’ design elements such as ‘splayed portals’, and there are no light-weight screening or pergola elements that might moderate visual impacts (as well as climate or privacy).*
- *For internal elevations, scale and bulk are accentuated by the predominance of blank walls which represent the primary design solution to provide satisfactory privacy for opposing apartments.*
- *The ‘aggregated’ mass and consistency of proposed building forms result in a development that displays pronounced inconsistency with the DCP’s character controls which seek to avoid “the appearance of a continuous wall of development.”*

2.7 Apartment Design Guide

Amendment No. 3 of the *SEPP 65* also requires consideration of the Apartment Design Guide, NSW Department of Planning and Environment 2015. The Guide includes development controls and best practice benchmarks for achieving the design principles of *SEPP 65*. The following table sets out the proposals compliance with the ADG:

Apartment Design Guide			
Control	Proposal	Requirement	Compliance

Deep Soil Zone (3E)	33%	7% of site area	Yes
Communal Open Space (3D)	20% of site provided as Communal Open Space (COS)	25% of site area	No
Communal Open Space – Sunlight Access (3D-1)	The principal useable COS does not appear to achieve 2 hours sunlight access as inadequate areas were included in the COS area	50% to receive 2 hours sunlight access	Yes
Building Separation (3F-1)	Internal building separation distances are in accordance with the ADG. Buildings separation to boundaries are generally compliant with exception of balconies located in the south western corner of Building E, north eastern corner of Building A and North western corner of Building C. All non-compliant balconies are setback at 4.5m	6m Between habitable windows and balconies for floors 1-4, 9m for floors 5 and 6. 3m between Non-habitable rooms for floors 1-4, 4.5m for floors 5 and 6	Yes, minor non compliances are negligible and don't cause privacy impacts
Solar Access (Living rooms and private open space areas) (4A-1)	Solar Access Assessment provided by applicant outlines 74% of all units would receive at least 2 hours sunlight access with. Each individual building would be compliant with the numerical controls.	2 hours for 70% of units	Unknown see discussion below
No Solar Access allowable for units (4A-1)	5.5% of All Units receiving no sunlight access. No building would be in excess of the 15% numerical control	15% of units in any building (max)	Yes
Natural Cross Ventilation (4B-3)	Cross Ventilation provided by applicant contends that 60% of Units achieve adequate cross ventilation	60%	Unknown see discussion below
Minimum Dwelling Size (4D-1)	1 br – 50m ² min 2 br – 70m ² min 3 br – 95m ² min	Studio – 35m ² 1 br – 50m ² 2 br – 70m ² 3 br – 90m ²	N/A Yes Yes Yes

		+ 5m ² for additional bathrooms +12m ² for 4 th and additional bedrooms	
Habitable room depth (4D-2)	Units are compliant with the exception of Units A502 and B502 which exceed the 8m room depth for open plan layouts	2.5x Ceiling height 8m from a window (max)(open plan layouts)	No
Minimum Ceiling Height (4C-1)	Compliant	2.7m (habitable rooms) 2.4m (non-habitable rooms)	Yes
Minimum Balcony Size (4E-1)	1 br 8m ² 2 br – 10m ² 3 br – 12m ² Units E103, E104, A108, B108, C103, C104 and D105 do not meet 15m ² requirement	1 bedroom 8m ² 2m depth 2 bedroom 10m ² 2m depth 3 bedroom 12m ² 2.4m depth 15m ² for units on ground floor	Yes Yes Yes No
Maximum Number of Units on a Single Level (4F-1)	8 units Max (Unit D)	8 units off a circulation core	Yes
Car Parking (3J-1)	216 in basement	216 – As per HDCP	Yes
Total Storage Area (4G-1)	Compliant	Studio 4m ³ (Min) 1 bed - 6m ³ (Min) 2 bed - 8m ³ (Min) 3 bed - 10m ³ (Min) Minimum of 50% accessible from within apartments	Yes Yes Yes Yes

As detailed in the above table, the amended development generally complies with the prescriptive measures within the *Apartment Design Guide (ADG)* other than percentage of communal open space area and two units that exceed the 8m maximum room depth for open plan layouts. Below is a brief discussion regarding the relevant development controls and best practice guidelines.

2.7.1 Communal open space

The ADG specifies that the principal usable part of communal open space should be consolidated in one location with a minimum area equal to 25% of the site and that this area should achieve 50% of direct sunlight for a minimum 2 hours between 9am and 3pm on June 21.

To achieve compliance with the 25% principle, the application requires 1,741m² of area dedicated to communal open space. The architectural plans indicate that the proposed development achieves 33% (2,200m²) of communal open space by including all landscaped areas along the side and rear boundaries, front setback areas, the 6m wide areas between buildings and the central courtyard.

Council contends that the applicants calculation is incorrect and doesn't comply with the numerical controls of the ADG as the areas included along the side and rear boundary should not be included as a continuation to the communal open space area they are not usable areas other than for landscaping and pedestrian access to the central courtyard, would be divided by a 300mm retaining wall for flooding along the periphery of the site and are not within a consolidated area.

In calculating the communal open space area excluding the side and rear landscaped areas, the proposal would only provide 20% (1540m²) of communal open space. In addition, it is noted that the 6m wide narrow areas between buildings was included in 20% calculations, however this area would not receive sunlight, would experience wind tunnel issues and be surrounded by blank walls creating a poor amenity outcome for users of the space and the front landscaped area was included which is problematic for units on the ground floor, again creating amenity issues.

In addition, the DEP raised the following concerns with regards to the communal open space area:

- *The central open space provides the sole recreation area which would be extensively overshadowed during midwinter (a likely maximum of one hour sunlight to half of the proposed area), is a long narrow space flanked by tall walls, is not sufficiently separated from ground floor apartments or pedestrian routes, and also would not provide a range of secure and attractive recreation spaces that are likely to attract concurrent use by unrelated individuals or groups of residents.*
- *Primary pedestrian routes through the site are threaded between four storey blank building-ends which fail to provide satisfactory surveillance and which fundamentally-compromise the amenity of these important routes.*
- *Buildings A to C have no direct access to the central open space with residents having to use the front lobby to access the space.*
- *Although windows are provided for upper storey corridors, those windows do not face the central open space - hence they fail to contribute to surveillance or social interaction.*
- *Unrestricted access is available from the central open space to side and rear setbacks, but plans do not indicate any recreation purpose for those areas.*

The development proposes a significant number of units and it is expected that this area would fully comply with the 25% minimum area requirement and provide an area with enhanced residential amenity which promotes social gathering, entertaining, play and relaxation to support the apartments. The non-compliance and poorly designed communal area further demonstrate why the proposal is considered an overdevelopment of the site

2.7.2 Habitable room depth

The ADG specifies that in open plan layouts where the living, dining and kitchen are combined the maximum habitable room depth is 8m from a window.

Whilst the vast majority of units are compliant with the maximum habitable room depth requirement, Units A502 and B502 on level five contain a narrow kitchen area with the nearest window located 10m from the back of the kitchen wall. Both these units do not achieve the desired open plan layout and would not achieve good amenity for future residents as the kitchen areas would be reliant on artificial lighting and the units would achieve no cross ventilation.

2.7.3 Solar access and natural ventilation

The ADG specifies that 70% of living rooms and private open space areas for the proposed development must achieve solar access for 2 hours during mid-winter.

The DEP raised the following concerns with the applicant's numerical assessment with regard to solar access compliance or natural ventilation assessment, stating as follows:

- *'Notwithstanding a positive evaluation of solar access, the development cannot satisfy ADG requirements because 'exterior' east facing apartments barely meet the two hour minimum to living areas and balconies, and because interior apartments would be exposed to overshadowing by buildings within the development, it is not possible for 70% of apartments to receive the requisite sunlight'.*
- *Lower storey apartments in buildings A and B rely upon indented light wells (snorkels) which are 3m deep, and which would be likely to compromise daylighting and ventilation.*
- *An insufficient proportion of apartments have floorplans which are inherently suited to natural cross ventilation, and the highly technical analysis of ventilation does not clearly demonstrate how satisfactory ventilation would be achieved by more than 60% of apartments (which comprise a large number of single aspect floorplans).'*

Objective 3B-2 of the ADG provides guidance for overshadowing to adjoining properties including that greater building separation and increased upper level setbacks be provided beyond minimums to reduce overshadowing impacts to southern properties and that a minimum of 4 hours of solar access should be retained to solar collectors on neighbouring properties.

The proposal does not provide a solar analysis or solar assessment for adjoining properties to enable an assessment on the proposals compliance.

2.7.4 Ceiling Heights

Whilst the proposal achieves the minimum 2.7m floor to ceiling requirement, the floor to floor heights of each level do not achieve the 3.1m requirement depicted by figure 4C.5 of the ADG to avoid service bulkheads within habitable rooms as Levels 1 to 4 are typically 3.04m. Compliance with this measure would further increase the building height.

Further, as the amended plans have not provided detailed design sections (as required by the *Environment Protection and Assessment Regulation 2000*), there is insufficient information regarding the viability of structural dimensions, the alignments and construction of architectural components, or the locations of building services to enable an assessment on the suitability of the reduced floor to floor heights.

2.7.5 Ground Floor Private Open Space

Multiple units located on the ground floor including units E103, E104, A108, B108, C103, C104 and D105 do not meet Objective 4E-1 ADG requirement that private open space for apartments at ground level should have a minimum area of 15m².

The numerical non-compliance is considered unacceptable as it will result in a reduction in amenity and sunlight access for future residents on the ground floor level.

2.8 Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River

The site is located within the catchment of the Hawkesbury Nepean River. Part 2 of this Plan contains general planning considerations and strategies requiring Council to consider the impacts of development on water quality, aquaculture, recreation and tourism.

The proposal includes details of soil and water management during construction works. A condition is recommended with respect to installation of sediment and erosion control measures prior to, and during, construction.

The proposed development would have minimal potential to impact on the Hawkesbury-Nepean Rivers Catchment subject to the implementation of recommended conditions.

2.9 Clause 3.42 Environmental Planning and Assessment Act 1979 - Purpose and Status of Development Control Plans

Clause 3.42 of the *Environmental Planning and Assessment Act, 1979* states that a DCP provision will have no effect if it prevents or unreasonably restricts development that is otherwise permitted and complies with the development standards in relevant Local Environmental Plans and State Environmental Planning Policies.

The principal purpose of a development control plan is to provide guidance on the aims of any environmental planning instrument that applies to the development; facilitate development that is permissible under any such instrument; and achieve the objectives of land zones. The provisions contained in a DCP are not statutory requirements and are for guidance purposes only. Consent authorities have flexibility to consider innovative solutions when assessing development proposals, to assist achieve good planning outcomes.

2.10 Hornsby Development Control Plan 2013

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within the *Hornsby Development Control Plan 2013 (HDCP)*. The following table sets out the proposal's compliance with the prescriptive requirements of the Plan:

Hornsby Development Control Plan 2013			
Control	Proposal	Requirement	Compliance
Site Width	103m	30m	Yes
Height	6 storeys	5 storeys	No

	18.875m	17.5m	No
Lowest Residential Floor Above Natural Ground Level	<1.5m	1.5m (max)	Yes
Maximum Floorplate Dimension	44.4m (N/S) Building A and B, 39m Building D. Buildings C and E compliant	35m	No
	26.7m (E/W) Buildings C and E. 20.6 Building A B and C	35m	Yes
Building Indentation	No – Building D contains an indentation however no other buildings comply	4m x 4m	No
Front Setback	7m	10m 8m < 1/3 building length	No
Side Setback (Northern)	Building A = 48% at 6m and 52% at 4.5m Building C = 65% at 6m and 35% at 4.5m 4.5m (balconies)	6m 4.5m < 1/3 building length 6m (balconies)	No No
Side Setback (Southern)	Building B = 48% at 6m and 52% at 4.5m Building E = 65% at 6m and 35% at 4.5m 4.5m (balconies)	6m 4.5m < 1/3 building length 6m (balconies)	No No
Rear Setback	6m	10m 8m < 1/3 building length 7m (balconies)	No

Top Storey Setback from Ground Floor	Each building exhibits a non-compliant elevation	3m setback for exterior walls, if mezzanine proposed 6m setback where no sleeving is proposed including pergolas and planting to perimeter	No
Basement Ramp Setback	3.7m	2m	Yes
Deep Soil Landscaped Areas	8m front 4.5m sides 6m rear	8m front 4m sides 7m rear	Yes Yes No
Communal Open Space with Minimum Dimensions 4m	>50m ² (min) 20%	50m ² (min) 25%	Yes No
Parking	190 resident spaces 26 visitor spaces 60 bicycle racks 4 motorbike space	190 resident spaces 26 visitor spaces 54 bicycle racks 4 motorbike space	Yes Yes Yes Yes
Solar Access	Solar Access Assessment provided by applicant outlines 74% of all units would receive at least 2 hours sunlight access with. Each individual building would be compliant with the numerical controls.	70%	Unknown, see discussion in report above under 2.1.3
Housing Choice	10% of each type (min)	10% of each type (min)	Yes
Adaptable Units	11%	10%	Yes

As detailed in the above table, the proposed development does not comply with a number of prescriptive requirements within the *HDCP*. The matters of non-compliance are detailed below, as well as a brief discussion on compliance with relevant desired outcomes.

2.10.1 Desired Future Character

The *HDCP* encourages orderly development that is consistent with the principles in the relevant Key Development Principles Diagram. The site is included in the Balmoral Street, Waitara redevelopment precinct. The Balmoral Street, Waitara precinct promotes the following:

- **Strategy** - *Redevelopment should be predominantly five storey residential flat buildings in garden settings, with parking in basements.*
- **Landscape setting** - *Provide broad setbacks along street frontages and rear boundaries and locate communal open spaces in order to retain remnants of Blue Gum High Forest and existing trees that are prominent streetscape features. Surround and screen new buildings with canopy trees and shrubs.*
- **Built form** - *To reflect the established pattern of detached-dwellings: limit the width of new facades that would be visible from any street and divide the floorspace of every new building into well-articulated pavilion forms that are separated by courtyards with canopy trees.*

Siting and design should provide at least two hours sunlight daily for living areas in 70% of new dwellings.

Design quality of facades should respond to visibility from all street and laneway frontages.

Immediately adjoining heritage items: ensure garden setbacks, heights, building forms + design features are compatible with values that are specified by the Hornsby Shire Heritage Inventory.

Employ setbacks and building forms that retain reasonable sunlight + privacy for existing neighbours.

As addressed in Section 2.7 of the report above under Principle 1 Context and neighbourhood, numerous elements of the proposed development do not comply with the DCP controls that establish the desired character of the area. In particular, the proposal breaches the 17.5m height limit to achieve a 6 storey building design, the scale and mass of Buildings A, B and D breaches the maximum 35m floorplate dimension and is accentuated by the uniformity of street setbacks, insufficient landscaped separation, repetition of building forms which fail to provide sufficient setbacks for the top-most storeys, and by top-most storeys which display two storey forms.

The non-compliance with basement and building setbacks provides insufficient space for landscaping that could assist in screening or moderating the visual impacts of the proposal.

The combined consistency of the proposed building forms of each building results in a development that is inconsistent with the DCP's character controls which seek to avoid "*the appearance of a continuous wall of development*" and avoid repetitive rendered finishes as a minimum 30% of brickwork is not provided in accordance with the *HDCP* to break up the building mass.

Pursuant to the provisions of Section 4.15(1)(b) of the Act, it is considered that the impacts of the development would be unsuitable with respect to the built environment as the proposal would not achieve a built form consistent with the desired future character of the Balmoral Street, Waitara Precinct as set out in the *HDCP* relating to Residential Flat Buildings (5 storeys).

2.10.2 Setbacks

The desired outcome of the “Setbacks” within the HDCP is to achieve:

‘Well-articulated building forms that are setback to incorporate landscaping, open space and separation between buildings; and

Setbacks that preserve and protect existing trees around the perimeter of sites and provide effective deep soil areas that are able to create a garden setting, including substantial tree canopy to all sides of the building.’

The setbacks are assessed under the relevant headings:

2.10.2.1 Front Setback (Park Avenue)

The HDCP prescribes a 10m front boundary setback, which can be reduced to 8m for 1/3 of the building width.

All three buildings (C, D and E) that have a primary frontage to Park Avenue would have a front setback of 8m for the entire width of the building frontage with ground floor balcony encroachments of 6m and decorative feature element encroachments on Levels 2 to 4 setback at 7m.

As discussed by the DEP, the mass and scale of the buildings that face the street are accentuated by near-identical forms and heights, together with the repetition of design elements which is accentuated by ‘heavy-weight’ design elements such as ‘splayed portals’ (decorative feature elements) with no light-weight screening or pergola elements that could assist in moderating visual impacts. The combined mass and consistency of the front building forms results in a lack of articulation and excessive bulk which has not been carefully designed. The non-compliant front setbacks result in reduced landscaping available within the front setback that could reduce the scale of the proposal.

2.10.2.2 Side Boundary (Southern)

The HDCP prescribes a 6m side boundary setback including balconies, which can be reduced to 4.5m for 1/3 of the building width.

Both Buildings B and E encroach significantly further than that anticipated by the HDCP controls as both buildings are setback 4.5m for more than 1/3 of the building width. Building B would be setback for 6m for 48% of the building width and 52% at 4.5m and Building E would be setback at 6m for 65% of the building width and 35% at 4.5m. Decorative feature elements are proposed on both buildings to disguise the bulk of the proposal which encroach 3.5m to the side boundary on Building B at the rear and 5m to Building E at the front.

The non-compliance results in an excessive building mass towards the southern side boundary resulting in an over development of the site with minimal articulation proposed to moderate building mass and no visual screening to moderate the building mass as a result of the stormwater easement located along this boundary preventing any type of vegetation within the overland flow path. In addition, Balconies are proposed at 4.5m with vertical louvre screens and 6m with no screening resulting in unacceptable privacy impacts to No. 16-20 Park Avenue.

2.10.2.3 Side Boundary (Northern)

Similar to the above discussion regarding the southern boundary, both buildings A and C would encroach significantly further than that anticipated by the HDCP controls. Building A would be setback 6m for 48% of the building width and 52% at 4.5m and Building C would be setback at 6m for 65% of the building width and 35% at 4.5m. Like the southern boundary, decorative feature elements are proposed on both buildings to disguise the bulk of the proposal which encroach 3.5m to the side boundary on Building A at the rear and 5m to building C at the front.

The non-compliance results in an excessive building mass towards the southern side boundary resulting in an over development of the site with minimal articulation proposed to moderate building mass and insignificant landscaping proposed to reduce the scale of the buildings. In addition, balconies are proposed at 4.5m with vertical louvre screens and 6m with no screening resulting in unacceptable privacy impacts to the adjoining single storey dwelling house at No. 34 Park Avenue that is yet to be redeveloped.

2.10.2.4 Rear Setback

The rear setback of Buildings A and B would be 6m, including balconies, which does not satisfy the rear boundary setback requirement of the HDCP which requires a 10m setback with the building encroaching to 8m for 1/3 of the building width. Balconies are permitted to encroach to 7m from the rear boundary.

This is unacceptable as the setback requirement does not achieve adequate landscape verges along the rear boundary and/or reasonable separation from the adjoining development and is not consistent with approved residential flat buildings throughout the Waitara locality.

In the absence of floor space ratio controls for the subject site, setbacks govern the density of the proposal. The proposed setbacks would result in additional floor area for the rear buildings increasing the bulk and scale of the proposal and minimal articulation. The non-compliance results in a poor landscape outcome for the rear of the site and would not comply with the desired outcome for the 5 storey Waitara precinct which is identified in the Key Development Principles of the HDCP which encourages large canopy trees at the rear to act as a landscape buffer and vegetation screening between residential flat developments. The non-compliance is also extended to the basement deep soil area providing a reduction in available deep soil landscaping and the ability to provide large canopy trees and vegetation to screen the development and improve privacy between neighbouring buildings.

2.10.2.5 Fifth Storey Setback

The HDCP prescribes a 3m additional setback from the exterior walls of the fifth storey, measured from the exterior walls of the lowest storey. The purpose of this control is ensure the top most floors are visually recessive with a setback from the storeys below. The DCP also stipulates an additional 6m setback for exterior walls of the fifth storey if a mezzanine is proposed unless sleaving is proposed to reduce the visual impact of the mezzanine.

Each building exhibits non-compliant elevations that do not incorporate a 6m building recess for the fifth or sixth level. Towards the front of the development, Building C does not incorporate a recessed setback for the fifth or sixth storey along the southern elevation which is the same for the northern elevation of Building E resulting in excessive building mass and scale to the public domain and a top heavy design.

2.10.3 Built Form and Separation

The HDCP requires a 9m building separation where more than one building is proposed.

Separations between Buildings A and B, A and C, C and D, D and E; and E and B are 6m – significantly less than the DCP's requirement of 9m which results in lack of landscaping to break up the visual mass of the proposal, canyon like pedestrian avenues to the communal open space area, dark and potentially wind swept spaces at ground level surrounding by proposed blank walls.

The proposal results in excessive scale and bulk from the unsatisfactory composition and articulation of proposed building forms which are accentuated by facades which have not been carefully-designed.

The bulk and scale of all five buildings is accentuated by the uniformity and unbroken wall lengths of setbacks facing the front and rear boundaries resulting in a poorly-articulated design with balconies that do not project from the building. Balconies do not appear as open structures and present as part of the building which contributes to unacceptable articulation. The applicant proposes to break up the building mass by proposing feature design elements that encroach into the prescribed setback and landscaped areas which is not supported.

Building A, B and D exceed the maximum 35m floorplate dimension and only Building D located towards the middle of the site facing Park Avenue provides a 4m x 4m indentation to break up the building mass and provide an attempt at articulation.

The DEP raised concerns with the mass and scale of the buildings which is accentuated by near-identical forms and heights, together with the repetition of design elements, heavy weight fifth and sixth storeys, splayed portals that encroach into setback, blank walls for internal elevations, insufficient landscape separation, lack of indentation, insufficient setbacks, height of the proposal and inconsistency with the DCP's character controls which seek to avoid '*the appearance of a continuous wall of development*'.

2.10.4 Landscaping

The landscaping provisions of the HDCP prescribe that 8m wide landscaped deep soil areas be provided at the front, 7m at the rear and a 4m wide landscaped areas be provided along the side boundaries. In addition, a 9m landscaped buffer should be provided between residential buildings.

Whilst the basement level complies with the 8m requirement at the front setback, the basement is setback 3.7m for 37m of the basement ramp for both side boundaries and 6m to the rear boundary which reduces the ability to provide large canopy trees along the periphery of the development and provide landscape screening to moderate the visual impacts of the proposed buildings which are approximately 18m to 19m high.

In addition, it is unclear how maintenance would occur to the proposed rooftop landscaping as multiple areas are inaccessible with no pedestrian access from either the fire stairs or the lift lobby.

2.10.5 Sunlight and Ventilation

The HDCP requirements for sunlight and ventilation are the same as the ADG requirements which is discussed in detail above in Section 2.1.3 under the ADG.

2.10.6 Housing Choice

As stated in the above table, the proposed development includes a mix of 1, 2 and 3 bedroom units including adaptable units complying with the prescriptive measures of the HDCP.

2.10.7 Vehicular Access and Parking

The proposal provides for a sufficient number of resident, visitor and accessible car parking spaces along with adequate bicycle racks and motorcycle parking in accordance with the HDCP.

Parking provision within the basement levels is in accordance with the minimum number of car spaces prescribed by the HDCP. The basement level includes storage areas for residents, bicycle/motor cycle parking areas, visitors and resident parking spaces and accessible car spaces.

2.10.8 Waste Management

The amended proposal provides two bin storage rooms adjacent to the driveway ramp which are integrated into the building. The proposal would require 17 x 660L garbage bins serviced twice per week and 17 x 660L recycling bins serviced weekly.

Council's waste assessment concludes that the proposed ground level bin collection/ holding areas have sufficient space for all the 660L bins and aisle space to access and manoeuvre them. The bin storage areas are located in a good location for servicing and both bin holding areas are acceptable. No objections are raised to the proposed garbage chute locations.

Despite the above, Council's waste assessment raises concerns with the following matters:

- The DCP requires there to be bulky waste storage area(s) of at least 8m² per 50 units or part thereof. This development therefore requires 32m² of bulky waste storage space, but only 22m² has been provided.
- The bulky waste storage area can only be accessed via steps by residents of Buildings AC which is not acceptable.
- Although it is acceptable to store the paper/cardboard bins in the bulky waste storage rooms, the space for these bins needs to be added to the bulky waste storage area not subtracted from it.
- The bin carting path from the bin collection room AC to the truck parked on the street is too narrow – it needs to be no less than 2m wide. The bin carting path from the bin collection room BDE has been replaced by a substation, leaving the bins to be carted on the driveway along the 1:8 section which is not acceptable as the maximum gradient for carting 660L bins is 1:30.
- The layouts of the garbage linear track systems have been changed to allow for the recycling chute. This has resulted in the offset of nearly every garbage chute to be excessive (greater than that recommended by manufacturers). Chutes that are not installed according to manufacturer's recommendations regularly block during the life of the building – the chute offset needs to be significantly reduced.
- The waste room for Building D does not work. There is insufficient width for the two bins under the chute plus clearance between the bins and between the bins and the walls. The floor to ceiling height is 2.5m so it is not possible to achieve a functional chute gradient with the required volume handling equipment.

- The Waste management plan includes 2 x 1100L bin linear tracks on each garbage chute to provide the required minimum of 3 days bin capacity under the chute, however as the bins would be 660L not 1100L, the number and size of the linear tracks is required to be amended requiring garbage chutes A1, A2, B1, B2 and recycling chute D to handle 2 x 660L bin linear tracks, while C, D and E garbage chutes would all need 3 x 660L bin linear tracks.

2.11 Section 7.11 Contributions Plans

Hornsby Shire Council Section 7.11 Contributions Plan 2020- 2030 applies to the development as it would result in an additional 171 residential dwellings in lieu of the existing residences. Accordingly, the requirement for a monetary Section 7.11 contribution would be recommended as a condition of consent, should the application be approved.

3. ENVIRONMENTAL IMPACTS

Section 4.15(1)(b) of the Act requires Council to consider *“the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality”*.

3.1 Natural Environment

3.1.1 Tree and Vegetation Preservation

An Arboricultural Impact Assessment (AIA) has been provided with the proposal prepared by Urban Forestry Australia addressing the development's impact on trees.

The arborist report included an assessment on 68 trees including 4 street trees, 10 trees on adjoining properties and 54 trees on the subject site.

The 54 trees on the subject site are identified as follows:

- 5 trees are locally indigenous species
- 11 trees are introduced native species,
- 25 trees are introduced exotic species.

Of the 68 trees assessed by the arborist, 56 trees are proposed to be removed to facilitate the development which includes all trees on site and one street tree in front of No. 24 Park Avenue identified as a Jacaranda tree as it is in very poor health from years of topping and lopping to clear power lines.

Council's tree assessment raised no objections to the proposal as there is sufficient space on the site to provide compensatory plantings of locally occurring species to maintain tree canopy and the trees to be removed are mostly exotics planted by former property owners.

If the Panel were minded to approve the development, conditions would be recommended for tree protection and replacement tree planting.

3.1.2 Stormwater Management

Stormwater generated from the proposed development would be connected to Council's drainage system on Park Avenue via a two separate below ground on-site detention (OSD) tanks located within the front setback to control the discharge from the site.

In addition, the HDGP recommends that for sites over 2000m², a MUSIC model should be submitted demonstrating an improvement in urban stormwater quality. In support of this, the application was

included a MUSIC model which demonstrated that the development would achieve a 90% reduction in the post development mean annual load of total gross pollutants, 80% reduction in the post development mean annual load of total suspended solids, 60% reduction in the post development mean annual load of total phosphorous and a 45% reduction in the post development mean annual load of total nitrogen.

Council's engineering assessment raised no objections to the proposed method of stormwater disposal.

Built Environment

3.1.3 Built Form

The built form and scale of the development is considered inappropriate for the site and inconsistent with the desired future character of the precinct.

3.1.4 Traffic

A traffic and parking assessment has been submitted with the proposal which estimates that the traffic generation of the proposed development to be 35 vehicle trips in the AM peak hour and 27 vehicle trips in the PM peak hour.

Although peak hour traffic generation may appear to be negligible when compared with the traffic volumes on the adjacent road network for this development alone, the cumulative traffic impacts of all sites earmarked for redevelopment in the precinct will be significant. The cumulative impact has been considered in the strategic transport model for the housing strategy. The required traffic management improvements have been included in the Section 7.11 Development Contributions Plan.

Council's engineering assessment of the traffic impacts of the development concludes that the proposed development is acceptable on traffic grounds.

3.2 Social Impacts

The location of the development is in close proximity to Waitara Railway Station and the Hornsby Town Centre allowing direct access to retail, business, recreational, health and educational facilities for future residents. Whilst the proposal would provide additional housing supply, approval of an application with numerous non-compliances to the HLEP and HDCP would not achieve a positive development outcome for future occupants or the desired character of the subject five storey precinct and in this respect, the proposal would not have a positive social impact.

3.3 Economic Impacts

The proposal if recommended for approval would have a minor positive impact on the local economy for a short 12-18 month period providing employment for construction and by generating an increase in demand for local services.

4. SITE SUITABILITY

Section 4.15(1)(c) of the Act requires Council to consider "*the suitability of the site for the development*".

The scale of the development would result in compromised built form including non-compliances to setbacks, building separation, number of storeys, heights, landscaping, deep soil areas and insufficient detail to assess flooding impacts and would not be consistent with the desired future character of the Balmoral Street, Waitara precinct.

The scale of the proposal is not compatible with site attributes and therefore, the site cannot be considered suitable for the proposed development.

5. PUBLIC PARTICIPATION



Section 4.15(1)(d) of the Act requires Council to consider “any submissions made in accordance with this Act”.

5.1 Community Consultation

The proposed development was notified from 14 March 2019 to 29 March 2019 and the amended proposal was notified from 15 January 2020 to 10 February 2020 in accordance with the requirements of the Hornsby Community Participation Plan. During the original notification period, Council received 5 submissions, no submissions were received to the amended proposal. The map below illustrates the location of those nearby landowners who made a submission that are in close proximity to the development site.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
3 SUBMISSIONS RECEIVED OUT OF MAP RANGE			

Five submissions objected to the original development, generally on the grounds that:

- Overdesign significantly greater than local resident's expectations and the internal aesthetic quality is less than reasonable,
- The proposal does not comply with the 17.5m height provision and is zoned for 5 storey not 6 storey units,
- Basement and building setbacks do not comply with HDCP prescribed,
- The building floor plate exceeds the HDCP 35m control and it does not have a minimum 4m x 4m recess to create the appearance of two separate pavilions as stated in the DCP.
- The buildings are only separated by 6m. The DCP required a 9m separation.
- The northern side of the building along the boundary of No. 34 Park Ave required an additional 3m set back from the boundary.
- The building design does not visually break-up the built form. The façade is repetitive as a solid form, they do not look lightweight. The façade is repetitive in materials.
- The building is fully rendered. There is not a mix of material in the main bulk of the building to break up the repetitive painted solid concrete massing and the proposed paint colours of the building are too bold and will be overwhelming for the neighbours.
- The 3D rendered images of the proposed development are misrepresentative of the actual design of the development and the surrounding area. The use of these trees in the image is a deliberate misrepresentation to hide the true overwhelming bulk of the building.
- The proposed development removes all existing trees on the site including trees that have been listed in the original DA for demolition to remain.
- The proposed development indicated gardens to the Level 5 in the 3D rendered images, however the plans do not indicate that there are roof gardens. This seems to be a deliberate misrepresentation of what will actually be built.
- Due to the minimal setback to the rear boundary there is less than 40% area that can accommodate any trees that will be 10-12m in height.
- The required deep soil setbacks to the boundaries, 8m front, 7m rear have not been provided.
- The deep soil diagram provided on page 15 of the design statement seems to be misleading. It is showing more deep soil area than what will actually be provided. The deep soil area in the between the 2 buildings is indicated to be paved making the deep soil area unusable.
- There is no indication of what type of heating, ventilation and air conditioning system that is to be provided for the building. It is critical to know if there will be exposed wall mounted units.
- With the proposed design, less than 70% of dwellings in the block will receive 2 hours of sunlight.
- Notification issues with yellow sign.

The above issues have been addressed in the report above with the exception of the following:

5.1.1 Yellow notification sign

Council agrees that evidence of erection of the yellow notification sign was not submitted to Council confirming that the sign was displayed during the notification period in accordance with the requirements of the Hornsby Community Participation Plan during both times the DA was notified and accordingly the DA is recommended for refusal.

6. THE PUBLIC INTEREST

Section 4.15(1)(e) of the Act requires Council to consider “*the public interest*”.

The public interest is an overarching requirement, which includes the consideration of the matters discussed in this report. Implicit to the public interest is the achievement of future built outcomes adequately responding to and respecting the future desired outcomes expressed in environmental planning instruments and development control plans.

The application does not satisfactorily address Council’s criteria and would not provide a development outcome that, on balance, would result in a positive impact for the community. The proposal would result in compromised setbacks and insufficient landscaping and a built form that is inconsistent with the desired future character of the precinct. Accordingly, it is considered that the approval of the proposed development would not be in the public interest.

CONCLUSION

The application seeks approval for the construction of a 6 storey residential flat building comprising 181 units with a basement car park.

The proposed development is unsatisfactory with respect to the *Hornsby Local Environmental Plan 2013*, design principles under *SEPP 65* and the objectives of the Apartment Design Guide. The proposed development does not comply with the height development standard and flood control of the *HLEP* and the prescriptive measures and desired outcomes of the HDCEP with respect to desired future character, number of storeys, setbacks, articulation, landscaping, built form and separation and communal open space.

The scale of the development is not suitable for the site attributes and the proposal would not result in a built form which contributes positively to the built environment and the desired future character of the Waitara five storey precinct.

Council received 5 submissions during the public notification period. The matters raised have been addressed in the body of the report.

Having regard to the circumstances of the case, refusal of the application is recommended.

The reasons for this decision are:

- The proposed development does not comply with the requirements of the relevant environmental planning instruments and the Hornsby Development Control Plan 2013.
- The proposed development creates unreasonable environmental impacts to adjoining development and the public domain with regard to visual bulk, overshadowing, amenity impacts.

Note: At the time of the completion of this planning report, no persons have made a *Political Donations Disclosure Statement* pursuant to Section 10.4 of the *Environmental Planning and Assessment Act 1979* in respect of the subject planning application.

SCHEDULE 1

1. The proposal does not meet objective 1.3(g) of the *Environmental Planning and Assessment Act 1979* to promote good design and amenity of the built environment.
2. The proposed development is unsatisfactory in respect to *Section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979* as the proposal is not consistent with the design quality principles contained within Schedule 1 of *State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development*, does not comply with Clause 4.3 height of building development standard and Clause 6.3 flood planning in the *Hornsby Local Environment Plan 2013*.
3. The Clause 4.6 variation request is not considered well founded and does not adequately demonstrate how the proposed development achieves the objectives of the Height of Building (HOB) development standard, specifically the Clause 4.6 does not demonstrate that compliance with the objectives of the standard are unreasonable or unnecessary and it does not provide sufficient environmental planning grounds to justify the requested variation to the HOB standard. Accordingly, the proposal to vary the HOB standard is not considered in the public interest.
4. In accordance with *Section 4.15 (1)(a)(ii) of the Environmental Planning Assessment Act 1979*, the application has not taken into consideration the Housekeeping Amendment Planning Proposal which currently being assessed by the Department of Planning, Industry and Environment (DPIE) to reduce the 17.5m height limit to 16.5m to maintain the desired fifth storey of Residential Flat Buildings but avoid mezzanines.
5. The amended development application was not accompanied by detailed sections of proposed facades in accordance with *Clause 50 and Part 1 of Schedule 1 of the Environmental Planning and Assessment Regulation 2000*.
6. The proposed development is unsatisfactory in respect to *Section 4.15(a)(i) of the Environmental Planning and Assessment Act 1979* as the proposal does not satisfy the requirements of the *Apartment Design Guide* as follows:
 - a) The communal open space area does not meet the minimum 25% site area and does not achieve 2 hours sunlight as per Objective 3D and 3D-1;
 - b) The proposal does not include a detailed shadow analysis for adjoining development at No.16-20 Park Avenue to the south as per Objective 3B-2;
 - c) It is unclear whether the proposal would achieve the desired 70% solar access as per Objective 4A-1 and 60% natural ventilation requirement as per Objective 4B-3;
 - d) Units A502 and B502 exceed the 8m maximum room depth for open plan layouts and do not achieve good amenity as per Objective 4D-2; and
 - e) The proposal does not provide the minimum 3.1m floor to floor height requirements as per Objective 4C-1.
 - f) Multiple units located on the ground floor including units E103, E104, A108, B108, C103, C104 and D105 do not meet Objective 4E-1 ADG requirement that private open space for apartments at ground level should have a minimum area of 15m².

7. The proposed development is unsatisfactory in respect to Section 4.15(a)(iii) of the *Environmental Planning and Assessment Act 1979* as the proposal does not meet the requirements of the Hornsby Development Control Plan 2013 as follows:
- a) The proposal does not satisfy Section 1C.1.2 *Stormwater Management* and Section 1C.3.2 *Flooding* as insufficient detail has been provided to demonstrate appropriate stormwater disposal from the site which would minimise flooding impacts to the subject site and surrounding properties as follows:
 - i) 1% (1 in 100 year Average Recurrence Interval) overland flow meeting the safety factors is not addressed.
 - ii) Replacement of the Council pipe within the drainage easement to a box culvert is not addressed which would connect into the existing upstream stormwater infrastructure (1.5m wide x 1.2m high box culvert) between No.33 and 35 Balmoral Street which was recently upgraded.
 - iii) Floor levels of the units adjoining the overland flow are not in accordance with Council requirements to be 500mm above freeboard.
 - iv) Flood impacts on adjoining properties as a result of the proposed stormwater works not addressed in flood report.
 - v) Unintended outcomes with respect to flooding and drainage impacts to neighbouring properties as a result of 300mm high retaining wall capturing drainage not addressed.
 - vi) Cross sections of overland flow and swale not submitted.
 - vii) Flood report modelling uses incorrect LIDAR levels and does not use current land survey levels prepared by a registered surveyor which is important as these revised levels would change the flood modelling.
 - b) The proposal is contrary to Section 3.4.1 *Desired Future Character* as the proposal would result in a residential flat building with inadequate setbacks from adjoining properties, a compromised landscape setting, be six storeys and over in height, shadow neighbouring properties and result in an inappropriate built form;
 - c) The proposal is contrary to Section 3.4.2 *Design Quality* as the proposal as the proposal does not achieve a built form appropriate for the site, would not achieve the design quality principals of *State Environmental Planning Policy No. 65 Design Quality of Residential Flat Development* and is not consistent with the objectives of the *Apartment Design Guide*;
 - d) The proposal is contrary to Section 3.4.4 *Height* as the proposal exceeds the maximum 17.5m height control and exceeds the maximum five storeys requirement;
 - e) The proposal is contrary to Section 3.4.5 *Setbacks* as the building does not satisfy the requirements for front, side and rear boundary setbacks, basement setbacks, fifth storey setback and mezzanine storey setback;
 - f) The proposal is contrary to Section 3.4.6 *Building Form and Separation* as follows:

- i) Floorplates exceed the maximum dimension of 35m and do not include a 4m x 4m recess to break up the buildings,
 - ii) Individual buildings are not separated by a minimum 9m as required by large sites where there is more than one building,
 - iii) Balconies do not appear as open, lightweight structures and do not minimise solid masonry walls,
 - iv) Facades do not incorporate corner wrap around balconies, are mostly rendered with the exception of building D and do not include a minimum 30% brick or natural material cladding,
 - v) Top storeys are dominant and are not visually recessive;
- g) The proposal is contrary to Section 3.4.7 *Landscaping* as the deep soil areas are inadequate as follows:
 - i) The rear boundary does not achieve the required 7m wide deep soil to achieve a landscape setting and canopy trees.
 - ii) Landscaped areas between 2 buildings should be designed to have a minimum total width of 8m and accommodate trees that reach a mature height of 6-7m and include a minimum deep soil area of 7m x 7m to allow for a canopy tree.
 - iii) The proposal does not achieve the required 8m landscape area between two buildings or a 7 x 7m deep soil area to accommodate a canopy trees to break up the visual mass between buildings.
 - iv) The landscaping is significantly compromised by the proposed stormwater swale and 300mm high retaining wall that wraps around the entire building which may significantly reduce the effectiveness of reducing flooding impacts and providing canopy trees.
- h) The proposal is contrary to Section 3.4.8 *Open Spaces* as the proposal does achieve the minimum 25% communal open space area and:
 - i) 50% direct sunlight is not provided to the principal usable part of the communal open space for 2 hours between 9am and 3pm on 21 June,
 - ii) The principal communal open space does not provide convenient access from the lobby with ground floor residents having to use the front lobby to enter the space and levels 1 to 5 having to use the fire escape,
 - iii) Ground level units do not achieve 15m² POS area,
- i) The proposal is contrary to Section 3.4.10 *Materials and Finishes* as follows:
 - i) Facade elements do not use a range of materials and finishes, with a minimum of 30% exposed brick or natural material cladding (such as sandstone or timber).
 - ii) Facade elements should not be fully rendered.
- j) The proposal is contrary to Section 3.4.11 *Sunlight and Ventilation* as follows:

- i) It is unclear whether the proposal would achieve the desired 70% unobstructed solar access for 2 or more hours to living room windows and 60% natural ventilation requirements to units;
 - ii) 50% direct sunlight is not provided to the principal usable part of the communal open space for 2 hours between 9am and 3pm on 21 June,
 - k) The proposal is contrary to Section 3.4.15 *Key Development Principles* as the proposal presents as six storeys and does not achieve an acceptable landscape setting in accordance with the *Key Development Principles Diagram* for the Balmoral Street, Waitara precinct.
8. The proposed development is unsatisfactory in respect to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act*, as the likely impacts of the development would be unsuitable with respect to the built environment as the proposal would not achieve a built form consistent with the desired future character of the *Balmoral Street, Waitara Precinct*.
9. The proposed development is unsatisfactory in respect to Section 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*, as the proposal would not have a positive social impact due to the extent of non-compliances with the *HLEP and ADG*.
10. The proposed development is unsatisfactory in respect to Section 4.15(1)(e) of the *Environmental Planning and Assessment Act 1979*, as approval of the application would not be in the public interest.

- END OF REASONS FOR REFUSAL -