

24<sup>th</sup> April 2020

The General Manager  
Hornsby Shier Council  
PO Box 37  
Hornsby NSW 2077

Attention: Mathew Miles – Assessment Officer

Dear Mr Miles,

**Development Application DA/65/2019  
Supplementary Statement of Environmental Effects  
Response to additional information request  
Proposed residential flat buildings  
22 - 32 Park Avenue, Waitara**

Reference is made to Council's additional information request of 30<sup>th</sup> March 2020 pertaining to the above application in which concerns raised by Council's Design Excellence Panel (the Panel) in relation to the amended scheme were articulated. We note Council's advice that the amended plans were evaluated having regard to the applicable controls as well as the comments and recommendations which were provided by the Panel as detailed in Council's earlier additional information requested 28 May 2019.

Having reviewed the comments provided by the Panel in relation to both the original and amended schemes we are of the opinion that there are significant inconsistencies in relation to the Panel's position particularly in relation to the distribution of built form elements across the site. It would appear that the development's exceedances of the building height standard has influenced the panels opinion as to the acceptability of the development as a whole with a majority of the issues raised either subjective in nature or open to interpretation having regard to the relevant objectives of the applicable DCP and Apartment Design Guide (ADG) controls and guidelines.

We therefore urge Council staff to assess the application on its merits and to ensure that primary consideration is given to how the amended proposal responds to the Panel's comments as detailed in Council's earlier additional information requested 28 May 2019. This would ensure consistency in the assessment and determination process.

The following section of this submission will detail the response to the various issues raised.

## **1. Introduction**

Response: The commentary confirms that the amended plans have been considered by the Panel and this is duly noted.

## **2. Character of the locality**

Response: We refer to the Panel's comments as detailed within Council's additional information requested 28 May 2009 pertaining to the original scheme. These included an opinion in relation to the design and massing of the development including the spatial distribution of building forms on the site. Such commentary included the following:

- *The maximum length of buildings should come back to numeric expectations clearly stated by the HDCP. The Panel were concerned with a design that provided for a 50m ground floor corridor, and access to units that is poorly designed. Alignment with the HDCP floor plate controls would also enable a better internal courtyard at the ground level, with scope for more than 12m separation to expand the communal open space area.*

Response: We note that, consistent with these previous comments, the primary focus of both the Panel and Council is on strict compliance with the numerical provisions of the DCP both in terms of building length/ depth and setbacks. In this regard, we note that clause 4.15(3A)(b) of the Act requires Council to be flexible in applying DCP provisions and allow reasonable alternative solutions that achieve the objects of controls/ standards for dealing with that aspect of the development.

Having regard to these previous comments, the form and massing of the amended scheme has been broken into 5 separate residential flat buildings, 3 of which present to Park Avenue. The amended development also incorporates a large internalised courtyard with surrounding built form elements satisfying the minimum 12 metre building separation provisions contained within the ADG. Connectivity to the individual apartment buildings has also been enhanced with wayfinding facilitated through the provision of clearly identifiable building entrances and pathways from the Park Avenue frontage.

The issues raised previously by the Panel have been comprehensively addressed by the amended scheme.

- *The double U-shape creates floor plates that are generally too large, too regular and repetitious. The Key principles diagram in the Hornsby DCP indicates there was substantial canopy down the back boundaries, requiring an irregular building form with articulation to retain the desired character for this area. The Applicant agreed that the proposed floor plate is not the best outcome for the site.*

Response: As previously indicated, the double U-shaped floor plates have been replaced by 5 separate building pavilions, 3 of which present to Park Avenue. The building pavilions are well modulated, and maintain appropriate side and rear boundary setbacks, to provide for deep soil landscape opportunity around the entire perimeter of the development including along the length of the rear boundary.

The centralised courtyard extends through the development site in a north-south direction with such courtyard generally aligning with the internalised courtyard established by the adjoining property to the south. All building forms are appropriately articulated and modulated with recessive upper level floor plates to provide for a visually interesting building form which maintains the rhythm of built form elements in the street consistent with both the existing established and desired future character for the area.

The issues raised previously by the Panel have been comprehensively addressed by the amended scheme.

- *To avoid the dominant street wall appearance, 25 and 35m footprints would help achieve the desired character, and may result in three separate buildings at the street frontage, and consideration for integration of existing trees at the rear. This more appropriate design agenda would flow on to other areas of the building, allowing communal open space to be better distributed, including on upper storeys subject to privacy and active surveillance, and better alignment with adjoining development.*

Response: Consistent with the comments expressed by the Panel in relation to the original scheme, the building footprints have been amended to provide 3 separate buildings at the street frontage. This design approach maintains the rhythm of built form elements in the street consistent with the spatial relationship established by the adjoining property to the south and residential flat development generally within the site's visual catchment. As also suggested by the panel, the amended scheme incorporates a large centrally located communal open space which generally aligns with that established by the adjoining residential flat development to the south. This central courtyard area receives good levels of solar access and active surveillance throughout the day

The issues raised previously by the Panel have been comprehensively addressed by the amended scheme.

- *Long narrow apartment layouts are not ideal, and the 5th level apartments should be reviewed. The mezzanines need to be redesigned to be an intermediate floor and open to the level below. Internal width of some apartments also appear to be inadequate based on ADG guidelines.*

Response: The design and arrangement of the apartments has been amended with all apartments satisfy the ADG guidelines in related to internal geometry and amenity. The issues raised previously by the Panel have been comprehensively addressed by the amended scheme.

In terms of the broader built form character issues raised by the Panel, we remain of the opinion that the building heights proposed are consistent with those established by all surrounding residential apartment development and to that extent we are of the opinion that the 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. The development is compatible in its context and is able to coexist in harmony.

The density proposed is entirely appropriate given the zoning of the land, the sites immediate proximity to Hornsby Town Centre and Waitara Train Station, the ability to provide appropriately for car parking and the consistency with the Subregional Strategy and Hornsby Shire Housing Strategy (2010) as they relate to the appropriate concentration of residential density. It is considered that the public interest is best served in providing certainty in the planning process through encouraging development of good design that satisfies the outcomes and controls contained within the adopted legislative framework.

### **3. Built form and facades**

Response: As previously indicated, the double U-shaped floor plates have been replaced by 5 separate building pavilions 3 of which present to Park Avenue. The building pavilions are appropriately modulated, and maintain appropriate side and rear boundary setbacks, to provide for deep soil landscape opportunity around the entire perimeter of the development including along the entire length of the rear boundary.

The centralised courtyard extends through the development site in a north-south direction with such courtyard generally aligning with the internalised courtyard established by the adjoining property to the south. All building forms are appropriately articulated and modulated with recessive upper level floor plates to provide for a visually interesting building form which maintains the rhythm of built form elements in the street consistent with both the existing established and desired future character for the area.

The building façades are visually interesting with recessed balconies and projecting shade elements providing areas of light and shade with variations in building colours appropriately differentiating the building forms whilst maintaining a cohesive built form outcome as a whole. We do not agree with the Panels comments for the reasons outlined.

#### **4. Common areas**

Response: As previously recommended by the Panel, the amended scheme incorporates a large centrally located communal open space which generally aligns with that established by the adjoining residential flat development to the south. This central courtyard area receives good levels of solar access and active surveillance throughout the day. Connectivity to the individual apartment buildings has also been enhanced with wayfinding facilitated through the provision of clearly identifiable building entrances and pathways from the Park Avenue frontage. Accordingly, we do not agree with the Panels comments for the reasons outlined.

#### **5. Residential amenity**

Response: The amended proposal affords appropriate levels of amenity with strict compliance achieved in relation to the ADG requirements for solar access and natural cross ventilation. The proposal will not give rise to any unacceptable or unanticipated shadowing impact to apartments within the southern adjoining residential flat development. In this regard, we rely on the SEPP 65/ADG Design Statement prepared by the project Architect and the Natural Ventilation and Solar Access Assessments prepared by SLR Consulting. Accordingly, we do not agree with the Panels comments for the reasons outlined.

#### **6. Sustainability**

Response: In terms of sustainability, the proposal satisfies the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

## **7. Clause 4.6 variation**

Response: Whilst we accept that the development exceeds the applicable building height standard and that a Planning Proposal has been prepared to reduce the building height applicable to development on the land, the subject application must be considered against the current building height standard and having regard to the consistency of the building height proposed, including number of storeys, with that established by approved and constructed residential flat development surrounding the site.

The clause 4.6 variation request demonstrates that the proposal achieves the zone objectives and the objectives of the height of buildings standard and accordingly pursuant to the first test in *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48] strict compliance is both unreasonable and unnecessary. Further, the building height breach can be directly attributed to the need to maintain minimum floor levels to address flooding being the same circumstances accepted by Council in its approval of the building height breach associated with the adjoining 6 storey residential flat building to the south.

## **8. Waste**

Response: we are of the opinion that the issues raised in relation to waste management can be appropriately dealt with by way of minor amendments or the imposition of appropriately worded conditions of consent.

We have formed the considered opinion that the amended scheme comprehensively addresses the concerns originally expressed by the Panel and appropriately responds to the built form characteristics of development located within the sites visual catchment and the objectives of the relevant DCP and ADG provisions.

Having given due consideration to the matters pursuant to Section 4.15(1) of the Environmental Planning and assessment Act, 1979 as amended, it is considered that there are no matters which would prevent Council from granting consent to this proposal in this instance.

Given the significant time that this application has been with Council we request that the application be determined without further delay. Please not hesitate to contact me to discuss any aspect of this submission.

**Yours faithfully**

Boston Blyth Fleming Town Planners

A handwritten signature in black ink, appearing to read 'Greg Boston', with a stylized flourish at the end.

Greg Boston

B Urb & Reg Plan (UNE) MPIA

B Env Hlth (UWS)

**Director**