

SYDNEY NORTH PLANNING PANEL – SUPPLEMENTARY REPORT

Panel Reference	PPS-2019SNH016
DA Number	DA/65/2019
LGA	Hornsby Shire Council
Amended Development	Amended proposal for construction of 5 x 5 storey residential flat buildings with a mezzanine level comprising 168 units with basement car parking for 198 vehicles and consolidation of 9 allotments into 1 lot
Street Address	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	0 to amended DA
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 No. 55 Remediation of Land • State Environmental Planning Policy No. 65 Design Quality of Residential Apartment Development • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (State and Regional Development) 2011 • State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 • Sydney Regional Environmental Plan No. 20 Hawkesbury-Nepean River (No. 2 - 1997) • 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	<ol style="list-style-type: none"> 1. Proposed Architectural Plans 2. Proposed Landscape Plans 3. Clause 4.6 Written Request - Height of Buildings

report for the panel's consideration	4. Design Excellence Panel memo 5. Amended Statement of Environmental Effects
Report prepared by	Matthew Miles - Senior Town Planner
Report date	5 May 2021

Summary of s4.15 matters

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

Legislative clauses requiring consent authority satisfaction

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

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

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

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

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

Conditions

Have draft conditions been provided to the applicant for comment? No

Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

SUPPLEMENTARY ASSESSMENT REPORT AND RECOMMENDATION

EXECUTIVE SUMMARY

- The amended application proposes construction of 5 x 5 storey residential flat buildings with a mezzanine level comprising 168 units with basement car parking for 198 vehicles and consolidation of 9 allotments into 1 lot.
- The amended 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 contravene the height of buildings development standard. The submission is not well founded and accordingly not supported.
- The amended proposal does not comply with numerous Hornsby Development Control Plan (HDCP) prescriptive measures and the Apartment Design Guide (ADG) objectives.
- The amended proposal was presented to Hornsby Council's Design Excellence Panel (DEP) on 12 April 2021 with the applicant and their experts in attendance. The DEP noted that whilst the amended scheme has resulted in a range of changes including a reduction in yield from 181 to 168 units, the proposal fails to satisfy the SNPP recommendations for deferral nor meet design excellence provisions or design quality principles of *State Environmental Planning Policy No. 65* and accordingly is not supported by DEP.
- No submissions were received in respect of the amended application.
- It is recommended that the application be refused.

RECOMMENDATION

THAT Development Application No. DA/65/2019 for construction of 5 x 5 storey residential flat buildings with a mezzanine level comprising 168 units with basement car parking for 198 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

On 15 October 2020, the Development Application was reported to the Sydney North Planning Panel (the Panel) with a recommendation for refusal. At that meeting, the Panel resolved to defer the application for the following reasons:

The current proposal was further considered by Council's Design Excellence Panel and was also comprehensively assessed by Council. As a result, Council has recommended extensive reasons for refusal listed in Schedule 1 of Council's Assessment Report.

With regard to the Clause 4.6 Variation to Height request, the Panel concurs with Council that the request is inadequate and accordingly the Panel could not approve the proposal in its current form.

The Panel considered refusing the application. However, based upon the Panel's review of the plans, documentation and Applicant and Council responses at the briefing on 15 October 2020, the Panel was of the view that with substantial design changes the proposal may be acceptable.

The Panel requests the Applicant and the Council meet, as a matter of urgency, to discuss all reasons for refusal listed in the Assessment Report. The Panel appreciates that resolution of these matters will require substantial changes to the building design and layout but believes such an outcome is achievable and should be pursued as soon as possible.

In addition to addressing Council's reasons for refusal, the amended design should ensure the proposal:

- 1. Complies with the height standard;*
- 2. Very substantially increases the amount and configuration of the communal open spaces to provide opportunities for a range of recreational activities with good solar access, landscaping and demonstrated accessibility for residents;*
- 3. Resolves the flood / storm water issue;*
- 4. Clearly identifies all areas of private open space;*
- 5. Meets the urban design standards of both the Apartment Design Guide and Hornsby Development Control Plan 2013, both quantitatively and qualitatively, with particular reference to setbacks, solar access, articulation (façade presentation), privacy (separation distances), landscaping and deep soil areas for trees; and*
- 6. Amends the design to have regard to the future character of the Precinct and the development's street presentation should respect its highly visible presence when viewed from the public domain and adjacent park.*

The Panel resolved to defer the determination of the matter to allow the Applicant to urgently resolve the above concerns and submit amended plans and information.

Once Council receives the amended plans and information, a Supplementary Assessment Report will be prepared and the Panel will reconsider the proposal at the earliest possible opportunity.

The decision to defer was unanimous.

On 29 March 2021, the Applicant submitted amended plans and supporting material seeking to respond to the Panel recommendations for deferral with the key amendments being as follows:

- Reduction in number of units from 181 to 168 units,
- Reconfiguration of sixth storey to a mezzanine level,
- Amended building setback including relocated driveway ramps to provide a 6m minimum building setback (previously 4.5m),
- Increased internal building separation to 9m (previously 6m) between buildings C and D and buildings D and E fronting Park Avenue and 6m to 7.5m building separation between buildings A and B at the rear (previously 6m),
- Provision of building indentations to provide articulation as follows:
 - 4m x 4m indentations provided for buildings A and B along the rear eastern elevation,
 - 2m x 3m indentations provided for buildings A and B internally at the western elevation,

- Ground floor plan amended to include provision for residents to access communal areas from lobby and foyer,
- Stormwater and flooding amendments to meet Council's engineering requirements and deletion of swale around site,
- Reduced car parking due to reduction in unit numbers and reconfiguration of basement from 219 spaces to 198 spaces,
- Building length reduced as follows
 - Building A at rear reduced in length from 44m to 39-40m,
 - Building B at rear reduced in length from 44m to 43-44m,
 - Building D at front reduced in length from 40m to 33m,
- Landscaping amended due to reduced building footprint,
- Provision of face brick to the materials selection,
- Provision of linked pathways and seating throughout the site to increase communal open space,
- Ground floor 15m² private open space provided.

The response to each of the deferment items is discussed in the report.

This report is a supplementary report and is to be read in conjunction with the Planning Assessment report in relation to DA/65/2019 which was considered by the Panel at its meeting held on 15 October 2020.

ASSESSMENT

1. RESPONSE TO REASONS FOR DEFERRAL

1.1 Decision of Sydney North Planning Panel

On 15 October 2020, the Development Application was reported to the Panel with a recommendation for refusal. At that meeting, the Panel resolved to defer determination of the DA and required the Applicant to submit amended plans. Each of the reasons for deferral are addressed in detail below.

1.2 Height of Building Compliance

1. *Complies with the height standard*

The amended proposal does not comply with the height standard for all five buildings.

The amended plans have slightly reduced the building height from each of the five buildings by approximately 100mm-200mm, however each building is still over the maximum permissible 17.5m height of building (HOB) development standard for the subject site.

It is noted that Clause 1.8A Savings provision relating to development applications of the *Hornsby Local Environmental Plan 2013 (HLEP)* applies to the proposal and for the purposes of assessment the permissible height of building for this proposal is 17.5m instead of the currently legislated 16.5m height limit for the site as the application was made before the commencement of the amendment to the *HLEP* on 4 December 2020.

The amended building heights are as follows:

	Original DA	First Amendment	Current Amendment
Height	Building A = 17.5m Building B = 17.5m	Building A = 18.16m Building B = 17.9m Building C = 18.58m Building D = 18.8m Building E = 18.67m	Building A= 17.91m Building B = 17.66m Building C = 18.45m Building D = 18.59m Building E = 18.49m

An amended written request to contravene 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 development is consistent with the standard and zone objectives, even with the proposed variation (refer to Section 7 of Appendix 3);*
- *There are no additional significant adverse impacts arising from the proposed non-compliance; and*
- *Important planning goals are achieved by the approval of the variation.*

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.'

A summary of the applicant's request pursuant to Clause 4.6(3)(b) (environmental planning grounds) to contravene the HOB development standard is summarised below:

- The height breach, in part, can be attributed to the requirement to site the development above the Flood Planning Level. The following table details the extent of the variation when excluding flooding:

	FPL (RL)	Plus 17.5m (RL)	Proposed RL	Height over FPL
Building A & B	172	189.5	189.95	450mm
Building C	171.1	188.6	189.05	250mm
Building D	171.7	189.2	189.45	450mm
Building E	172.2	189.7	190.15	450mm

Therefore, when excluding flooding the proposed development will be 250-450mm above the maximum height level. This variation occurs predominately at the western end of each building given the cross fall of the site. In most instances, the extent of the height variation at the eastern end of the building is negligible or compliant. Therefore, it is a combination of the flooding and topography that result in a variation to the height of buildings development standard. Both these factors are site specific factors that are not contemplated by Clause 4.3 of HLEP 2013.

- The greatest extent of the variation occurs on the western elevations of Buildings C, D & E. The non-compliant elements are setback 12.2-13.75m from the front (western) boundary. Given the height and scale of the base elements, the top elements will appear as visually recessive elements that are not visually jarring to the casual observer on Park Avenue when viewed in context of surrounding properties.
- Despite the height variation, the proposed development will step with the change in topography and transition to the currently underdeveloped site at Nos. 34-28 Park Avenue. Insistence on compliance with the height control would put the development out of step with the gradual fall of building heights with the topography.
- The height of the proposed development, including the variation, will be entirely compatible with the height and character of surrounding development as Nos. 16-20 Park Avenue and 35-39 Balmoral Street do not comply with Clause 4.3 of HLEP 2013. Whilst these variations in themselves are not sufficient reasons to vary the development standard, it is Council's actions in approving height variations in the Balmoral Street, Waitara Precinct that sets a different context to one that is governed by the permissible planning controls. Whilst it cannot be said that the height standard has been thrown away, the Balmoral Street, Waitara precinct does not demonstrate a high level of compliance with the height of buildings development standard and therefore height variations can be considered in the context of existing and approved buildings.
- When considering the development in the context of the surrounding development, including existing non-compliant buildings, the proposal development, even with the height variation, will sit in harmony with surrounding development and is entirely compatible with the scale and character of surrounding development, noting that compatible does not mean sameness (Project Venture Developments Pty Ltd v Pittwater Council [2005J NSWLEC 191).
- It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:
 - The extent of the additional height creates no adverse additional overshadowing impacts to adjoining properties when compared to a compliant building envelope.
 - The height breach does not result in any adverse additional privacy impacts
 - The height breach will not result in any significant view loss
- The height breach facilitates an arrangement of floor space on the site in a manner that is effective in providing high levels of amenity to occupants of the development with the provision of mezzanine style additions. Furthermore, insistence on compliance with the height development standard would reduce the height of Buildings C, D & E which would not facilitate the gradual stepping of buildings with the topography.
- The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development, particularly the flood levels, the topography and character of the precinct. Insistence on compliance with the height control will result in the removal of the mezzanine style level which is a disproportionate response given the insignificant impacts of the proposal. The additional height does not significantly impact the amenity of the neighbouring properties (when compared to a compliant development) and has been designed in such a way to ensure the additional height is not visually jarring from the public domain.

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

- The development exceeds the height development standard prescribed under Clause 4.3 of *HLEP* by 6.2% at its highest point. Council is not satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3), that compliance with the height development standard is unreasonable or unnecessary having regard to the specific proposal and that there are sufficient environmental planning grounds to justify contravening Clause 4.3 and as such the proposal is not considered to be in the public interest.
- The mezzanine addition that results in the height exceedance fails to demonstrate design excellence in accordance with *State Environmental Planning Policy No. 65* design quality principles and the Apartment Design Guide and in its current form adds to the bulk of the building.
- The proposed development in its current form is not in keeping with the future desired character of the area and is not considered to be in the public interest and adding additional bulk above the height standard in mezzanine form that has adverse impacts on the character of the five-storey precinct is not considered necessary or reasonable.
- The Request does not demonstrate how the proposed development achieves the objectives of the HOB development standard as the addition of a mezzanine was not envisaged by the 17.5m height limit of the *HLEP* or DCP controls is considered to exceed the development potential of the site which is constrained by the flooding constraint and that the flooding constraint was a known constraint on the site before purchasing the subject site.
- The Request argues that the flooding constraint and topography dictates the floor levels for the site, however, the request has failed to acknowledge that the development potential of this site should be based on the existing flooding site constraints and infrastructure capacity of the subject site which was a known constraint upon purchase of the subject property.
- The 4.6 argues that the height exceedance would be within the existing character of the precinct with two adjoining buildings exceeding the height limit and argues that future character can be set by the existing recently approved and proposed buildings. As stated in the previous assessment report, the height variation exceeds the development potential of the site as the building does not comply with several setback and floor plate controls that dictate the development potential of a site and character of the five-storey precinct in lieu of no floor space ratio standard. It is also highlighted that the rest of the five-storey precinct in Park Avenue and Balmoral Avenue comply with the height standard and the adjoining buildings do not set the character for the entire precinct.
- Irrespective of the flooding constraint on the site, the proposal would exceed the HOB standard as a result of the mezzanine level.

Accordingly, the Clause 4.6 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 contravention to the HOB standard. Accordingly, the proposal to vary the HOB standard is not considered in the public interest.

1.3 Communal Open Space

2. *Very substantially increases the amount and configuration of the communal open spaces to provide opportunities for a range of recreational activities with good solar access, landscaping and demonstrated accessibility for residents*

The original SNPP report did not include side and rear landscaped areas in the calculations for Communal Open Space (COS) as these areas were considered unusable and inaccessible as they were burdened by a stormwater swale and retaining wall and would not promote social interaction or passive uses. The amended proposal has redesigned the side and rear boundary areas by deleting the stormwater swale and retaining wall and incorporating interlinked pathways around the majority of the periphery of the site with occasional seating areas as well as through buildings.

In response to the SNPP concerns regarding the communal open space area, the applicant has provided the following justification in support of the revised layout:

'The revised architectural plans (Issue C) and revised Landscape Plan (Issue J) detail that the principal area of COS at the centre of the site will contain seating, BBQ area and a variety of spaces that will receive solar access for more than 2 hours in midwinter. This is considered to be entirely appropriate given the principal COS areas of Nos. 16-20 Park Avenue and 35-39 Balmoral Street are located between buildings. In this instance, the location of the principal area of COS in the centre of the site will provide the following benefits for the occupants:

- *Allow the user the choice to follow the sun or shade, depending on the season and temperature, to maximise the amenity of the occupants;*
- *Provide linkages around the site between active and passive COS areas;*
- *Allow for casual surveillance of the principal area of COS from multiple balconies and windows on the upper levels; and*
- *Allow direct access from the lobbies of Buildings A-E to the principal COS at the centre of the site which was not previously provided.*

Therefore, the revised architectural plans (Issue C) will not only improve the quantity of the COS but also improve the quality and accessibility to the COS which will satisfy the only objective of Part 3D-1 of the ADG to provide "an adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.'

Council's Design Excellence Panel was not supportive of the amended plans attempt to substantially increase the amount and configuration of the communal open space area and raised the following concerns:

- *'Dimensions and configuration of proposed COS has adverse impacts in relation to amenity and the scale of proposed buildings:*
 - *Open spaces comprise a central area which has an effective width of less than 10m (nett of flanking private open spaces), and principal portions of that open space would be extensively overshadowed by the proposed building forms,*
 - *The central open space has narrow extensions which are hemmed between sheer vertical walls of four to six storeys, and consequently are unlikely to contribute to residents' recreation or social interaction,*

- *The rear setback, although technically accessible as a communal open space, is a narrow corridor which presents no opportunities for recreation 'destinations', and consequently also is unlikely to contribute to residents' recreation or social interaction.*
- *Being regarded as COS may exclude it from the Deep soil area calculation.*
- *The COS of this project is highly constrained by the built form and lacks suitable program, access and amenity for a development of this scale. Much of the ground plane is characterised as COS when in fact it is little more than circulation, compounded by the fact that these in-between spaces are very long (20+m).*
- *The argument was made by the proponent that the COS was acceptable as it relied on neighbouring parks and public spaces to provide active space to complement those of the development. As the site is not constrained in size, is not in a densely urbanised area, and is not restricted by zoning constraints, this proposition is not supported. If this development and future developments were to rely on public assets to provide a proportion of their COS these public spaces would quickly be overwhelmed.*
- *Universal access is not provided within the COS, with stairs, decks, stepping stones and lawn acting as obstacles preventing clear connections from space to space. Further to this, there is no direct path from north to south through the centre of the development. Residents need to cross the lawn (which may be wet and non-accessible to those less able), need to exit to the street and re-enter the site, or need to walk around the eastern edge of buildings A+B.'*
- *Optimum mid-winter sunlight to COS areas is predominantly to either front or side setbacks that would provide little benefit based on the landscape amenity. and the central courtyard receives moderate benefit to just over 50% of the available space.*
- *Thoroughfares where seating is shown along paths to rear buildings A and B receive virtually no sunlight for most of the day in mid-winter.*

Council agrees with the Design Excellence concerns and whilst the COS area might technically meet the minimum 25% area of the ADG, minimal attempt has been made to significantly increase the amount and configuration of communal space' in accordance with the Panel deferral recommendation.

1.4 Stormwater and Flooding

3. *Resolves the flood/stormwater issue*

The amended application is accompanied by revised stormwater drawings prepared by SGC engineering and an amended flood report prepared by GRC Hydro to support the application. Council's engineering assessment raises no objections to the proposal on stormwater or flooding grounds.

1.5 Private Open Space

4. *Clearly identifies all areas of private open space*

The amended application has clearly delineated a 15m² private open space area for each unit on the ground floor level.

1.6 Compliance with Apartment Design Guide and Hornsby Development Control Plan

5. *Meets the urban design standards of both the Apartment Design Guide and Hornsby Development Control Plan 2013, both quantitatively and qualitatively, with particular reference*

to setbacks, solar access, articulation (façade presentation), privacy (separation distances), landscaping and deep soil areas for trees

The following section discusses the amended proposal's non-compliance with the ADG and HDCP and a table is provided at the end of the discussion with the key non-compliances noted.

Rear deep soil setback

This remains unchanged, generous setbacks for quality deep soil zones are considered critical to the establishment of generous tree canopies. The deep soil zone is already compromised by retaining walls (some up to 1.5m high, Private open space courtyard walls, pathway along the periphery of the development to achieve communal open space.

Rear building setback

This remains unchanged, the building including balconies are setback at 6m with sections of the building extending to 8m and 10m to articulate the building.

The applicant contends the setback meets the ADG separation requirements and is a deliberate outcome to redistribute floor space from the centre of the site where the principal area of communal open space is located and that the rear setback is entirely compatible with surrounding properties and provides a better planning outcome which will enhance and protect the amenity of the occupants in terms of the location of the COS.

Council and the Design Excellence Panel respectfully disagrees with the justification provided as the apartment buildings at the rear could be redesigned to comply, that the rear setback is not compatible with the adjoining building to the south at No.16-20 Park Avenue which has a rear setback at 10m, reduced to 8m for 1/3 of the building length and balconies extending to 7m and that providing a 12m internal building separation for the communal open space area is not considered sufficient reasoning to allow a rear setback non-compliance noting the significant scale and number of units proposed warrants a useable high quality, attractive and inviting communal open space.

Front building setback

The amended design still incorporates architectural splays and portals that reduce the front setback to 7m and on the ground level POS areas encroach to 5m to 6m which reduces the ability to provide sufficient landscaping. In addition, Building D located in the middle of the site projects to 8m for 48% of the building length which further adds to the bulk of the building.

Council's Design Excellence Panel stated that the design rationale for the thick splays on the western facades remains unclear and there is no evidence to suggest that these elements would work against low angles of late afternoon sun in summer.

Maximum building footprint exceedance

The rear buildings A and B exceed the 35m maximum floorplate length by up to 9.5m, accentuating the unrelieved mass and scale of built form elements that provide backdrops to Park Avenue and neighbouring developments to the east along Balmoral Street.

These buildings have extensive glazed elements towards the east which does not moderate the buildings scale. Separations of 5m to 6m between buildings A and C, B and E, rather than 9m further accentuate the mass and scale, and compromise amenity of flanking apartments together with the contained open spaces as addressed below and result in long internal corridors with marginal levels of natural light and a reduced amenity to the COS between these buildings. The DEP recommended

increasing the building separation of 9m and the corners of the buildings stepped back to augment COS for the internal courtyard and minimise perception of façade length allowing more generous open space.

Top storey setback non-compliance

Buildings C, D and E incorporate top storey elements that do not step in by 3m from the ground floor which accentuates the mass and scale of the 5 storey and mezzanine levels. Further it is unclear how the Level 5 rooftop landscape planters provided to limit the massing of the 5 storey + mezzanine level will be maintained and serviced, and who takes ownership of these upon completion given it is unclear how these areas can be easily accessed without entry into private residences.

Building height non-compliance

Council's Design Excellence Panel raised the following concerns regarding the breach in building height:

Building heights exceed the permissible maximum of 17.5m by between 750mm and 1.35m for the proposed street-front buildings D, C and E, and by 450mm for the proposed rear buildings A and B, and there does not appear to be sufficient justification for the substantial breach.

Notwithstanding the case put under the CI 4.6 variation for additional height due to site topography and potential flooding issues, the building height breach diagram clearly shows the considerable extent and unvaried roof outline compared to surrounding buildings.

Housing choice non-compliance

The proposal does not incorporate a minimum 10% of 3-bedroom units to allow for demographic diversity, no justification has been provided on why this cannot be provided.

In addition, Council's Design Excellence Panel raised the following concerns regarding housing choice:

While there is a good range of unit sizes, the provision of 2- and 3-bedroom units that could suit families might not be effective if there is insufficient provision for kids of various ages to play in supervised or unsupervised areas within the COS without creating potential amenity impacts for other residents.

Privacy/Separation

Council's Design Excellence Panel raised the following concerns regarding privacy and security:

The proximity of the COS/circulation paths to habitable rooms raises serious privacy concerns. These are often directly adjacent to pas offering no buffer or privacy to residents.

Some units in Building D have access to bedrooms via the kitchen, and in some cases, there are bedrooms opening directly off living areas which is not an acceptable privacy arrangement for family accommodation (also apparent in other buildings).

Units at ground level facing Park Avenue will rely on landscape treatment for privacy, but Level 1 units with glazed balustrades will be exposed to the street and oval beyond. It would be recommended that these balconies have obscure glazing or solid upstands.

Building form and separation

The design excellence panels concern regarding building form and separation can be summarised as follows:

- *Separations of 5m to 6m between buildings A and C, Band E, rather than 9m further accentuate mass and scale.*
- *Blank walls in spaces that are 6m wide x 20m+ long x 6 stories (H) may satisfy ADG guidelines, but this solution compromises the amenity of apartments that front onto these spaces (by necessitating blank walls and/or opaque glazing) as well as compromising the useability and amenity of the ground level spaces themselves.*
- *Long internal corridors with marginal levels of natural light, especially to Buildings A and B, represent a missed design opportunity.*
- *Building separation should be widened to comply with the DCP 9m minimum and the corners of the buildings stepped back to augment COS provision for the internal courtyard. This would help minimise perception of façade length and enable more generous open space.*

Apartment Design Guide

The following table sets out the proposal's compliance with the ADG:

Apartment Design Guide				
Control	Amendments	Deferred Proposal	Requirement	Amended plans compliance
Deep Soil Zone (3E)	1493m ² approx. or 21% (POS, paths, structures excluded from calcs)	33%	7% of site area	Yes
Communal Open Space (3D)	28%	20% of site provided as Communal Open Space (COS)	25% of site area	Yes
Communal Open Space – Sunlight Access (3D-1)	50% to receive 2 hours sunlight access	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)	<p>Building separation distances are in accordance with the ADG</p> <p>Balconies deleted from sides for 6m building separation to neighbours</p>	<p>Internal building separation distances are in accordance with the ADG.</p> <p>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.</p> <p>All non-compliant balconies are setback at 4.5m</p>	<p>Up to 4 storeys 6m</p> <p>Up to 5-8 storeys 9m</p>	Yes
Solar Access (Living rooms and private open space areas) (4A-1)	73%.	<p>Solar Access Assessment provided by applicant outlines 74% of all units would receive at least 2 hours sunlight access with.</p> <p>Each individual building would be compliant with the numerical controls.</p>	2 hours for 70% of units	Yes
No Solar Access allowable for units (4A-1)	7% of All Units receiving no sunlight access. No building would be more than the 15% numerical control	5.5% of All Units receiving no sunlight access. No building would be more than the 15% numerical control	15% of units in any building (max)	Yes
Natural Cross Ventilation (4B-3)	69%	Cross Ventilation provided by applicant contends that 60% of Units achieve adequate cross ventilation	60%	Yes

Minimum Dwelling Size (4D-1)	1 br – 50m ² min 2 br – 70m ² min 3 br – 95m ² min	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 + 5m ² for additional bathrooms +12m ² for 4 th and additional bedrooms	N/A Yes Yes Yes
Habitable room depth (4D-2)	Units comply	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)	Yes
Minimum Ceiling Height (4C-1)	Compliant	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 Ground floor meet 15m ² requirement	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 Yes
Maximum Number of Units on a Single Level (4F-1)	Complies	Complies	8 units off a circulation core	Yes
Total Storage Area (4G-1)	Complies	Complies	Studio 4m ³ (Min) 1 bed - 6m ³ (Min) 2 bed - 8m ³ (Min)	Yes Yes Yes Yes

			3 bed - 10m ³ (Min) Minimum of 50% accessible from within apartments	
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Hornsby Development Control Plan 2013 (HDCP)

The below table summarises the key development statistics of the original and amended proposals with respect to compliance with the *Hornsby Development Control Plan 2013 (HDCP)*.

Hornsby Development Control Plan 2013				
Control	Amendments	Deferred Proposal	Requirement	Amended plans compliance
Site Width	Unchanged	103m	30m	Yes
Height	5 storeys + mezzanine 17.9m – 18.42m	6 storeys 18.16m - 18.875m	5 storeys 17.5m	Yes No
Maximum Floorplate Dimension	39m-40m building A (N/S) 43m-44m building B (N/S) 33m building D (N/S) Unchanged buildings C + E	44.4m buildings A(N/S) 44.4m building B (N/S) 40m building D (N/S) 27.7m building C + E	35m 35m 35m 35m	No No Yes Yes
Building Indentation	Buildings A, B + D has 4x4 indentation Building E + C has a 2x3m indentation	No – Building D contains an indentation however no other buildings comply	4m x 4m where floorplate exceeds 25m	Yes No
Front Setback Building	7m to splay portal feature for buildings C + E Building E 1/3 at 8m Building D 48% at 8m Building C 1/3 at 8m Ground POS areas 5m- 6m	7m to splay portal feature for buildings C + E Building E 38% at 8m Building D 56% at 8m Building C 50% at 8m	10m 8m < 1/3 building length	No

Side Setback (Northern)	6m to all buildings	Building A = 48% at 6m and 52% at 4.5m Building C = 65% at 6m and 35% at 4.5m 4.5m (balconies)	6m which can be reduced to 4.5m < 1/3 building length 6m (balconies)	Yes
Side Setback (Southern)	6m to all buildings	Building B = 48% at 6m and 52% at 4.5m Building E = 65% at 6m and 35% at 4.5m 4.5m (balconies)	6m which can be reduced to 4.5m < 1/3 building length 6m (balconies)	Yes
Rear Setback	6m with minor indentations to 8m and 10m Balconies setback 6m	6m with minor indentations to 8m and 10m Balconies setback 6m	10m 8m < 1/3 building length 7m (balconies)	No No
Top Storey Setback from Ground Floor	<u>Front</u> Building C – 3m to North & West, 0m to East & South Building D – 3m to East & West, 0m to North & South Building E – 3m to West & South, 0m to East & North <u>Rear</u> Building B – 3m all elevations with minor 1.6m to north Building A – 3m to all elevations with 1.6m to south No sleeving for mezzanine	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	>2m	3.7m	2m	Yes
Deep Soil Landscaped Areas	8m front 6m sides 6m rear	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) 28%	>50m ² (min) 20%	50m ² (min) 25%	Yes Yes
Parking	196 car spaces including residential and accessible	216 car spaces	198 car spaces including residential and accessible	Yes
Solar Access	73%	74%	70%	Yes
Housing Choice	35% 1 bed 61% 2 bed 5% 3 bed	10% of each type (min)	10% of each type (min)	No
Adaptable Units	12%	11%	10%	Yes

1.7 Public Domain

6. *Amends the design to have regard to the future character of the precinct and the developments street presentation should respect its highly visible presence when viewed from the public domain and adjacent park*

In support of the built form in relation to the public domain and future character of the precinct, the applicant has provided the following justification:

- *‘both overall height and storey height will be entirely compatible with the height and character of surrounding development. It has been demonstrated that there are numerous examples of surrounding buildings that do not comply with the HLEP or HDCP requirements (or previous iterations) which sets a different character to one that is governed by strict compliance with the*

current planning controls. Whilst it cannot be said that the planning controls have been thrown away, it is clear that the Balmoral Street, Waitara precinct does not demonstrate a high level of compliance with the height of buildings development standard and therefore height variations can be considered in the context of existing and approved buildings.

- In this instance, the actual character of the locality does not reflect the "strategy" as there are numerous examples of residential flat buildings that provide a mezzanine style additions on the top element similar to the proposal. Examples include No. 16-20 Park Avenue with the top (mezzanine style addition) and No.40-44 Edgeworth David Avenue.*

The Design Excellence Panel does not accept the applicant's argument and noted that the amendments have not addressed the public domain and future character of the precinct as follows:

- The most-pronounced character shortcomings are influenced directly by non-compliances and non-conformities with the local controls which contribute to excessive mass and scale that are contrary to contextual character in the immediate precinct.*
- As a footprint in 'figure ground' view and consideration of associated negative spaces the layout differs in spatial character from surrounding development in not providing similar permeability with legible through-site open space view corridors.*
- The overall built form presents as a monumental like façade expression that includes mezzanine pop-up for the top 2 floors and a range of protruding forms intended to create a cohesive visual framework for varied façade treatments of the 5 buildings. A range of different material treatments has been used for these buildings A, B, C, D and E, and a west facing streetscape elevation along Park Avenue indicates how these facades attempt to present degrees of individuality within a generic structural matrix. Compared to other recent developments of similar scale, this proposal has a higher proportion of glazed facades (particularly on the east elevations) that appears contrary to the established and anticipated desired future character.*
- There is a significant public domain interface along Park Avenue, and it does not appear that the landscape treatment has been appreciative of the potential for this to benefit both residents and passing pedestrians with scope for social bump spaces and better contribution to the overall streetscape.*
- If Buildings A&B were made to comply with DCP stipulated length of 35m, several large trees could potentially be retained. Of the two in the middle of the site, 1 provides a benefit to the neighbouring buildings to the east (as well as all buildings on this site) and the other (eucalypt?) might be visible from the street.*

2. PUBLIC PARTICIPATION


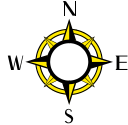
Section 4.15(1)(d) of the Act requires Council to consider "any submissions made in accordance with this Act".

2.1 Community Consultation

The amended proposal was notified from 3 March 2021 to 20 April 2021 in accordance with the requirements of the Hornsby Community Participation Plan. No submissions were received to the amended proposal. The map below illustrates the location of those nearby landowners who were notified of the amended proposal.



NOTIFICATION PLAN

• PROPERTIES NOTIFIED	X SUBMISSIONS RECEIVED	 PROPERTY SUBJECT OF DEVELOPMENT	
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3. 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.

4. CONCLUSION

The amended application seeks approval for the construction of a 5 storey + mezzanine level residential flat building comprising 168 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 of the *HLEP* and the prescriptive measures and desired outcomes of the HDCP with respect to desired future character, 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.

Having regard to the circumstances of the case, refusal of the amended 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 and amenity impacts.
- The written request pursuant to Clause 4.6 of the *Hornsby Local Environmental Plan 2013* to contravene the height of buildings development standard contained within Clause 4.3 does not adequately establish that compliance with the development standard is unnecessary in the circumstances of the development, and that sufficient environmental planning grounds exist to justify the contravention of the development standard.

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*, and does not comply with Clause 4.3 height of building development standard in the *Hornsby Local Environment Plan 2013*.
3. The Clause 4.6 request is not considered well founded and does not adequately demonstrate how the proposed development achieves the objectives of the Height of Building 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 contravention of the Height of Building development standard. Accordingly, the proposal to vary the Height of Building development 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 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 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, over in height and an inappropriate built form;
 - b) 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*;
 - c) The proposal is contrary to *Section 3.4.4 Height* as the proposal exceeds the maximum 17.5m height control and the fifth storey and mezzanine level do not comply with minimum setbacks which enhances the bulk and scale of the building when viewed from the streetscape.
 - d) The proposal is contrary to *Section 3.4.5 Setbacks* as the building does not satisfy the requirements for front and rear boundary setbacks, fifth storey setback and mezzanine storey setback;
 - e) The proposal is contrary to *Section 3.4.6 Building Form and Separation* as follows:
 - i) Buildings A and B floor plate exceed the maximum dimension of 35m,

- ii) Buildings A and B 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,
 - v) Top storey level is dominant and not visually recessive with no sleeving incorporated and planter boxes that are inaccessible without private access through residences;
- f) 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 and is compromised by pathways, seating and private open space areas at ground level.
6. 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*.
7. 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 *HELP and HDCP*.
8. 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 -