

**TO:** Sydney Central City Planning Panel – 10 June 2021

**SUBJECT:** Lots 12 & 13 Butu Wargun Drive PEMULWUY NSW 2145

**APPLICATION No:** MOD2020/0373

<b>Application lodged</b>	20 November 2020
<b>Applicant</b>	Mintus Holdings Pty Ltd
<b>Owner</b>	Mintus Holdings Pty Ltd
<b>Application No.</b>	MOD2020/0373
<b>Description of Land</b>	Lots 12 & 13 Butu Wargun Drive, Pemulwuy Lots 12 & Lot 13 in DP 1162280
<b>Proposed Development</b>	Section 4.55(2) for various modifications to the approved residential flat buildings including additional floors and roof terraces, and car parking spaces and additional 17 residential apartments, amendments to unit mix and floor levels, and deletion of internal roads
<b>Site Area</b>	3.0919 hectares (30,919m <sup>2</sup> )
<b>Zoning</b>	R4 High Density Residential
<b>Disclosure of political donations and gifts</b>	Nil disclosure
<b>Heritage</b>	No – The subject site adjoins Prospect Hill being a heritage item of state significance (I01662).
<b>Principal Development Standards</b>	<u>FSR</u> Permissible: Max. 0.85:1 Proposed: 0.8499:1  <u>Height of Building</u> Permissible: Max. 12.5m Proposed: Max. 13.5m
<b>Issues</b>	Building Height / Number of Storeys Submissions

## SUMMARY

1. Section 4.55(2) Modification Application No. MOD2020/0373 was lodged on 20 November 2020 for various modifications to the approved residential flat buildings including additional floors and roof terraces, and car parking spaces and additional 17 residential apartments, amendments to unit mix and floor levels, and deletion of internal roads.
2. The application was publicly notified to occupants and owners of the adjoining properties, published online on Council's website, and a site notice was placed at the property for a period of 21 days between 27 November and 18 December 2020. In response, a total of 66 individual submissions were received, in which 40 were unique submissions.

3. Council through its assessment identified a number of concerns with the proposal relating to the increased height of the buildings, vehicular access and basement design, and encroachments of portions of the additions within the electrical easement. These matters have been appropriately addressed by the submission of amended plans which have reduced the height of each block to generally comply with the site specific RLs (prescribed by Part P – Pemulwuy Residential Controls of HDCP 2013) applicable to the subject site through additional excavation, and changes to floor levels and basement layout. The amended plans and additional information were provided on 18 May 2021 and did not warrant re-notification.
4. The proposed development seeks the following notable variations:

Control	Required	Approved	Provided	% variation
Building Height (HLEP 2013)	Max. 12.5m	Block D = Max. 13.1m	Block D = Max. 12.7m-13.5m	1.6%-8%
		Block F = Max. 12.5m	Block F = Max. 13.25m-13.4m	6%-7.2%
		Block G = Max. 12.3m	Block G = Max. 12.9m	3.2%
Height Limits – Pemulwuy South (HDCP 2013)	3 storey zone	Block A = 3 / 5 storey Block D = 3 / 5 storey Block E = 3 / 5 storey Block F = 4 / 5 storey Block G = 3 / 5 storey	Blocks A, D, E & G = 4 / 5 storey  Block F = 5 storey	33.3% & 66.6%

**Note:** Only new non-compliances have been discussed within the body of the report which are proposed under the subject modification application. The approved architectural plans is attached at **Attachment 8**.

5. The original application was determined by the regional panel. The application is referred to the Sydney Central City Planning Panel (SCCPP) for determination as the matter is considered to be contentious.
6. It is recommended that the application be approved subject to conditions provided in the Draft Notice of Determination at **Attachment 1**.

## REPORT

### SUBJECT SITE AND SURROUNDING AREA

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The subject site comprises of two irregular shaped allotments which are legally described as Lots 12 & 13, DP 1162280, Butu Wargun Drive and have a combined area of 30,919sqm or 3.09ha.

The topography of the site is fairly steep, rising in height approximately 36 metres from RL 64.10 in the east to RL 100.5 in the west.

The site is bounded to the south by Butu Wargun Drive. To the west and south-west of the site is Prospect Hill which is a heritage item of state significance (I01662), zoned E2 Environmental Conservation.

The subject site and land directly east and north are zoned R4 High Density Residential pursuant to Holroyd Local Environmental Plan 2013. Land further north and south of the site are zoned R3 Medium Density Residential and comprise of established dwelling houses. To the north is a public reserve (zoned RE1 Public Recreation) which also forms part of the state-listed Prospect Hill conservation area. To the north-east is single, two and three-storey residential dwelling development.

Residential flat buildings have been approved on land directly adjoining the subject site to the north and east as follows:

- Three (3) x four storey residential flat buildings comprising 47 dwellings at 38-42 Winnima Circuit, Pemulwuy (DA2018/378/1);
- Four storey residential flat building comprising 14 dwellings at 44 Winnima Circuit, Pemulwuy (DA2018/380/1); and
- Four storey residential flat building comprising 25 dwellings at 46 Winnima Circuit, Pemulwuy (DA2018/379/1).

The subject site is located in the area identified as the 'Northern Residential Lands'.



Figure 1 – Streetview of subject site from round about on Butu Wargun Drive. Right: Winnima Circuit (Google Maps 2021).



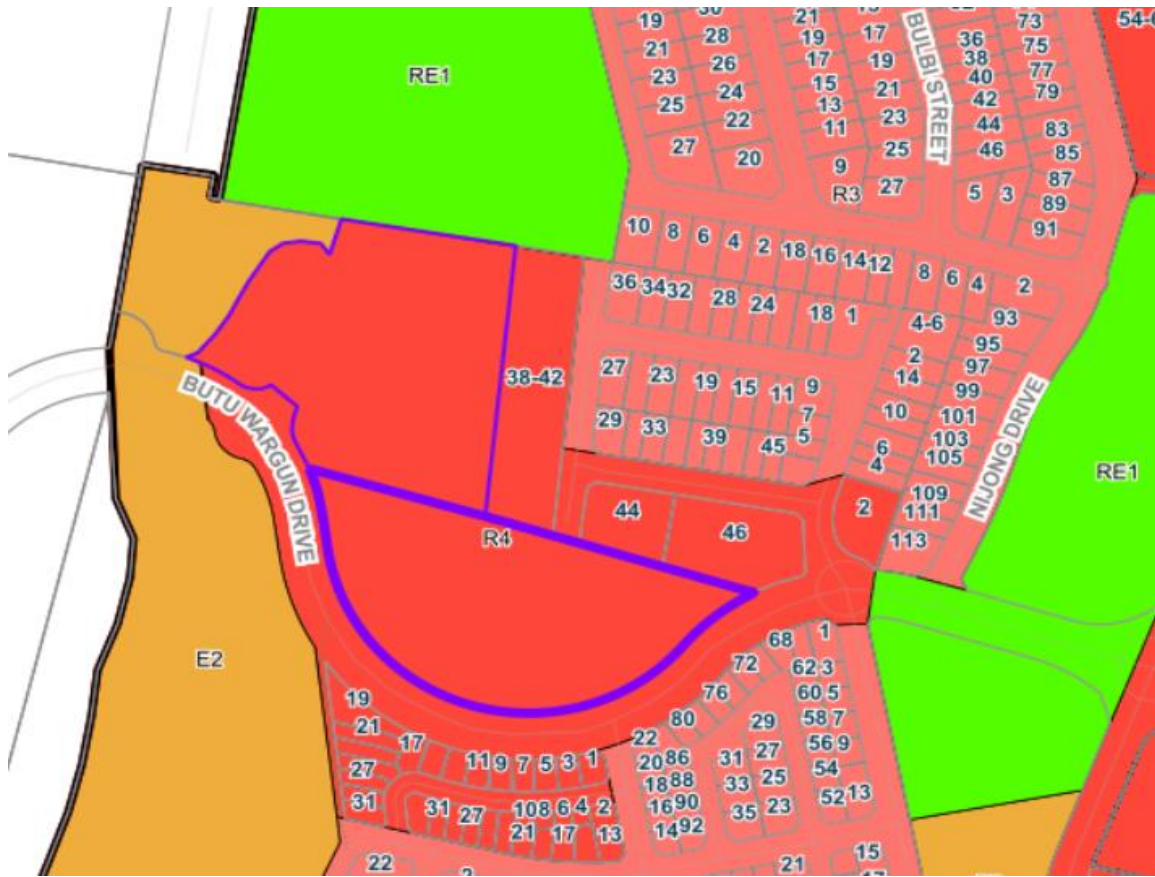


Figure 2 - Zoning Map. Subject site outlined in purple (IntraMaps)



Figure 3 - Aerial image of subject site outlined in yellow (IntraMaps 2021).

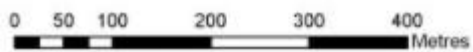


# Heritage Council of New South Wales



## State Heritage Register

Gazettal Date: 17 October 2003



Scale: 1:5,500

Produced by: Michelle Galea

### Legend

- SHR Curtilage
- Land Parcels
- LGAs
- Suburbs

Figure 4 - State Heritage Register showing Prospect Hill in relation to the subject site (Heritage NSW)

## DESCRIPTION OF THE PROPOSED DEVELOPMENT

MOD2020/0373 seeks consent for various modifications to the approved residential flat buildings including additional floors and roof terraces, and car parking spaces and additional 17 residential apartments, amendments to unit mix and floor levels, and deletion of internal roads.

Generally, the proposal seeks the following modifications to the approved development:

- Gross Floor Area increased by 1,652.1m<sup>2</sup>;
- Floor Space Ratio increased from 0.799:1 to 0.8499:1;
- Net increase of 17 residential apartments;
- Additional floor level to Blocks A, D, E, F & G;
- All blocks (except Blocks B & C) floor levels lowered;
- Deletion of all internal roads;
- Staging of development deleted;
- Increase in car parking spaces from 379 to 401;
- Basement layout redesigned and external works adjusted accordingly;
- Roof courtyards added to upper level units;
- Loading bays added; and
- Mailboxes relocated.

Note: No concerns are raised to the staging of the development being deleted.

Modifications as detailed for each block are as follows:

<b>Block</b>	<b>Details (Original Approval)</b>	<b>Modifications</b>
<b>Block A</b>	3 / 5 storeys 40 residential apartments	<ul style="list-style-type: none"> <li>• Additional floor level to western end, increasing Block A to 4 / 5 storeys</li> <li>• Additional 4 residential apartments (4 x 2-bedroom units)</li> <li>• Total number of residential apartments increased to 44</li> <li>• Private roof courtyards introduced to proposed units</li> <li>• Block A floor level lowered by 1000mm</li> </ul>
<b>Block B</b>	4 / 5 storey 42 residential apartments	<ul style="list-style-type: none"> <li>• Adaptable 1-bedroom units on Levels 1-3 inclusive converted to 2-bedroom units</li> </ul>
<b>Block C</b>	4 / 5 storey 42 residential apartments	<ul style="list-style-type: none"> <li>• Adaptable 1-bedroom units on Levels 1-3 inclusive converted to 2-bedroom units</li> </ul>
<b>Block D</b>	3 / 5 storey 32 residential apartments	<ul style="list-style-type: none"> <li>• Additional floor level to western end, increasing Block D to 4 / 5 storeys</li> <li>• Additional 3 residential apartments (3 x 2-bedroom units)</li> <li>• Total number of residential apartments increased to 35</li> <li>• Private roof courtyards introduced to proposed units</li> <li>• Block D floor level lowered by 1200mm</li> </ul>
<b>Block E</b>	3 / 5 storey 46 residential apartments	<ul style="list-style-type: none"> <li>• Additional floor level to western end, increasing Block E to 4 / 5 storeys</li> </ul>

<b>Block</b>	<b>Details (Original Approval)</b>	<b>Modifications</b>
		<ul style="list-style-type: none"> <li>• Additional 4 residential apartments (4 x 2-bedroom units), including 1 adaptable unit</li> <li>• Total number of residential apartments increased to 50</li> <li>• Private roof courtyards introduced to proposed units</li> <li>• Block E floor level lowered by 500mm</li> </ul>
<b>Block F</b>	4 / 5 storey 53 residential apartments	<ul style="list-style-type: none"> <li>• Additional floor level increasing western Block F to 5 storeys</li> <li>• Additional 4 residential apartments (4 x 2-bedroom units)</li> <li>• Total number of residential apartments increased to 57</li> <li>• Adaptable 1-bedroom units on Levels 1-4 inclusive converted to 2-bedroom units</li> <li>• Private roof courtyards introduced to proposed units</li> <li>• Block F floor level lowered by 1500mm</li> </ul>
<b>Block G</b>	3 / 5 storey 45 residential apartments	<ul style="list-style-type: none"> <li>• Additional floor level increasing western Block G to 4 / 5 storeys</li> <li>• Additional 3 residential apartments (2 x 2-bedroom units &amp; 1 x 3-bedroom unit)</li> <li>• 2 x adaptable 1-bedroom units on Level 2 converted to a 3-bedroom unit</li> <li>• Net increase of 2 residential apartments</li> <li>• Total number of residential apartments increased to 47</li> <li>• Private roof courtyards introduced to proposed units</li> <li>• Block G floor level lowered by 500mm</li> </ul>

The modification application seeks to alter the unit mix as follows:

<b>Approved</b>	<b>Proposed</b>
Total 300 residential apartments:	Total 317 residential apartments:
<ul style="list-style-type: none"> <li>• 30 x 1 bed (10%)</li> </ul>	<ul style="list-style-type: none"> <li>• 18 x 1 bed (5.5%)</li> </ul>
<ul style="list-style-type: none"> <li>• 254 x 2 bed (85%)</li> </ul>	<ul style="list-style-type: none"> <li>• 281 x 2 bed (89%)</li> </ul>
<ul style="list-style-type: none"> <li>• 16 x 3 bed (5%)</li> </ul>	<ul style="list-style-type: none"> <li>• 18 x 3 bed (5.5%)</li> </ul>

Car parking is modified as follows:

<b>Approved</b>	<b>Proposed</b>
Total of 378 car parking spaces	Total of 401 car parking spaces
<ul style="list-style-type: none"> <li>• 315 residential spaces (including 64 accessible spaces)</li> </ul>	<ul style="list-style-type: none"> <li>• 334 residential spaces (including 44 accessible spaces)</li> </ul>
<ul style="list-style-type: none"> <li>• 63 visitor spaces</li> </ul>	<ul style="list-style-type: none"> <li>• 67 visitor spaces</li> </ul>
<ul style="list-style-type: none"> <li>• 7 car wash bays</li> </ul>	<ul style="list-style-type: none"> <li>• 7 car wash bays</li> </ul>



Figure 5 - Site Plan showing proposed deletion of internal roads dashed in blue (Drawing No. S01, Issue I, prepared by Architex, dated 14/05/2021)

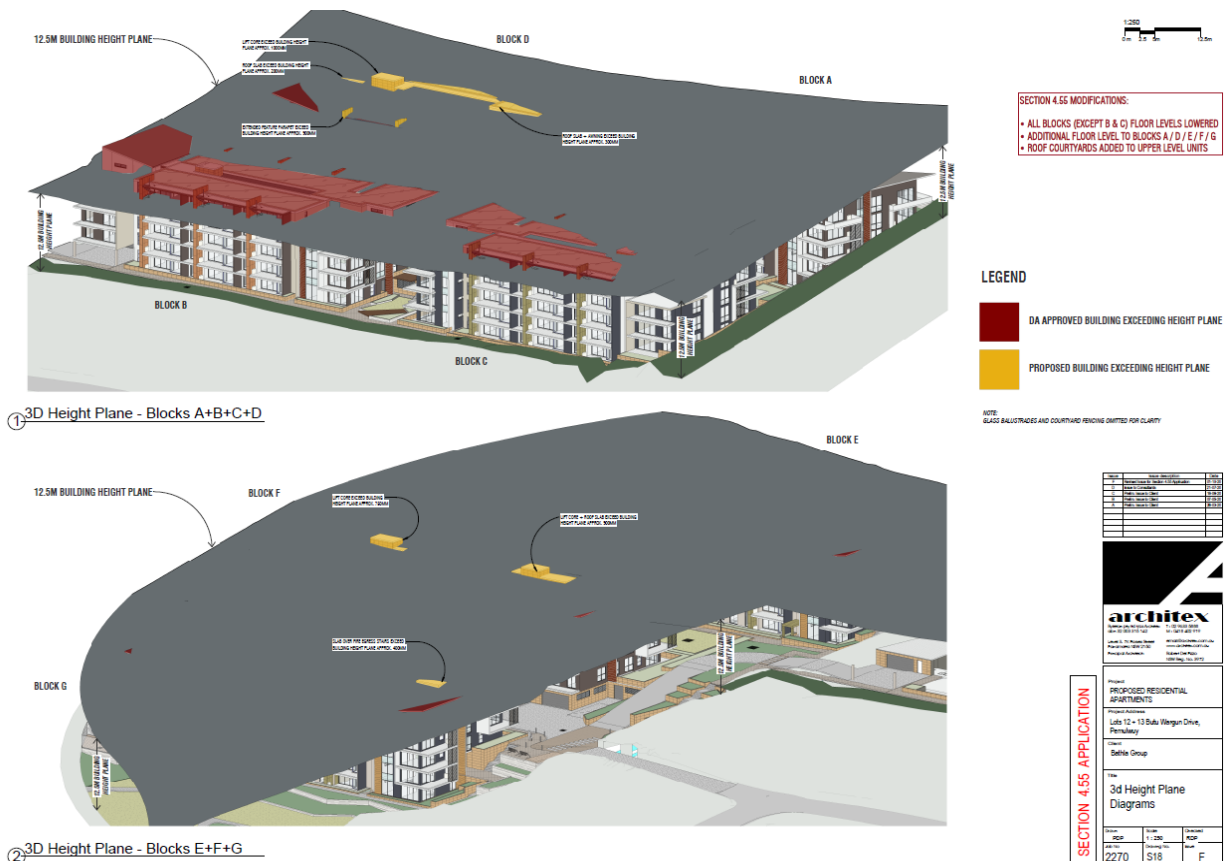


Figure 6 - 3D Height Plane Diagram showing portions of buildings exceeding the 12.5m height standard as approved in red and as proposed as part of subject modification in yellow (Drawing No. S18, Issue F, prepared by Architex, dated 1/10/2020)



## BACKGROUND

On 13 September 2018, DA2016/381/1 for construction of 7 x part 3, 4 & 5 storey residential flat buildings comprising a total of 300 units above 3 basement levels and at-grade parking accommodating a total of 379 parking spaces and internal roadworks in 2 stages; with Stage A accommodating Blocks A, B, C and D; and Stage B accommodating Blocks E, F & G; was approved as a deferred commencement by the Sydney West Central Planning Panel.

- On 14 December 2018, a Schedule A letter was issued by Council outlining that Development Consent No. 2016/381/1 has become operative.

## HISTORY

Date	Action
20 November 2020	Section 4.55(2) Modification Application MOD2020/0373 was lodged with Council.
20 November 2020	The application was referred to Council's internal and external departments for review.
27 November to 18 December 2020	The application was publicly notified to adjoining and opposite owners, published online, and a site notice was placed at the property for 21 days. In response, a total of 66 individual submissions were received, in which 40 were unique submissions.
27 April 2021	Application was deferred with respect to matters relating to the increased height of the buildings, vehicular access and basement design, waste management, and encroachments of portions of the additions within the electrical easement.
18 May 2021	Amended plans and revised Clause 4.6 request to vary building height was received by Council, which forms part of the final assessment for consideration by the Panel.
10 June 2021	Application referred to SCCPP for determination.

## APPLICANTS SUPPORTING STATEMENT

The applicant has provided a Statement of Environmental Effects prepared by Universal Property Group Pty Ltd dated 10 August 2020, and Clause 4.6 written request prepared by Think Planners received 18 May 2021, in support of the application.

An additional response regarding the rooftop treatment prepared by Think Planners dated 18 May 2021 has also been submitted.

## CONTACT WITH RELEVANT PARTIES

The assessing officer has undertaken a site inspection of the subject site and surrounding properties and has been in regular contact with the applicant throughout the assessment process.

## INTERNAL REFERRALS

### Development Engineer

The development application was referred to Council's Development Engineer for comment who has advised that the modified development is supportable with regards to the deletion

of the internal roads and stormwater management, subject to the imposition of conditions requiring 2 loading bays to be provided for Blocks A-D & Blocks E-G, and the provision of a turning bay for a HRV at the entrance of Blocks E-G basement.

### Environment and Health

The development application was referred to Council's Environmental Health Officer for comment who has advised that the development is supported with regard to noise impacts, and environmental impacts, subject to conditions.

### Waste Management

The development application was referred to Council's Waste Management Officer for comment who has advised that the waste arrangements of the modified proposal are satisfactory.

## **EXTERNAL REFERRALS**

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### Transport for NSW (TfNSW)

Correspondence dated 9 December 2020 from TfNSW raised no objections to the modified proposal.

### Endeavour Energy

Correspondence from Endeavour Energy dated 15 December 2020 outlined that portions of Block A (northern 5 level section, Level 6 and roof courtyards) encroach within Endeavour Energy's underground electrical easement and the easement for the UGOH pole and the 33kV high voltage overhead powerlines.

Conditions are imposed requiring that the parts of the building encroaching the easement be redesigned to correct the encroachment or an asset relocation/undergrounding of the existing overhead power lines undertaken and part of the easement released.

### Sydney Water

Correspondence from Sydney Water dated 21 January 2021 provided advice with regards to water servicing, wastewater servicing and critical assets, and raised no objections to the modified proposal.

## **PLANNING COMMENTS**

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### **Section 4.55(2):**

<b>Requirement</b>	<b>Comments</b>
Council is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	The development as proposed to be modified is substantially the same as the original consent, as the proposed modifications are largely within the approved building footprint and involves additional floor levels and units to Blocks A, D,

	<p>E, F &amp; G, and the reconfiguration of car parking, and floor and basement levels to accommodate the reconfigured and additional units.</p> <p>The modified proposal will increase the approved part 3, 4 and 5 storey buildings to part 4 and 5 storey.</p> <p>The proposed amendments do not deviate from the approved residential flat buildings on the subject site.</p>
<p>Council has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and</p>	<p>No Minister, public authority or other approval body was required to be consulted regarding the proposed modification.</p>
<p>Council has notified the application in accordance with:</p> <ul style="list-style-type: none"> <li>(i) the regulations, if the regulations so require, or</li> <li>(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and</li> </ul>	<p>All persons who made a submission in respect of the original application were notified of the proposed modification.</p> <p>The application was notified for 21 days from 27 November 2020 and 18 December 2020, in accordance with HDCP 2013.</p>
<p>Council has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>	<p>See discussion on “Public Notification” in this report.</p>
<p>Relevant matters referred to in Section 4.15(1) of the act have been taken into consideration.</p>	<p>Proposed modification is not contrary to the public interest and the likely environmental impacts of the development as modified are considered acceptable.</p>
<p>Council has considered the reasons given by the consent authority for the grant of the consent that is sought to be modified.</p>	<p>The development was initially approved as it was found to be satisfactory with respect to:-</p> <ul style="list-style-type: none"> <li>• Overall bulk and scale,</li> <li>• Car parking, and vehicle circulation,</li> <li>• Provision of a variety of housing types within a high density environment,</li> </ul>

	<ul style="list-style-type: none"> <li>• Compliance with the relevant planning instruments.</li> <li>• Satisfactory appearance.</li> </ul> <p>It is considered that the previous conclusions have not been altered and the development is suitable for approval.</p>
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**The provisions of any Environmental Planning Instruments (EP&A Act s4.15 (1)(a)(i))**

State Environmental Planning Policies

The proposed development is affected by the following State Environmental Planning Policies:

**(a) State Environmental Planning Policy (State and Regional Development) 2011**

The proposal has a CIV greater than \$30 million and constitutes regionally significant development in accordance with Clause 2 General development over \$30 million, of Schedule 7 Regional Significant Development of SEPP (State Regional Development) 2011. The S4.55(2) modification application is referred to the Sydney Central City Planning Panel (SCCPP) for determination as the matter is considered to be contentious.

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

Clause 7 of SEPP 55 requires Council to be satisfied that the site is suitable or can be made suitable to accommodate the proposed development. The matters listed within Clause 7 have been considered in the assessment of the original development application. Council is satisfied that the site is suitable or can be made suitable to accommodate the approved shop top housing development. The proposed modifications have no bearing on the original SEPP 55 matters for consideration, as assessed under approved DA2016/381/1.

**(c) Statement Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65)**

SEPP 65 applies to the development as the building is 3 storeys or more, and contains more than 4 dwellings. A design statement addressing the design quality principles prescribed by SEPP 65 was prepared by the project architect. Integral to SEPP 65 is the Apartment Design Guide (ADG), which sets benchmarks for the appearance, acceptable impacts and residential amenity of the development. A revised design verification statement signed by registered architect Robert Del Pizzo was submitted with the S4.55(2) application.

There are no new ADG non-compliances sought as part of this modification.

A comprehensive assessment against the Apartment Design Guide (ADG) controls and SEPP 65 sets 9 design quality principles are provided at **Attachment 2.**

**(d) State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)**



*Clause 45 - Development likely to affect an electricity transmission or distribution network*

Clause 45 requires that written notice be provided to the local electricity supply authority for any development carried out within or immediately adjacent to an easement for electric purposes. A 6m electricity easement runs adjacent to the northern boundary of the site and burdens Lot 13. Accordingly, the application was referred to Endeavour Energy, who raised no objection and provided recommendations to be imposed as conditions of consent.

*Clause 104 – Traffic-generating development*

Clause 104 ensures that the TfNSW is given the opportunity to comment on development nominated as ‘traffic generating development’ under Schedule 3 of the SEPP. Schedule 3 identifies development involving more than 300 dwellings or 200 car spaces. The modified application proposes 317 dwellings and 401 car parking spaces and accordingly was referred to the TfNSW for comment. The TfNSW raised no objection to the development and did not impose any conditions.

**(e) Statement Environmental Planning Policy No 19 - Bushland in Urban Areas (SEPP 19)**

The subject site adjoins land reserved for public open space purposes, being Marrong Reserve, to the north and west of the site. The proposal development is not considered to pose adverse impacts on Marrong Reserve.

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

The proposal does not exceed the biodiversity offsets scheme threshold. The proposed vegetation removal has been assessed as part of the original application and is considered acceptable.

**(g) State Environmental Planning Policy (Coastal Management) 2018**

The subject site is not identified as a coastal wetland and/or land identified as “proximity area for coastal wetlands” and/or land identified as such by the Coastal Vulnerability Area Map.

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

BASIX Certificate No. 755834M\_03 dated issued on 9 October 2020 has been submitted with Council and is considered to be satisfactory.

Regional Environmental Plans

The proposed development is affected by the following Regional Environmental Plans:

**(a) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005**

The subject site is identified as being located within the area affected by the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The proposed development raises no issues as no impact on the catchment is envisaged.

(Note: - the subject site is not identified in the relevant map as 'land within the 'Foreshores and Waterways Area' or 'Wetland Protection zone', is not a 'Strategic Foreshore Site' and does not contain any heritage items. Hence the majority of the SREP is not directly relevant to the proposed development).

Local Environmental Plans

**Holroyd Local Environmental Plan 2013**

The provision of the Holroyd LEP 2013 is applicable to the development proposal. The proposal complies with the maximum FSR standard. It is noted that the development exceeds the maximum LEP building height.

**(a) Permissibility: -**

The proposed development is defined as a 'residential flat building' and is permissible in the R4 High Density Residential zone with consent.

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

**Note—**

Residential flat buildings are a type of **residential accommodation**—see the definition of that term in this Dictionary.

**(b) LEP Building Height & Floor Space Ratio development standards**

The maximum Building Height and Floor Space Ratio development standards applicable to development at the subject site as follows:

Development Standard	Yes	No	N/A	Response
<b>4.3 Height of buildings</b> Max. 12.5 metres	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Block D = Max. 12.7m-13.5m Block F = Max. 13.25m-13.4m Block G = Max. 12.9m  Refer to detailed discussion below.
<b>4.4 Floor Space Ratio</b> Max. 0.85:1	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	The modified proposal complies by providing an FSR of 0.8499:1 (26,281m <sup>2</sup> )

A comprehensive assessment and compliance table of the proposal against the relevant planning controls and development standards applicable to the site under the Holroyd LEP 2013 is attached to this report in **Attachment 3.**

**(c) Clause 4.3 Height of Buildings**

The proposal seeks a variation to Clause 4.3 – Height of Buildings that stipulates that the height of buildings is not to exceed 12.5m on the subject site.

The modified proposal seeks the following breaches to the maximum 12.5m building height standard:

Block	Approved Building Height	Portion of building exceeding height standard	Proposed height	% Variation
<b>Block D</b>	Block D = Max. 13.1m	Lift core (RL100.8), exceedance of 1m	13.5m	8%
		Southern roof slab (RL98.55), exceedance of 0.2m	12.7m	1.6%
		East elevation feature parapet (RL98.2), exceedance of 0.9m	13.4m	7.2%
		Northern roof slab (RL96.8), exceedance of 0.3m	12.8m	2.4%
<b>Block F</b>	Block F = Max. 12.5m	Southern lift core (RL92.5), exceedance of 0.75m	13.25m	6%
		Northern lift core (RL92.5), exceedance of 0.9m	13.4m	7.2%
<b>Block G</b>	Block G = 12.3m	Slab over fire egress stairs (RL86.5), exceedance of 0.4m	12.9m	3.2%

It is noted that the original application (DA2016/381/1) approved the following building height exceedance shown in red in Figure 7 below. The subject modification application seeks a further non-compliance to the maximum 12.5m building height standard shown in yellow below.

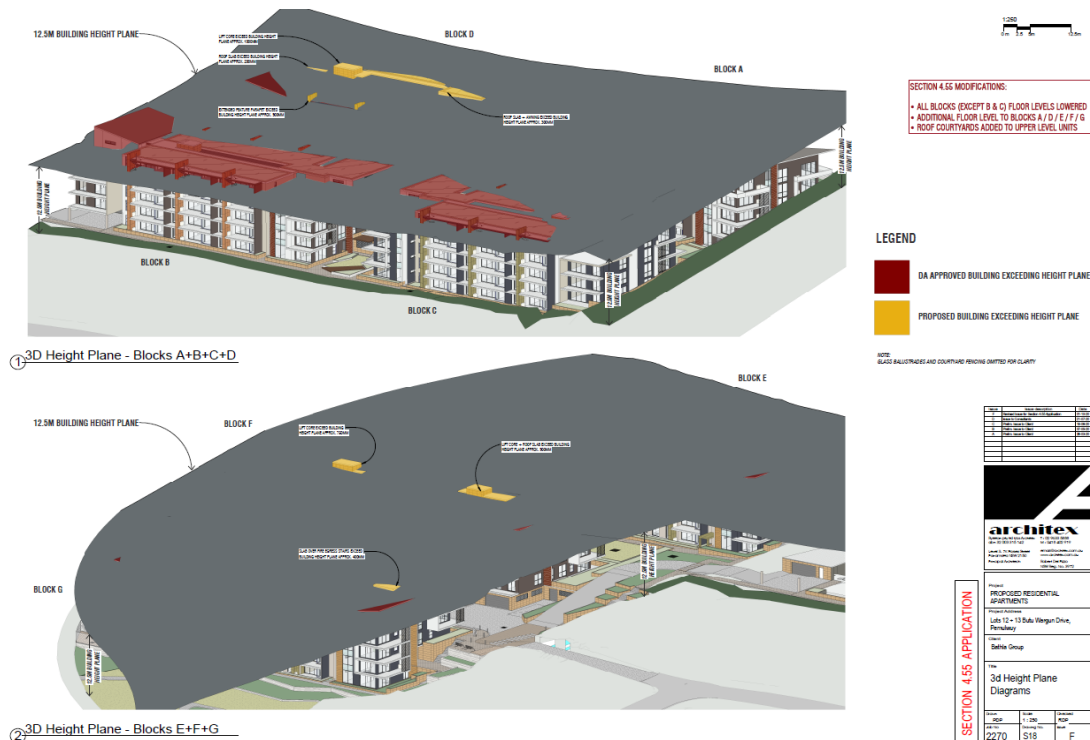


Figure 7 - 3D Height Plane Diagram showing height exceedance (Drawing No. S18, Issue F, prepared by Architex, dated 1/10/2020)

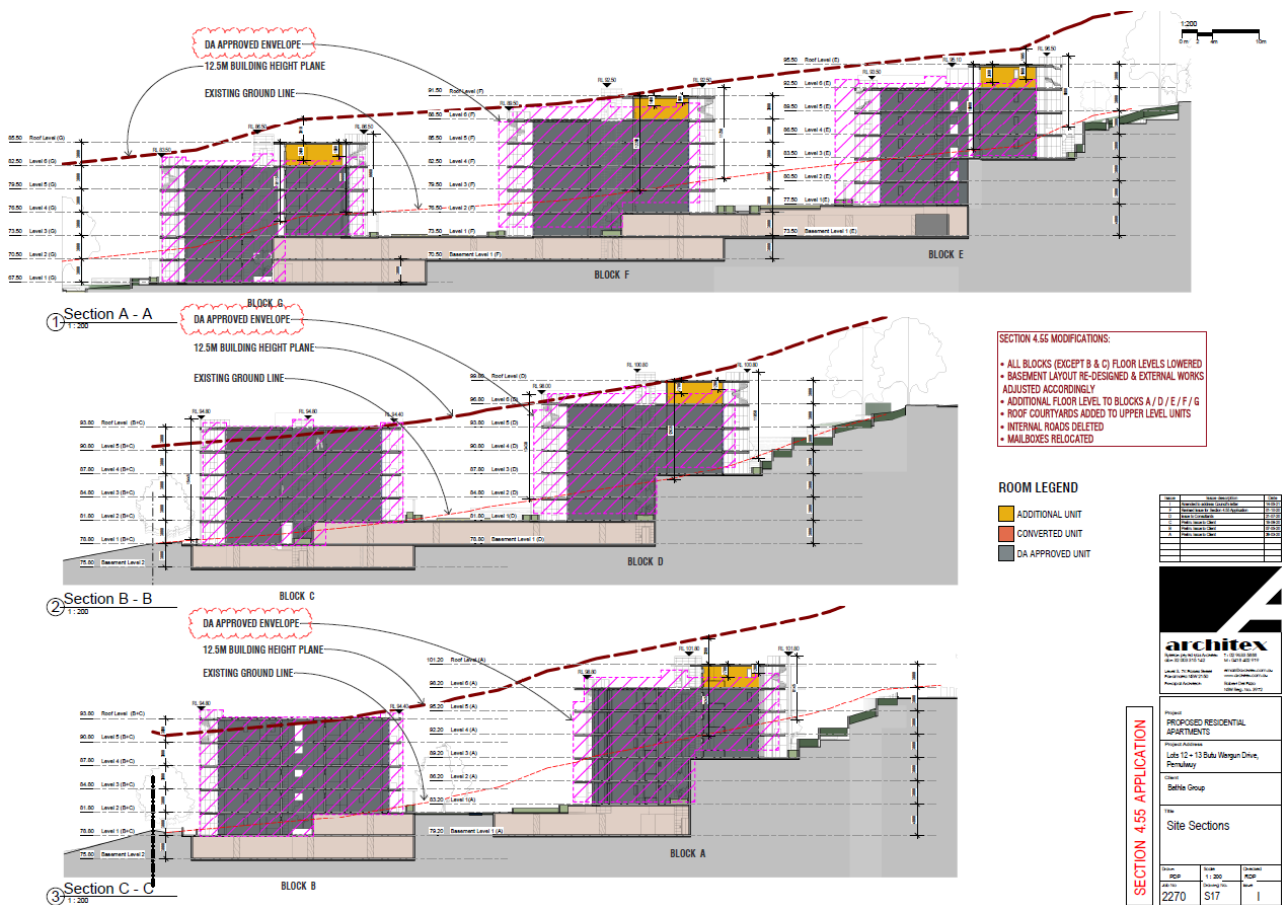


Figure 8 - Site Section Plan showing building envelope approved by DA2016/381/1 hatched in purple and portions of modified proposal exceeding the 12.5m height standard (Drawing No. S17, Issue I, prepared by Architex, dated 14/05/2021)

**(d) Variation to Building Height**

It is noted that there is no statutory requirement for a Clause 4.6 variation request to be submitted for Section 4.55 modification applications. Nonetheless, the applicant has prepared a Clause 4.6 variation request for the departure sought to the building height standard – Refer to **Attachment 7**.

**Assessment of Building Height variation**

**Applicant’s justification:**

The applicant requests that the consent authority consider the request to vary the building height standard, and grant development consent to the proposal, despite the departure from the control, for the reasons stated below.

*The current development proposal remains consistent with the objectives of the clause and is a more appropriate outcome on the site because of the following:*

- *All built form heights are complying with the RL DCP heights that ensures that view to/from the Ridgeline Park and Prospect Hill is protected.*
- *Buildings have been stepped to address the site’s steep cross-fall that will contribute towards minimising building height, bulk and scale when viewed from the street level.*



- *The size of the site permits sufficient separation of building on site and also from neighbouring land parcels and also have negligible impacts in terms of privacy and overshadowing to adjoining properties.*
- *The increased height and modulation of building locations enables greater amenity to the proposed units through better solar orientation and increased levels of natural ventilation.*
- *The non-compliance to the height control has no unacceptable impact on the setting of any items of environmental heritage or view corridors.*
- *The proposal will sit comfortably in the streetscape relative to the desired future character of the locality.*
- *The proposed development will permit the site to develop to its full zoning potential whilst complementing the future vision envisioned for the site by providing a residential flat building that provides good address to the street frontage.*
- *The proposed development complies with key planning controls applying to the proposal including FSR, landscape, deep soil zones and communal open space.*
- *The proposed variation is minor in nature with the majority of the building being compliant with the building height control. The extent of non-compliance will not be a visually prominent element in the streetscape.*
- *The additional height does not generate any additional amenity impacts given the location of the site and the surrounding site context.*
- *The proposal has been carefully designed to ensure that no adverse visual or acoustic amenity impacts will be created by the proposed building height along site boundaries.*
- *The development proposal is consistent with the intent of the maximum height control and has a bulk and scale that is not discernible from a development that complies with the control.*

*As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in the circumstances.*

Planner's comment:

The variations sought as part of the subject application are minor, ranging from:

- 0.3m or 2.4% to 1m or 8% for Building D,
- 0.75m or 6% to 0.9m or 7.2% for Building F, and
- 0.4m or 3.2% for Building G.

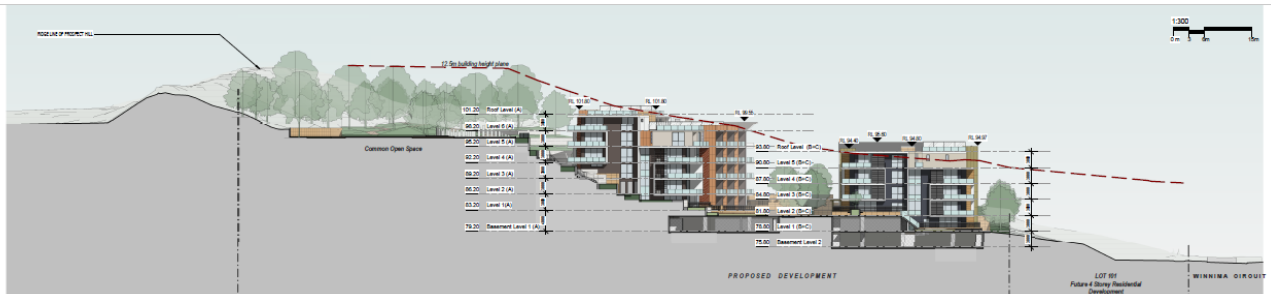
The departures sought to the building height standard are restricted to the lift core, roof slabs and parapet features of the buildings, and do not include any habitable or additional gross floor area. The variation to the building height are primarily associated with the significant slope of the site.

The amended proposal has lowered the floor levels of Blocks A, D, E, F & G to reduce the extent of building area that exceeds the height standard and to bring the buildings generally in line with the site specific RLs prescribed by Figure 55 Height Control Strategy – Pemulwuy South in Part P of HDCP 2013, as shown below.



Figure 9 - Extract of Figure 55 Height control strategy – Pemulwuy South in Part P of HDCP 2013

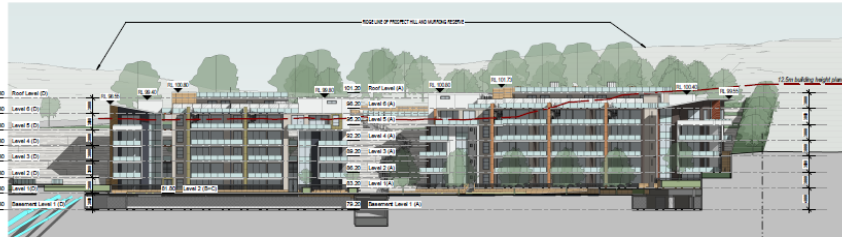
Elevation plans have been amended to show the ridgeline of Prospect Hill to determine the visual impact of the increased building height of the proposal.



South Elevation - Blocks A + B



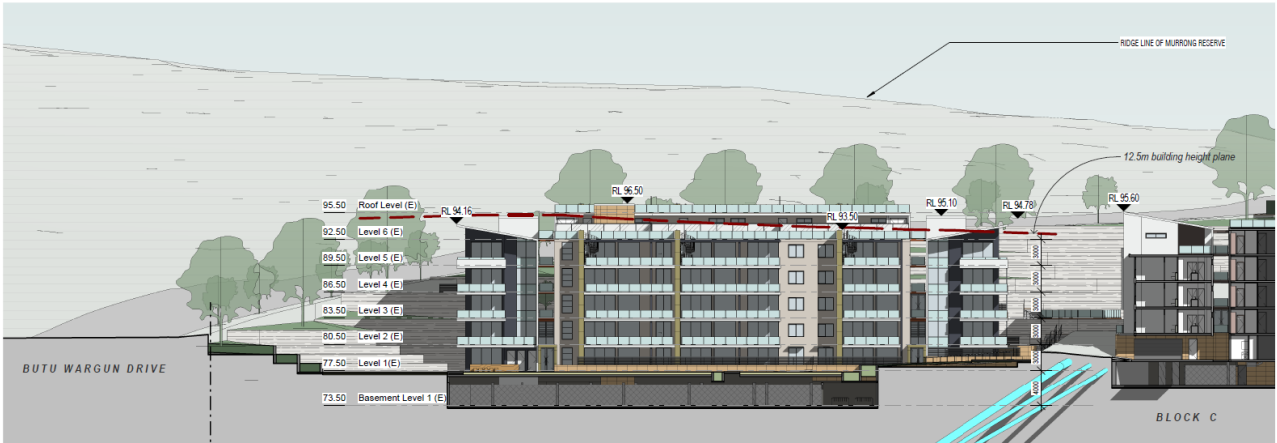
North Elevation - Blocks C + D



East Elevation - Blocks A + D

**SECTION 4.55 MODIFICATIONS:**  
 • ALL BLOCKS (EXCEPT B & C) FLOOR LEVELS LOWERED  
 • BASEMENT LAYOUT RE-DESIGNED & EXTERNAL WORKS ADJUSTED ACCORDINGLY  
 • ADDITIONAL FLOOR LEVEL TO BLOCKS A / D / E / F / G  
 • ROOF COURTYARDS ADDED TO UPPER LEVEL UNITS

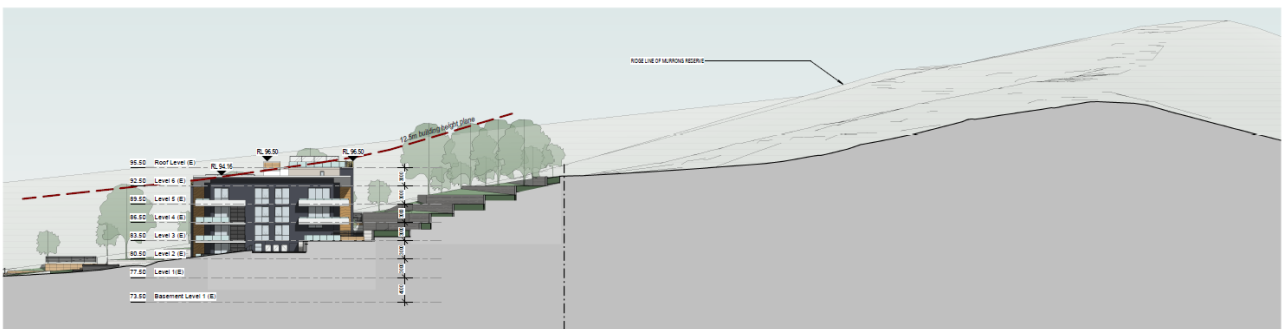
architex	
PROPOSED RESIDENTIAL APARTMENTS	
Lots 12-13 Subj Wager Drive, Pemulwuy	
Belle Group	
Site Elevations	
SDP	2270
Scale	S15
Sheet	F



13 East Elevation - Block E  
1:300



1 East Elevation - Cnr. Butu Wargun and Naying Drive  
1:300



8 North Elevation - Block E  
1:300



The views from Prospect Hill to the east are not affected as a result of the proposal as the floor levels of Blocks A, D, E, F & G have been lowered, and additional floor levels have been included on the western end of blocks to fall within the 12.5m building height plane and respond to the steep topography of the land.

It is considered that the ridgeline of Prospect Hill is maintained from the 8 key vantage points identified in the Prospect Hill Conservation Management Plan, evident by the elevation plans and 3D aerial view plan submitted.

In this regard, it is considered that the RLs contained in the DCP are correct in their intent to maintain views to and from Prospect Hill.

The shadow diagrams accompanying the application demonstrate that the proposal does not result in any significant adverse impacts on surrounding properties and that the development complies with the solar access requirements under the ADG.

In this regard, the modified proposal is considered to be consistent with the objectives of the building height standard.

**The provisions of any proposed instrument that is or has been the subject (EP&A Act s4.15 (1)(a)(ii))**

**(a) Draft State Environmental Planning Policy (Environment)**



The draft SEPP relates to the protection and management of our natural environment with the aim of simplifying the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property. The changes proposed include consolidating the following seven existing SEPPs:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011
- State Environmental Planning Policy No. 50 – Canal Estate Development
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.

The draft policy will repeal the above existing SEPPs and certain provisions will be transferred directly to the new SEPP, amended and transferred, or repealed due to overlaps with other areas of the NSW planning system.

Changes are also proposed to the Standard Instrument – Principal Local Environmental Plan. Some provisions of the existing policies will be transferred to new Section 117 Local Planning Directions where appropriate.

#### **(b) Draft Cumberland Local Environmental Plan (Draft CLEP)**

The Draft Cumberland Local Environmental Plan (Draft CLEP) has been prepared by Cumberland Council to provide a single planning framework for the future planning of Cumberland City. The changes proposed seek to harmonise and repeal the three existing LEPs currently applicable to the Cumberland local government area, those being:

- Holroyd Local Environmental Plan 2013,
- Parramatta Local Environmental Plan 2011, and
- Auburn Local Environmental Plan 2010.

The current planning controls for the subject site, as contained within the Holroyd LEP 2013 are not proposed to change under the Draft CLEP.

#### **The provisions of any Development Control Plans (EP&A Act s4.15 (1)(a)(iii))**

The Holroyd DCP 2013 provides guidance for the design and operation of development within Holroyd to achieve the aims and objectives of Holroyd LEP 2013.

A comprehensive assessment and compliance table is provided at **Attachment 4**. A summary of the DCP non-compliances is provided in the following table.

<b>Part P – Pemulwuy Residential Controls</b>			
<p>6.1</p>	<p><b>Height Limits – Pemulwuy South</b></p> <p>Prospect Hill Zone – RLs apply</p> <p>Maximum external wall height is to be 10 metres.</p> <p>Height limits – 3 storey zone</p>	<p>Provided = 4 &amp; 5 storey</p> <p>The subject site is located within the Prospect Hill zone.</p> <p>Minor building elements, such as parapet walls, lift cores and roof slabs exceed the respective RLs.</p> <p>The modified proposal is generally compliant with the maximum RL heights with the exception of the abovementioned encroachments.</p> <p>The modified proposal exceeds the 10m external wall height and 3 storey height limit.</p> <p>It is noted that the approved development is part 3, 4 and 5 storey in height.</p> <p>An additional storey is proposed to Blocks A, D, E, F &amp; G to increase all 3 storey Blocks A, D, E &amp; G to 4 storey, and Block G to 5 storey in its entirety.</p> <p>The additional storey is proposed to western end of blocks to fall within the 12.5m building height plane and respond to the topography of the land. The location of the additional floors does not result in adverse visual impacts on surrounding properties.</p> <p>Having regard to the above, the additional storeys proposed are considered acceptable as the modified proposal complies with the building height, deep soil zone, communal open space and the landscape area. The modified design ensures to</p>	<p>No – Acceptable in this instance</p>

		maintain historic views to/from the Ridgeline and Prospect Hill.	
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**The provisions of any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4 (EP&A Act s4.15(1)(a)(iia))**

There is no draft planning agreement associated with the subject Development Application.

**The provisions of the Regulations (EP&A Act s4.15 (1)(a)(iv))**

The proposed development raises no concerns as to the relevant matters arising from the *Environmental Planning and Assessment Regulations 2000* (EP&A Reg).

**The Likely Environmental, Social or Economic Impacts (EP&A Act s4.15 (1)(b))**

It is considered that the proposed development will have no significant adverse environmental, social or economic impacts in the locality.

**The suitability of the site for the development (EP&A Act s4.15 (1)(c))**

The subject site and locality is not known to be affected by any natural hazards or other site constraints likely to have a significant adverse impact on the proposed development. Accordingly, it is considered that the development is suitable in the context of the site and surrounding locality.

**Submissions made in accordance with the Act or Regulation (EP&A Act s4.15 (1)(d))**

Advertised (Council website)  Mail  Sign  Not Required

In accordance with Council’s Notification requirements contained within the Holroyd DCP 2013, the proposal was publicly notified for a period of 21 days between 27 November 2020 and 18 December 2020. The notification generated 66 individual submission, in which 40 were unique submissions in respect of the proposal. No submissions received disclosed a political donation or gift.

The additional information and amended plans did not warrant re-notification of the application.

The issues raised in the public submissions are summarised and commented on as follows:

Figure 10 - Submissions summary table

	Concern	Comment
1	No infrastructure for surrounding roads to cope with more traffic and parking for extra cars.  Deletion of internal roads removes street parking and results in flow on impacts on Winnima Circuit and surrounding roads.	Vehicular access to the subject site is from Winnima Circuit.  The cumulative impact of additional vehicular movements generated by the approved 300 units and adjoining R4 zoned sites was assessed as part of DA2016/381/1 as still not

	<b>Concern</b>	<b>Comment</b>
		<p>reaching the identified carrying capacity of Butu Wargun Drive.</p> <p>Council's Development Engineer has reviewed the modified proposal and raises no objections to the deletion of the internal roads, subject to conditions requiring the provision of turning areas on site for cars and HRVs.</p> <p>The modified proposal provides compliant on-site car parking in accordance with Part A of HDCP 2013.</p>
2	Excessive density and scale of development	The modified proposal complies with the maximum 0.85:1 FSR standard applicable and as such considered to represent a built form of an appropriate bulk and scale at the subject site.
3	There should be more open spaces provided.	<p>The proposal provides adequate landscaped area and communal open space areas in accordance with the ADG and HDCP 2013.</p> <p>The proposal includes public open space to be dedicated to Council, being the eastern open space area located at the south-eastern corner of the subject site, with frontage to Butu Wargun Drive.</p>
4	Inadequate infrastructure and amenities to cater for the increased population with regard to roads, parking, schools, community facilities and medical centres.	<p>The proposed development provides its own recreational infrastructure, which includes a half-court basketball facility. The developer also proposes to dedicate 2,451m<sup>2</sup> of open space as a public park for use by all residents of the estate.</p> <p>In accordance with the Pemulwuy Contribution Plan 2015, the development will require the payment of Section 7.11 development contributions (formerly s.94) to assist Council in the provision of infrastructure within the estate.</p>
5	Tall buildings will reduce view of Prospect Hill and skyline.	<p>The views from Prospect Hill to the east are not affected as a result of the proposal as the floor levels of Blocks A, D, E, F &amp; G have been lowered, and additional floor levels have been included on the western end of blocks to fall within the 12.5m building height plane and respond to the steep topography of the land.</p> <p>It is considered that the ridgeline of Prospect Hill is maintained from the 8 key vantage</p>

	<b>Concern</b>	<b>Comment</b>
		points identified in the Prospect Hill Conservation Management Plan, evident by the elevation plans and 3D aerial view plan submitted.
6	Overlooking concerns from balconies of proposed apartments onto backyards and living areas.	The proposal provides adequate building separation setbacks to minimise visual impacts onto neighbouring properties.
7	Any increase in population within the area will increase the incidence of crime and unlawful behaviour.	There is no evidence to suggest that increased housing supply in the area will result in an increased in crime and unlawful activities.
8	Development at the subject site should be houses not apartments.	Residential flat buildings are a permitted land use within the R4 zone applicable to the subject site.
9	There are currently plenty of trees which provide shelter for different kinds of birds and kangaroos. Construction would mean all trees and other natural habitat will be lost forever.	The removal of trees was approved as part of DA2016/381/1.  The approved/modified development provides communal open space and landscaped areas.
10	Devalue of property.	There is no evidence which suggests that the proposal will reduce property values. This is not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979.
11	If vehicles are parked in the narrow lanes, the roads will be congested and not easily accessible for fire services and ambulances during emergency.	Loading bays and a turning area are provided on-site to enable emergency vehicles to access, manoeuvre and service the site.

### **The public interest (EP&A Act s4.15(1)(e))**

In view of the foregoing analysis it is considered that the development, if carried out subject to the conditions set out in the recommendation below, will have no significant adverse impacts on the public interest.

### **SECTION 7.11 (FORMERLY S94) CONTRIBUTION TOWARDS PROVISION OR IMPROVEMENT OF AMENITIES OR SERVICES**

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure.

Comments:

The development requires the payment of contributions in accordance with the Pemulwuy Contributions Plan 2015.

The modified proposal comprises of 317 residential units with the following dwelling mix:

- 18 x 1-bedroom units,
- 281 x 2-bedroom units, and



- 18 x 3-bedroom units.

As at 25 May 2021, the fee payable is \$3,186,606.37. This figure is subject to indexation as per the relevant plan. The draft determination attached includes a condition requiring payment of the contribution prior to issue of a Construction Certificate.

## **DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

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The applicant and notification process did not result in any disclosure of Political Donations and Gifts.

## **CONCLUSION**

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The development as modified is generally consistent with all statutory and non-statutory controls applying to the development with the exception of the building height. Minor non-compliances with Council's controls have been discussed in the body of this report. The development is considered to perform adequately in terms of its relationship to its surrounding built and natural environment, particularly having regard to impacts on adjoining properties.

For these reasons, it is considered that the proposal is satisfactory having regard to the matters of consideration under Section 4.15 and 4.55 of the *Environmental Planning and Assessment Act 1979*, and the modified development may be approved subject to conditions.

## **RECOMMENDATION**

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- 1. That Modification Application No. MOD2020/0373 for Section 4.55(2) for various modifications to the approved residential flat buildings including additional floors and roof terraces, car parking spaces and additional 17 residential apartments, amendments to unit mix and floor levels, and deletion of internal roads; on land at Lots 12 & 13 Butu Wargun Drive, Pemulwuy be approved subject to attached conditions.**
- 2. Persons whom have lodged a submission in respect to the application be notified of the determination of the application.**

## **ATTACHMENTS**

1. Draft Notice of Determination
2. ADG Compliance Table
3. HLEP 2013 Compliance Table
4. HDCP 2013 Compliance Table
5. Section 4.55(2) Architectural Plans
6. Section 4.55(2) Landscape Plans
7. Applicant's Clause 4.6 written request to vary Building Height Standard
8. Approved Architectural Plans – DA2016/381/1
9. Submissions received