



## Report to Sydney Central City Planning Panel

<b>SCCPP reference</b>	PPSSCC-28
<b>DA No.</b>	528/2019
<b>Date of receipt</b>	15 March 2018. Amended plans or information received: <ul style="list-style-type: none"><li>- 2 March 2020</li><li>- 20 August 2020</li><li>- 16 October 2020</li><li>- 24 November 2020</li></ul>
<b>Proposal</b>	Construction of two residential towers comprising 419 apartments over four levels of basement car parking, construction of a new road plus associated landscaping, civil and public domain works
<b>Street address</b>	12 - 14 Birnie Avenue, Lidcombe
<b>Property Description</b>	Lot 1 DP 802479
<b>Applicant</b>	Altus Consulting Group Pty Ltd
<b>Owner</b>	SLA Homebush Pty Ltd and YYS & Co. Pty Ltd
<b>Submissions</b>	Less than 10 unique submissions
<b>Relevant s4.15 matters</b>	<ul style="list-style-type: none"><li>• Environmental Planning and Assessment Act and Regulations</li><li>• State Environmental Planning Policy No. 55</li><li>• State Environmental Planning Policy No. 65</li><li>• State Environmental Planning Policy (Sydney Harbour Catchment) 2005</li><li>• State Environmental Planning Policy (BASIX) 2004</li><li>• State Environmental Planning Policy (State Regional Development) 2011</li><li>• Auburn Local Environmental Plan 2010</li><li>• Draft amendments to Auburn Local Environmental Plan 2010</li><li>• Carter Street Precinct Development Control Plan 2016</li><li>• Carter Street Precinct Development Contributions Plan 2016</li></ul>
<b>Attachments</b>	Attachment 1- Selected plans Attachment 2 - Clause 4.6 request to vary LEP building height standard Attachment 3- Council peer review of wind report Attachment 4- Council peer review of reflectivity report

<b>Summary of s4.15 matters</b>	
Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report ?	Yes
<b>Legislative clauses requiring consent authority satisfaction</b>	
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 summarised in the Executive Summary of the assessment report ?	Yes
<b>Clause 4.6 Exceptions to development standards</b>	
If a written request for a contravention to a development standard has been received, has it been attached to the assessment report?	Yes
<b>Special Infrastructure Contributions</b>	
Does the DA require Special Infrastructure Contributions conditions (S94EF)?	No
<b>Conditions</b>	
Have draft conditions been provided to the applicant for comment ?	Yes

<b>Recommendation</b>	Refusal
<b>Report by</b>	Brad Roeleven, Executive Planner

## 1. Executive summary

This report considers a proposal to construct two residential towers comprising 419 apartments over four levels of basement car parking, also including construction of a new road plus associated landscaping, civil and public domain works.

Assessment of the application against the relevant planning framework and consideration of matters by Council's technical departments reveals that most relevant matters for consideration have been satisfactorily addressed. However three issues remain outstanding and are of such significance that the application in its current form cannot be supported. Those matter are:

- Wind impacts, both on site and in the public domain;
- Reflectivity impacts for the public domain; and
- Insufficient information to comply with SEPP (Basix).

On balance the application is therefore not satisfactory when evaluated against section 4.15 of the Environmental Planning and Assessment Act 1979. Accordingly this report recommends that the application be refused, for the reasons set out at Attachment B.

## 2. Key issues

- Insufficient information to comply with SEPP (Basix).
- Non-compliance with LEP height control
- Departure from ADG controls for solar access
- Constraints from pipelines
- Minor variations to DCP setbacks and floorplate controls
- Departure from ADG controls for solar access
- Wind impacts
- Reflectivity impacts

## 3. Carter Street Priority Precinct

### 3.1 Background and context

The Carter Street Priority Precinct comprises 52 ha of land bounded by Sydney Olympic Park, the M4 Motorway, Haslams Creek and land adjacent to Birnie Avenue. Rezoning for the Precinct was finalised in November 2015. Transformation to a high density residential precinct is well underway with 4 sites completed, 2 under construction, and further 2 two approved.



Figure 1: Aerial photo of Carter Street Priority Precinct – site marked with a star

### **3.2 Strategic Review by the Department of Planning and Environment (DPE)**

In mid-2017 the DPIE commenced a review of the planning controls for the Carter Street Precinct, in conjunction with its consideration of the Sydney Olympic Park Master Plan 2030. Its purpose was to ensure the controls accommodated changes to the design of a proposed off ramp from the M4 Motorway and Parramatta Light Rail (Stage 2) stop and terminus whilst still ensuring housing, employment and retail services within the Carter Street precinct.

The outcome was a revised Master Plan used to inform amendments to Auburn Local Environmental Plan (LEP) 2010 and Carter Street Precinct Development Control Plan (DCP) 2016. Public exhibition of the draft documents concluded on 26 October 2018.

In January 2019 the DPIE undertook a targeted consultation process with landowners and council to present various 'post exhibition changes' to the exhibited draft controls, and indicated that the draft instrument would be gazetted prior to the state election in March 2019, however that did not happen.

On 5 September 2019 the DPIE advised that it was undertaking a further post exhibition review of the draft LEP. A revised draft Master Plan and amendments to ALEP 2010 was eventually placed on exhibition from 31 August 2020 until 28 September 2020. The exhibited package shows the following changes to the subject site:

- No change to land use zone;
- No change to FSR; 3.5:1
- Increase in maximum building height from 72m to 90m.

The draft LEP also introduces an incentive clause whereby an additional uplift in height and FSR (103m and 3.96:1) can be pursued but only if specific car parking rates are met. Note however that uplift is not sought by this application.

The application however does seek to achieve the 90m height limit under the draft LEP, and a request under clause 4.6 of Auburn LEP 2010 has been lodged for that purpose.

## **4. Site location, description and related applications**

### **4.1 Site location and description**

The site is legally described as Lot 1 DP 802749, known as 12 – 14 Birnie Avenue, Lidcombe, as shown in figure 2 below.

It has a site area of 31,517.78sqm (3.15 hectares) and is bounded by Birnie Avenue to the west, Edwin Flack Avenue to the north, Lot 3 DP 589764 to the south and Lot 62 DP 1191648 to the east. It is irregularly shaped. Existing development includes three former warehouse buildings (4,052sqm, 2,153sqm and 4,103sqm) with associated structures and hardstand areas.

It is not a heritage item or within a heritage conservation area, nor is it located within the vicinity of either. It is not flood liable nor is it reserved for acquisition; it is affected by acid sulfate soils.

The site is burdened by numerous easements, including for pipelines, access, electricity



purposes, drainage, transmissions and right of ways.

The site has a split zoning as follows:

- R4 – High Density Residential
- B6 – Enterprise Corridor

DA/423/2019 was approved 19 September 2019 to subdivide the site into two allotments, with the new allotment boundary reflecting the zone pattern, as shown at Figure 2 below. That subdivision has not yet been registered.



Figure 2: Subject site, the shaded area being the zoning and approved subdivision boundary

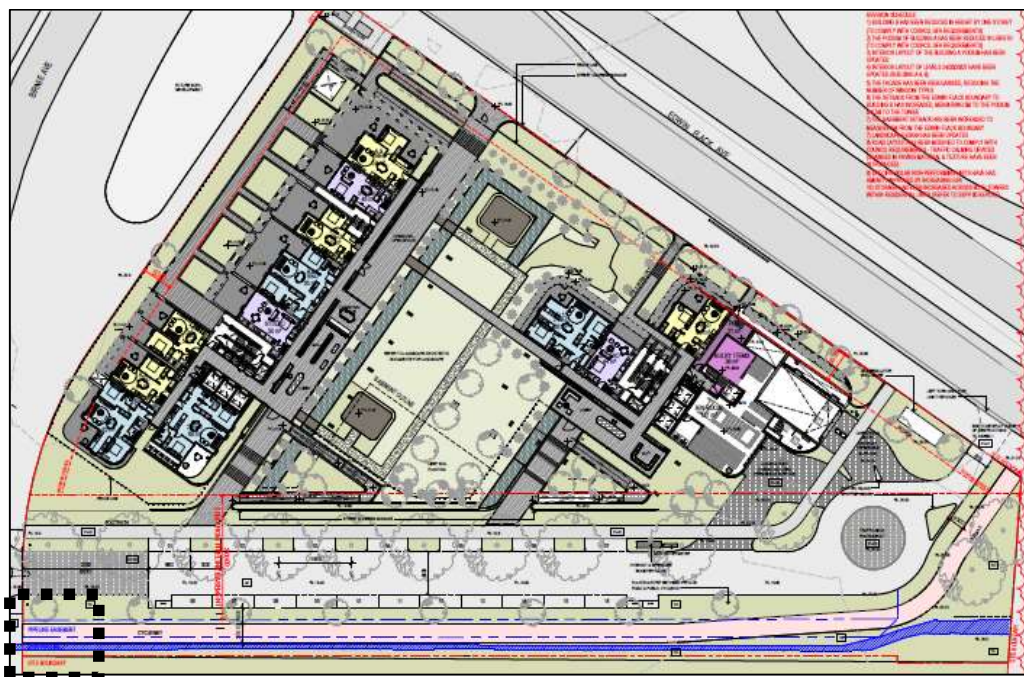


Figure 3: Approved subdivision boundary in red, extent of easement within development site in blue

## 4.2 Related applications

A summary of previous applications for this site is shown below:

DA number	Scope of works	Status
DA/423/2019	Subdivide the site into two allotments	Approved

## 5. The proposal

The proposal comprises the following primary elements:

- Two residential flat buildings, 27 storeys in height, comprising 419 apartments;
- Four levels of basement car parking;
- Construction of new road;
- Associated landscaping, civil and public domain works.



Figure 4: View from Edwin Flack Avenue



Figure 5: View north east from proposed road



Figure 6: Podium and tower detail



## 6. Public notification

The notification period was 25 September 2019 until 10 October 2019. Fifteen submissions were received however:

- 9 were identical, and a further 5 were slightly different, but essentially the same. The only issue raised was a concern linking the recent spate of major defects within apartment buildings to construction impacts from new developments, and requesting that a dilapidation report of private properties be undertaken prior to works commencing.
- One was an individual submission.

Noting the changes to the operation of Planning Panels which commenced on 1 August 2020, this matter is not required to be the subject of a public meeting as there is less than 10 unique submissions.

Consideration of the issues raised is provided at section 8 in **Attachment A** but, in summary, are not of a type to warrant modification to, or refusal of, this proposal.

## 7. Referrals

Any matters arising from internal/external referrals not dealt with by conditions	No
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## 8. Environmental Planning and Assessment Act 1979

Does Section 1.7 (Significant effect on threatened species) apply ?	No
Does Section 4.10 (Designated Development) apply ?	No
Does Section 4.46 (Integrated Development) apply ?	No
Are submission requirements within the Regulations satisfied ?	Yes

## 9. Consideration of SEPPs

Key issues arising from evaluation against SEPPs	SEPP Basix provisions not satisfied - a detailed assessment is provided at section 2.3 of <b>Attachment A</b> .
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## 10. Auburn LEP 2010

The table below presents a summary assessment against the terms of this LEP. A detailed evaluation is provided at **Attachment A**.

	<i>Comment or non- compliances</i>
Zones	<ul style="list-style-type: none"><li>• R4 High Density Residential</li><li>• B6 Enterprise corridor</li></ul>

Definition	<ul style="list-style-type: none"> <li>Residential flat building</li> </ul>
Part 2 Permitted or prohibited development	<ul style="list-style-type: none"> <li>Permissible in the zone (note all works in R4 zone)</li> <li>Consistent with zone objectives</li> </ul>
Part 3 Exempt and complying development	Not applicable
Part 4 Principle development standards	<ul style="list-style-type: none"> <li>Non-compliance - Building height The development standard is 70m. Each building has a height of 90m. A Clause 4.6 request is provided and the variation is supported.</li> </ul>
Part 5 Miscellaneous provisions	All relevant provisions satisfied
Part 6 Additional local provisions	Satisfied

## 11. Carter Street Development Control Plan 2016

The following table presents a summary assessment against the terms of this DCP, however a detailed evaluation is provided at **Attachment A**.

<i>Part</i>	<i>Comment or non-compliance</i>
Part 2 Vision, principles, indicative structure	Consistent
Part 3 Public domain	Satisfactory
Part 4 Residential/ mixed use development	Non-compliances for some setbacks and floorplates – satisfactory on merit.
Part 5 Employment uses	Not applicable – applies only B6 zoned land under ALEP 2010
Part 6 Environmental management	All relevant provisions satisfied

## 12. Planning Agreements and Contributions Plans

The matters for consideration:

- A Planning Agreement (PA) between the Minister for Planning and the applicant. For contributions to state public infrastructure. Fulfilment of the obligations under that PA must be confirmed by the Department of Planning Industry and Environment (DPIE) prior to the determination of any application, to satisfy clause 6.8 of Auburn LEP 2010.
- The Carter Street Precinct Development Contributions Plan 2016, which continues to operate despite the PA.



Both matters are satisfied as discussed provided at section 4.1 of **Attachment A**.

### 13. Response to SWCPP briefing minutes

The Panel was briefed on this application at its meeting on 5 December 2018. The 'Record of Briefing' provides a list of the key issues discussed. The matters that relate to the assessment of the application are addressed below:

<i>Issue</i>	<i>Comment</i>
Noted that DPIE guidance is required to progress the application	The DLEP is now well progressed and gazettal is expected shortly
Heights of buildings are dependent on broader Precinct review.	As above
Issues to be resolved include the local road network, and whether internal site roads are to be designated public or private.	This matter is now resolved- refer to section 6.4

### Conclusion

The application has been assessed relative to section 4.15 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls. Refusal is recommended subject to the reasons nominated at **Attachment B**.

### RECOMMENDATION

- A. That pursuant to Section 4.16(1) of the Environmental Planning and Assessment Act, 1979 the Sydney Central City Planning Panel refuse to grant development consent to Development Application DA/528/2019 for the reasons shown at **Attachment B**.
- B. That those persons who made a submission be advised of the Panel's decision.

# ATTACHMENT A - PLANNING ASSESSMENT

<b>SWCCP reference</b>	PPSSCC-28
<b>DA No.</b>	528/2019

## 1. Overview

### 1.1 Section 4.15 of the EPA Act

The relevant matters for consideration under this section of the Act noted in the table below:

**Table 1: Matters for consideration**

<b>Provision</b>	<b>Comment</b>
Section 4.15(1)(a)(i) - Environmental planning instruments	Refer to section 2 below
Section 4.15(1)(a)(ii) - Draft planning instruments	Refer to section 2.8 below
Section 4.15(1)(a)(iii) - Development control plans	Refer to section 3 below
Section 4.15(1)(a)(iiia) - Planning agreements	Refer to section 4.1 below
Section 4.15(1)(a)(iv) - The Regulations	Refer to section 5 below
Section 4.15(1)(b) - Likely impacts	Refer to section 6 below
Section 4.15(1)(c) - Site suitability	Refer to section 7.1 below
Section 4.15(1)(d) - Submissions	Refer section 7.2 below
Section 4.15(1)(e) - The public interest	Refer to section 8 below

### 1.2 Referrals

The following internal and external referrals were undertaken:

**Table 2: Referrals**

Landscape	No objections – conditions provided
Development Engineer	No objections – conditions provided
Traffic	No objections – conditions provided
Environmental Health (Waste)	No objections – conditions provided
Environmental Health (Contamination)	No objections – conditions provided
Environmental Health (Acoustic)	No objections – conditions provided
Urban Design (Public domain)	No objections – conditions provided

External ESD consultant	Concerns raised- refer to sections 2.3 and 6.5
External wind consultant	Concerns raised- refer to sections 6.5
Sydney Olympic Park Authority	No objections – comments provided
Ausgrid	No objections – conditions provided
TfNSW	No objections – conditions provided

## 2. Environmental planning instruments

Compliance with the relevant instruments is addressed below.

### 2.1 State Environmental Planning Policy 55 – Remediation of land

Clause 7 of SEPP 55 requires the consent authority to consider if land is contaminated and, if so, whether it is suitable, or can be made suitable, for a proposed use.

Consistent with clause 7(2) of this Plan, the application is supported by Preliminary Stage 1 ESA which included a review of site historical information, development of a Conceptual Site Model, soil and groundwater sampling. That report notes:

- All soil and groundwater results were below the Site Assessment Criteria (SAC)
- Asbestos Containing Material (ACM) were confirmed on the surface in the north-east section of the site.
- Review of the Conceptual Site Model (CSM) has identified a number of data gaps which require further assessment.

The report concludes that:

- Remediation is not necessary at this stage as the surface ACM can be removed without formal remediation if undertaken in accordance with SafeWork NSW guidance; and
- The site can be made suitable for the proposal provided the following recommendations are implemented:
  - A Detailed Site Investigation (DSI) is undertaken to address the data gaps identified in Section
  - The DSI should include an additional Waste Classification Assessment;
  - Should the DSI identify contamination risks to the proposed receptors then a Remediation Action Plan (RAP) should be prepared; and
  - A Hazardous Materials Assessment (Hazmat) for the existing buildings is undertaken prior to the commencement of demolition work.

The report has been evaluated and confirmed as satisfactory by council's Environmental Health Officer.

### 2.2 State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development

This Policy aims to improve the design quality of residential flat development. This proposal has

been assessed against the following matters relevant to SEPP 65 for consideration:

- Design Excellence Advisory Panel;
- The 9 SEPP 65 Design Quality Principles; and
- The Apartment Design Guide (ADG).

#### Design Excellence Advisory Panel (DEAP)

The Panel initially considered this proposal in November 2018 at the preDA stage, and confirmed its support for the scheme subject to:

- Pursuing opportunities for vehicle and pedestrian connections to Edwin Flack Avenue;
- Improving the entry driveway by reducing pavements areas to increase landscaping, and also achieving an improved street address with better defined pedestrian entry points;
- Removal of undercroft units in building B due to their poor level of amenity;
- Ensuring the amenity of balconies is not compromised by wind impacts
- Various opportunities to improve the landscape treatment generally
- Various opportunities to improve ESD outcomes.

The formal DA was subsequently by the DEAP panel in October 2019 and noted that the matters at the preDA stage had been generally been addressed with only further minor revisions required.

Specific analysis of ADG matters by the Panel is provided elsewhere within this report.

#### Design Quality Principles

Part 4 of the Policy introduces 9 design quality principles. These principles do not generate design solutions, but provide a guide to achieving good design and the means of evaluating the merits of proposed solutions. A response to those design principles, prepared by the project architect, supports the application as required by the Environmental Planning and Assessment Regulation.

The following table provides an assessment of the proposal against those principles having regard to the comments of DEAP and assessment by Council's officers:

Table 3: Response to SEPP 65 design principles

<b>Principle</b>	<b>Comment</b>
<b>Context Context and neighbourhood character</b>	The locality is transforming to a high density residential/mixed use precinct. The development generally accords with the desired future character nominated by the LEP and DCP. The building will contribute to the quality and identity of the area.
<b>Built form and scale</b>	The bulk and scale of the proposal is acceptable given its consistency with the LEP and DCP controls, noting the properly justified building height variation. Site planning, building volume/ mass presentation and detailing are satisfactory following modification to address issues raised by DEAP. Public domain outcomes are also satisfactory. Conditions are nominated to ensure further improvements are achieved.



<b>Density</b>	Density is consistent with the precinct specific controls in the LEP. Those controls were developed with regard to the context of the site in terms of availability of infrastructure, public transport, community facilities and environmental quality.
<b>Sustainability</b>	Energy and water efficiency targets under SEPP (Basix) 2004 are achieved. The design is generally consistent with best practice design criteria for cross ventilation and solar access under the ADG, with the exceptions noted elsewhere in this report acceptable on merit.
<b>Landscape</b>	The landscape treatment is satisfactory. Conditions are nominated to achieve an improved outcome for the public domain elements of the scheme.
<b>Amenity</b>	Amenity for apartments is satisfactory when tested against best practice design criteria in the ADG, with the exceptions noted elsewhere in this report acceptable on merit.
<b>Safety</b>	Appropriate outcomes achieved through the design generally, and otherwise by conditions of consent as proposed.
<b>Housing diversity and social interaction</b>	An appropriate mix of unit sizes has been provided. The required number of adaptable housing units is provided.
<b>Aesthetics</b>	The composition of building elements and materials is satisfactory. Conditions are recommended to ensure the quality of the built form presentation is maintained.

#### Apartment Design Guide (ADG)

The SEPP requires consideration of the ADG, which supports the 9 design quality principles by providing greater detail on how proposals can meet those principles through good design and planning practice. The table below considers this proposal against key ADG matters:

**Table 4: Response to ADG**

<b>Element</b>	<b>Comment</b>	<b>Complies</b>
Building separation	Separation distances are achieved	Yes
Apartment size and layout	<ul style="list-style-type: none"> <li>Minimum unit sizes are achieved</li> <li>Apartment layouts are efficient</li> </ul>	Yes
Balconies	Minimum areas and dimensions are achieved	Yes
Ceiling heights	Minimum internal heights are achieved	Yes
Storage	Required supply of storage for each unit is achieved	Yes
Solar access and daylight	<ul style="list-style-type: none"> <li>73% units &gt;2hrs solar access (Min. criteria is 70%) <ul style="list-style-type: none"> <li>43 % of units achieve 6+ hours of solar access</li> <li>A further 30% of units achieve 3+ hours solar access</li> </ul> </li> <li>23% get no solar access (Max criteria is 15%)</li> </ul>	<p>Yes</p> <p><b>No</b>, but satisfactory on merit. See discussion at 6.5</p>
Natural ventilation	65% of units are cross ventilated (min criteria is 60%)	Yes
Visual privacy	Satisfactory despite building separation distances	Yes

<b>Element</b>	<b>Comment</b>	<b>Complies</b>
Common circulation	<ul style="list-style-type: none"> <li>Design complies with criteria of maximum 8 units off a circulation core.</li> <li>Number of units per lift (criteria is 40/lift) <ul style="list-style-type: none"> <li>Building A = 74 units/lift</li> <li>Building B = 65 units/lift</li> </ul> </li> </ul>	<p>Yes</p> <p><b>No</b>, but satisfactory on merit.</p>
Common open space	<ul style="list-style-type: none"> <li>Common open space provided is 4,678m<sup>2</sup> being 43% of the site (criteria is 25%)</li> <li>Min 50% of COS to receive 2hrs sunlight at midwinter,</li> </ul>	Yes
Deep soil	Design criteria for sites greater than 1,500m <sup>2</sup> is 7%, with 15% desirable. The proposal achieves 14%. This increases to 24% if areas with a dimension of between 3m-6m are included.	Yes

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

The purpose of this Policy to reduce household electricity and water use by setting minimum sustainability targets for new and renovated homes. That outcome is implemented by setting minimum targets that must be achieved. Evidence of compliance is to be demonstrated through the provision of a Basix Certificate.

Consistent with the provisions of the Regulations and this Policy, the application as lodged was supported by the required Certificate and associated supporting plans and reports.

Review of that information by Council's sustainability consultant identified various errors or omissions from the applicant's assessment, and consequently a revised Certificate and supporting information was requested.

The further review of that information identified the following matters:

- Certificate numbers on the BASIX Certificate not consistent with that shown on the NatHERS class 2 summary certificate.
- The 2 towers, though on the same BASIX certificate, have a separate NatHERS class 2 summary certificate with a separate certificate number.
- A window schedule has been provided. However, the NatHERS certificates are found to be based on significantly greater openability that shown in the window schedule. This issue needs to be corrected to ensure natural ventilation benefits are not overstated.
- Some bedrooms found to not have any operable windows 3 which is not in line with the ADG.

While it is likely the case that these matters could be readily resolved, for the purposes of this assessment the Basix details provided are not sufficient to demonstrate that the requirements of this Policy are satisfied.

### 2.4 Deemed State Environmental Planning Policy (Sydney Harbour Catchment) 2005

This Policy applies to all of the City of Parramatta local government area. It aims to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and

waterways by establishing principles and controls for the whole catchment.

The nature of this project and the location of the site are such that there are no specific controls which directly apply, with the exception of the objective of improved water quality. That outcome will be achieved through the imposition of suitable conditions to address the collection and discharge of water.

## **2.5 State Environmental Planning Policy (Infrastructure) 2011**

### Clause 66C - Development adjacent to pipeline corridor

The site is traversed by multiple pipelines, including high pressure liquid hydrocarbon pipelines owned and operated by Caltex and VIVA Energy. Those pipelines are identified as licence numbers 4, 6 under the Pipelines Act 1967.

Clause 66C(1) of the ISEPP addresses the determination of development applications for development adjacent to pipeline corridors and states:

- (1) *Before determining a development application for development adjacent to land in a pipeline corridor, the consent authority must:*
  - (a) *be satisfied that the potential safety risks or risks to the integrity of the pipeline that are associated with the development to which the application relates have been identified, and*
  - (b) *take those risks into consideration, and*
  - (c) *give written notice of the application to the pipeline operator concerned within 7 days after the application is made, and*
  - (d) *take into consideration any response to the notice that is received from the pipeline operator within 21 days after the notice is given*

These matters are addressed below

#### Potential safety risks [66C(1)(a)]

The 2018 iteration of the DPIE's publicly exhibited draft amendments to precinct planning controls a Land Use Safety Study (LUSS) by Arriscar to estimate the risks posed by the existing pipelines. That study informed the introduction into the precinct DCP of specific provisions for development near the pipelines.

Although the precinct amendments are yet to be implemented, that risk assessment remains a relevant assessment tool for the purposes of this provision of the ISEPP. The controls are linked to hazard contours (see figure 7 below) and the proposed land use.

In summary, the relevant provisions of the 2018 draft DCP state that residential development on this site must not exceed a prescribed GFA unless such is supported by a risk assessment undertaken to satisfy DPIE criteria.

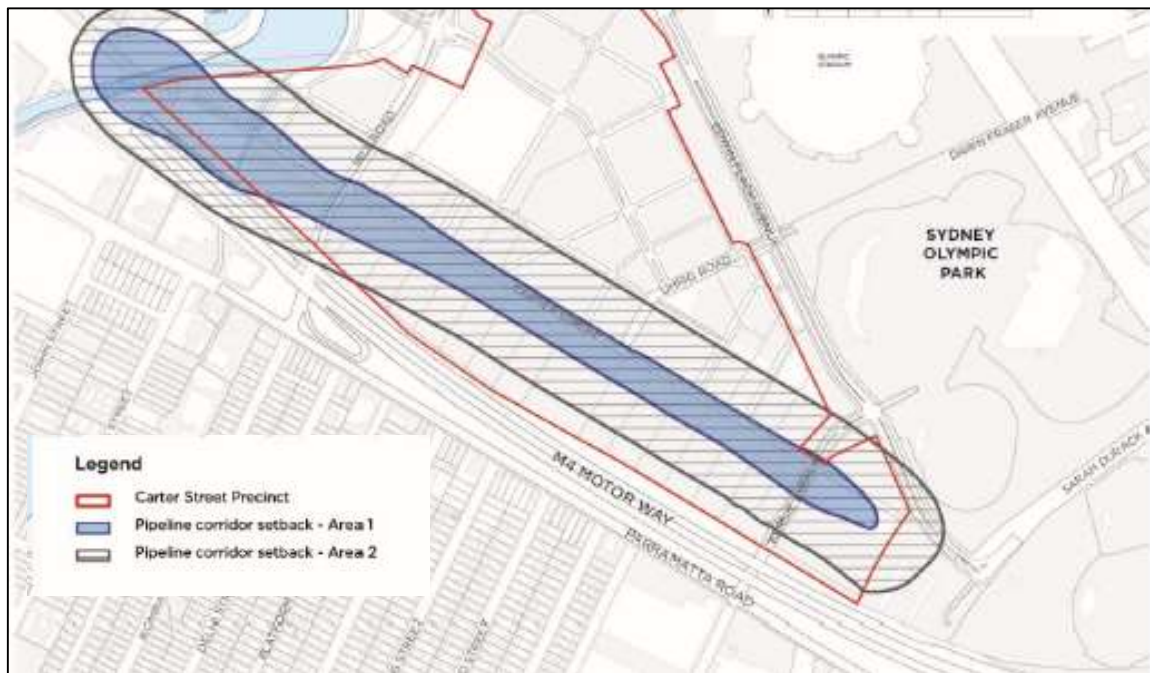


Figure 7: Pipeline hazard contours

Given the specialised nature of this particular matter council requested the Hazards Branch of the DPIE to review the application, who advised as follows:

*Given the proposed DA will have a GFA below what has been assumed in the Arriscar's report, the number of population introduced in DA is therefore likely below the population assessed in the Arriscar's report. As such, further risk assessment is not required for this DA.*

The 2020 iteration of the DPIE's publicly exhibited draft DCP refines the provisions for development in proximity to these pipelines. The evaluation undertaken to date is considered to respond to those controls.

Accordingly the provisions of clause 66C(1)(a) of the ISEPP are considered to be satisfied.

#### Risks to the integrity of the pipeline [66C(1)(a)]

The application is supported by a Safety Management Study report which sought to identify the specific impacts of this proposal upon the safe operation and maintenance of the Fuel Pipelines. That report provides the following conclusion:

*SMS risk register was prepared and validated during the SMS Workshop with (4) threats identified as needing a risk assessment based upon the proposed design of the Birnie Ave Development.*

*The one and only Intermediate Risk was accepted as ALARP subject to completion of the nominated actions identified.*

*The SMS Action Plan serves to provide specific actions to be address all concerns and issues raised at the Workshop.*

*The actions raised are to ensure proposed Developer and Licensee controls are in place*



*to ensure the pipelines can continue to be operated and maintained effectively and safely as required under AS2885.*

Given the specialised nature of this particular matter council requested the Hazards Branch of the DPIE to review the application, who advised as follows:

*The SMS is sufficient to respond the requirements of clause 66C of the ISEPP. The purpose of SMS is to ensure adequate protection available for the integrity of the pipeline. The SMS methodology is not designed to assess the societal risk from the pipelines.*

Accordingly the provisions of clause 66C(1)(a) of the ISEPP are considered to be satisfied.

#### Consultation with pipeline operators [66C(1)(c) and(d)]

Consistent with clause 66(1)(c), council consulted with the relevant pipeline operators being Viva Energy (objections addressed provided nominated conditions are attached to any consent), Qenos (no objections) and Caltex (no reply).

Accordingly the provisions of clause 66C(1)(c) and (d) of the ISEPP are considered to be satisfied.

#### Clause 104 - Traffic generating development

Consistent with clause 104 this Policy and Schedule 3 of this Policy (Traffic Generating Development) the application was referred to TfNSW for comment. No objections were raised.

## **2.6 State Environmental Planning Policy (State and Regional Development) 2011**

This application is captured by Part 4 of this Policy which provides that the Panel is the consent authority for this application.

## **2.7 Auburn Local Environmental Plan 2010**

### Zoning and permissibility

The site has a split zone, being part R4 'High Density Residential' and part B6 'Enterprise Corridor' however the proposal is located wholly within the R4 land. As noted there is an approved subdivision which aligns with the zone boundary.

The use is defined as a '*residential flat building*', which is permissible within the R4 zone.

### Zone objectives

Clause 2.3(2) requires the consent authority to have regard to the zone objectives when determining a development application. The objectives for the R4 zone are:

- *To provide for the housing needs of the community within a high density residential environment.*

- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage high density residential development in close proximity to bus service nodes and railway stations.*

The proposal is consistent with those objectives.

#### Remaining provisions

Consideration of the remaining provisions of the Plan that may be relevant to this application are addressed in the following table:

**Table 5: ALEP 2010 compliance table**

<b>Clause</b>	<b>Comment</b>	<b>Complies</b>
Clause 2.7 Demolition	Not part of this application.	N/A
Clause 4.3 Building height	The mapped control is 72m. The maximum heights for the buildings, measured to the top of the lift overruns, are: <ul style="list-style-type: none"> <li>• Building A = 90m (Non-compliance is 18m or 25%)</li> <li>• Building B = 90m (Non-compliance is 18m or 25%)</li> </ul>	<b>No</b> , defer to clause 4.6
Clause 4.4 Floor space ratio	The mapped control is 3.5:1, which is the FSR of this scheme.	Yes
Clause 4.6 Exceptions to standard	The application relies upon this clause to allow the exceedance of the height standard as noted above. See assessment at section 2.9 below. The variations are supported	Yes
Clause 5.10 Heritage	<ul style="list-style-type: none"> <li>• The site is not a listed heritage item, nor is it within a conservation area.</li> <li>• No heritage items in the immediate locality.</li> </ul>	N/A
Clause 6.1 Acid sulphate soils	The ALEP map identifies the site as comprising "Class 5" acid sulphate soils. The proposal does not meet the criteria in subclause (2) and therefore an Acid Sulfate Management Plan is not required.	N/A
Clause 6.2 Earthworks	<ul style="list-style-type: none"> <li>• Consideration of potential impacts upon drainage patterns, and proximity to watercourses have been considered by Council's Development Engineer, who is satisfied the works can managed without impact.</li> <li>• Site works will not prejudice the future development of any adjoining land, or the amenity of that land.</li> <li>• Issues relating to soil quality are addressed via considerations of SEPP 55</li> <li>• No circumstances identified for potential relics.</li> </ul>	Yes

Clause 6.3 Flood Planning	The site is not identified on flood planning map	N/A
Clause 6.5 Essential services	The nominated services are either already available, or otherwise will be made available such that they will be sufficient to service this development.	Yes
Clause 6.8 Contributions to designated State public infrastructure	Consent must not be granted unless the Secretary of the DPIE has certified in writing that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that development.	Yes Certification received 27.11.20

## 2.8 Draft Amendments to Auburn Local Environmental Plan 2010

As noted at section 3.2 of the Executive Summary, the DPIE has for several years now been investigating amendments to both the Auburn LEP and the associated Carter Street Precinct Development Control Plan. The most recent iteration of the draft controls was publicly exhibited from 31 August 2020 until 28 September 2020. Those provision are therefore a matter for consideration per section 4.15(1)(a)(ii) of the EPA Act.

Consistency with mapped controls under the DLEP is shown in the following table:

**Table 6: DLEP mapped controls**

<b>Map</b>	<b>Provision</b>	<b>Complies</b>
Active frontage map	Site not identified on this map	NA
FSR	3.5:1	Yes
Building heights	90m	Yes
Land Reservation acquisition	Site not identified on this map	NA
Transport Investigation area	Site not identified on this map	Yes
Zone Map	No change from existing LEP (e Part R4/part B6)	Yes

Consistency with the applicable written instrument controls under the DLEP is shown in the following table:

**Table 7: DLEP written instrument**

<b>Provision</b>	<b>Comment</b>
Clause 7.2 Design Excellence	<ul style="list-style-type: none"> <li>The proposal is satisfactory when tested against the qualitative criteria in subclause (4)</li> <li>Council's DEAP has confirmed it support for the scheme consistent with the terms of subclause (5)</li> </ul>
Clause 7.6 Height and Floor space incentives for reduced car parking	<ul style="list-style-type: none"> <li>Incentive height of 103m/ FSR of 3.96:1 permitted if parking supply outcomes achieved</li> <li>The DA does not rely upon these provisions.</li> </ul>

## 2.9 Evaluation of non-compliance with LEP building height

### 2.9.1 Overview

The following table provides a summary of the requested variation to the building height

development standard:

**Table 8: Summary of height variation**

The standard	Clause 4.3 of ALEP 2010 - Height of buildings – 70m
Objectives of the standard	<p>(a) <i>to establish a maximum height of buildings to enable appropriate development density to be achieved, and</i></p> <p>(b) <i>to ensure that the height of buildings is compatible with the character of the locality</i></p>
Extent of the variation	<p>The maximum defined heights and the % variations are:</p> <ul style="list-style-type: none"> <li>• <i>Building A</i> Maximum height is 90m (Non-compliance is 18m or 25%)</li> <li>• <i>Building B</i> Maximum height is 90m. (Non-compliance is 18m or 25%)</li> </ul>

### **2.9.2 Operational provisions**

The operational provisions of clause 4.6 of ALEP 2010 are satisfied as demonstrated below:

**Table 9: Operative provisions of clause 4.6**

Clause	Provision	Comment
4.6(1) Objectives	<p>(a) <i>to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i></p> <p>(b) <i>to achieve better outcomes for and from development by allowing flexibility in particular circumstances</i></p>	Noted
4.6(2) Operation of clause 4.6	The operation of clause 4.6 is not limited by clause 4.6(8) of this LEP, or any other instrument.	Noted
4.6 (3) Applicant's written request	<p>The applicant is to provide a written request seeking to justify contravention of the development standard. The request must demonstrate that:</p> <p><i>"(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i></p> <p><i>(b) there are sufficient environmental planning grounds to justify contravening the development standard."</i></p>	Received – refer Attachment 2

### **2.9.3 The matters for which consent authority is to be satisfied**

The matters that the consent authority is to be satisfied on are set out in clause 4.6(4) of ALEP 2010, and addressed in the following table:

**Table 10: Consent Authority matters**

Clause	Provision	Comment
4.6(4)(a)	<i>the consent authority is satisfied that:</i>	



	<p>i) <i>the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3),</i></p> <p>ii) <i>the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</i></p>	<p>See comments below</p> <p>See comments below</p>
4.6(4)(b)	<i>the concurrence of the Secretary has been obtained</i>	Concurrence assumed via Planning Circular PS 18-003 dated 21/02/2018. There is no limit to the level of non-compliance for which concurrence can be assumed.

#### **2.9.4 Summary of the applicant's contentions**

The applicant's contentions regarding environmental planning grounds to justify the non-compliance with the height development standard is summarised below (Note: the full request is included at Attachment 2).

*There are sufficient environmental planning grounds to justify contravening the lot size development standard given:*

- *There will be no detrimental impacts on both the natural and built environments;*
- *There will be no detrimental social or economic impacts;*
- *Site is suitable for the proposed development; and*
- *It is in the public interest.*
- *Approval of the proposed development with an increase in building height will not impact on the proposals ability to:*
  - *achieve an appropriate balance between development and*
  - *management of the environment that will be ecologically sustainable,*
  - *socially equitable and economically viable;*
  - *minimise adverse impacts of development;*
  - *protect and enhance the amenity of residents;*
  - *protect and enhance the natural environment and scenic quality of the*
  - *locality; and*
  - *meet the housing requirement for the precinct.*

#### **2.9.5 Evaluation**

To assist the Panel with its consideration of the height variation, an assessment against the relevant case law established in the NSW Land and Environment Court is provided below. These cases establish tests that determine whether application of a development standard is unreasonable or unnecessary and whether there are environmental planning grounds.

***Requirement (A) - Unreasonable and Unnecessary [clause 4.6(3)(a) of ALEP 2010]***

In the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827 that Judgement identified five circumstances in which compliance with a development standard can be unreasonable or unnecessary, and stated that only one such way needed to be demonstrated. Those five ways are:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*
5. *The zoning of particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.*

The applicant relies upon the first option – that the objectives of the height standard are achieved despite the departures requested. This is further reviewed at Requirement (C) below.

***Requirement (B) - Environmental Planning Grounds [clause 4.6(3)(b) of ALEP 2010]***

The decision in the Land & Environment Court case of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, suggests that 'sufficient environmental planning grounds' for a Clause 4.6 variation is more onerous than compliance with zone and standard objectives. The Judgement also established that the additional grounds had to be particular to the circumstances of the proposed development, and not merely grounds that would apply to any similar development.

In summary, the environmental planning grounds identified by the applicant to support the height variation, relative to a height compliant design are:

- Allows for planned densities to be achieved
- Lack of adverse environmental, amenity, built form, social and economic

It is not agreed that the planning grounds nominated are site specific in nature. However, it is agreed that there is a lack of adverse impacts as a consequence of the additional height proposed beyond the current control.

***Requirement (C) - Public Interest [clause 4.6(4)(a)(ii) of ALEP 2010]***

Public interest is determined with regard to objectives of the standard and the objectives of the zone. These matters are considered below:

**Table 11: Objectives of the standard and zone objectives**

<b>Objectives of the height standard</b>	
<b>Provision</b>	<b>Comment</b>
to establish a maximum height of buildings to enable appropriate development density to be achieved,	The current LEP density control (FSR) is not exceeded. Indeed the 'incentive' FSR control in the DLEP is also not exceeded.
to ensure that the height of buildings is compatible with the character of the locality.	The proposed height is consistent with the exhibited draft LEP amendments. Further, that draft LEP allows for incentive heights on this site- which this application <u>does not</u> seek to realise.
<b>Objectives of the zone</b>	
<b>Provision</b>	<b>Comment</b>
Provide for the housing needs of the community within a high density residential environment.	Achieved
Provide a variety of housing types within a high density residential environment.	Achieved, noting unit mix
Enable other land uses that provide facilities or services to meet the day to day needs of residents.	The absence of other permitted uses within this proposal is not contrary to the zone objectives, which seek only to encourage that possibility, but do not mandate such an outcome.
Encourage high density residential development in close proximity to bus service nodes and railway stations.	Achieved. The incentive provisions in the DLEP are predicated on this site's proximity to the Metro West station, which will be located nearby in Sydney Olympic park.

## **Conclusion**

The requested variation to the height control can be supported given:

- It is not for the purpose of additional density; although the DLEP allows for such in certain circumstances;
- The height sought is consistent with the strategic intent for the locality noting the terms of the exhibited Draft LEP. Further that Draft LEP allows even greater height on this site subject in certain circumstances. The status of that DLEP is considered to be 'certain and imminent';
- There are no adverse outcomes;
- The preconditions of Clause 4.6(4)(a), in relation to the adequacy of the applicant's written request and the public interest, are satisfied.

In reaching this conclusion regard has been had to the relevant Judgements of the LEC.

## **3. Carter Street Development Control Plan 2016**

### **3.1 Overview**

The DCP nominates an "Indicative Structure Plan" (ISP) which shows how the precinct may develop over time. The ISP is intended as a guide to demonstrate how the vision, development

principles and key elements for the precinct may be achieved, recognising there may be other effective options. The DCP states that Council may consent to a proposal that differs from the ISP where variations are considered to still achieve the vision, principles and key elements.

### 3.2 Compliance

The DCP is comprised of the following sections:

- 2 - Vision, principles and indicative structure
- 3 - Public domain
- 4 - Residential/ mixed use development
- 5 - Employment uses
- 6 - Environmental management

Sections 2, 3, 4 and 6 are relevant. Compliance tables are provided below:

**Table 12: DCP 2016 compliance table**

Part 2 – Vision principles and indicative structure		Complies
2.1 Vision	The proposal is not inconsistent with the vision statement.	Yes
2.2 Development principles	The proposal is not inconsistent with these principles.	Yes
2.3 Indicative structure plan	The proposal is not inconsistent with the ILP.	Yes
Part 3 – Public domain		Complies
3.1 Street network	The street network is consistent with the DCP.	Yes
3.2 Pedestrian and cycle network	Satisfactory.	Yes
3.3 Public open space network	Satisfactory.	Yes
Part 4 – Residential mixed use development		Complies
4.1 Building height and form	<ul style="list-style-type: none"> <li>• Building heights are consistent with ALEP 2010, other than for variations as noted at section above, and which are satisfactory on merit</li> <li>• Separation between buildings is satisfactory,</li> <li>• Floor plates exceed the 900m<sup>2</sup> maximum, however all floorplates are highly articulated</li> </ul>	Yes, .

	<ul style="list-style-type: none"> <li>• Maximum building lengths of 65m are achieved. No adverse built form of public domain outcomes arise. The built form is supported by DEAP.</li> <li>• Solar access to communal open space is adequate as per ADG requirements.</li> <li>• Buildings do not overshadow public open space</li> </ul>	
4.2 Setbacks and public domain interface	<ul style="list-style-type: none"> <li>• 5m deep soil zone setback is achieved except at pinch points at the western end of the site. Satisfactory on merit.</li> <li>• Design provides a suitable interface with street corners and public domain. Individual entries provided to ground floor units where appropriate.</li> <li>• Privacy to ground level units from public domain is achieved</li> </ul>	Yes
4.3 Building design and facades	<ul style="list-style-type: none"> <li>• Articulation of the built form and the overall façade treatment is satisfactory, noting the evaluation from DEAP.</li> </ul>	Yes
4.4 POS and landscaping	<ul style="list-style-type: none"> <li>• Location of private and common open space is satisfactory</li> <li>• Supply of common open space is satisfactory</li> <li>• Landscape treatment is satisfactory</li> </ul>	Yes
4.5 Vehicle access and car parking	<ul style="list-style-type: none"> <li>• Parking is provided in a basement</li> <li>• Vehicular access points are consolidated to minimise disruption to pedestrians</li> <li>• The supply of onsite parking satisfies requirements</li> <li>• The design geometry and layout of parking and service areas is not completely satisfactory, but is resolved by way of condition</li> </ul>	Yes,
4.6 Acoustic assessment	<ul style="list-style-type: none"> <li>• Required internal amenity is achieved</li> </ul>	Yes,
4.7 Safety + security	The design properly responds to CPTED considerations. Appropriate conditions are proposed.	Yes
4.9 Adaptable housing	The required number of adaptable units are provided	Yes
Part 6 – Environmental management		Complies
6.1 Sustainability	<ul style="list-style-type: none"> <li>• Basix targets are achieved, but concerns with status of some documents</li> <li>• Waste management during construction is addressed by conditions</li> </ul>	Yes
6.2 Flooding	The land is not flood affected. Arrangements for managing overland flow of stormwater are satisfactory.	N/A
6.3 Stormwater	Council's Development Engineer is satisfied with stormwater arrangements.	Yes

## 4. Planning Agreements or Contributions Plans

### 4.1 Planning Agreement

A Planning Agreement exists between the applicant and the DPIE for the purposes of clause 6.8 of Auburn LEP 2011, which makes provision for contributions to designated State public infrastructure. The PA requires payment to the DPIE of a contribution amount for all allowable gross floor area (GFA), with those funds put towards the provision of designated State public infrastructure to satisfy needs arising from the development of the Precinct.

Clause 6.8 provides that consent must not be granted unless the Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that development.

That Certificate was issued on 27 November 2020. (Ref:SVPA-2020-10)

### 4.2 Carter Street Precinct Contributions Plan 2016 - Levy

The PA specifically does not exclude the operation of section 7.12 of the Act. The land therefore remains the subject of this Plan, requires the payment of a fixed levy of 1% of the cost of development. This matter is addressed by condition in Attachment B.

## 5. Environmental Planning and Assessment Regulation 2000

This application satisfies relevant clauses of the Regulation as follows:

Table 13: Relevant EPA Regulations

Clause 50(1)(a)	The nominated documentation is provided being: <ul style="list-style-type: none"><li>○ A design verification statement;</li><li>○ An explanation of the design in terms of the principles in SEPP 65</li><li>○ Relevant drawings and montages</li></ul>
Clause 98	All building work will be carried out in accordance with the provisions of the Building Code of Australia.

## 6. Likely impacts

### 6.1 Context and setting

The Land and Environment Court planning principle on “compatibility with context” as established in *Project Venture Developments v Pittwater Council* provides the following test to determine whether a proposal is compatible with its context:

*Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites ?*

#### Response

This proposal will not result in any adverse physical impacts as follows:

- Site works and alterations to the ground profile are acceptable;
- Appropriate arrangements will be made for the collection and disposal of stormwater;
- Arrangements for vehicle access, and traffic generation will not compromise safety for road users, and will not reduce the efficiency of the local road network;
- The design and location of the building will not preclude surrounding land from being developed in accordance with planning controls; and
- The proposal will not generate noise, cast shadows or diminish views that would be detrimental to adjacent and surrounding sites.

*Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

#### Response

This proposal will have a satisfactory relationship with its context for the following reasons:

- It provides for a land use contemplated by the planning controls;
- Site planning locates built elements in suitable locations to avoid negative amenity outcomes for adjacent sites or areas of public open space;
- The scale and form and presentation of the buildings is consistent with planning controls,
- Design and site planning resolves issues raised by the DEAP;
- The public domain treatment will be satisfactory;
- The operational characteristics of the site will not result in any adverse impacts for adjacent sites or the wider locality.

## **6.2 Site works**

### Excavation

No adverse environmental outcomes, or impacts for adjoining sites, have been identified as a consequence of the excavation required for the basement levels of this scheme.

### Tree removal

The extent tree removal is acceptable to Council's landscape officer.

### Utility services

All utility services are available to the site by virtue of the existing development. Those services will be decommissioned / diverted as necessary to enable construction, and will be augmented as nominated by the relevant service providers to satisfy the demands generated by this proposal.

## **6.3 Natural and technological hazards**

The hazards of concern (contamination and risk associated with pipelines) are addressed at sections 2.1 and 2.5



## 6.4 Site design and internal design

### New access road

The current DCP nominates that this land would be serviced by a new road from Birnie Avenue, set along the same alignment as Carter Street, but terminating in a cul-de-sac within the site.

The 2018 and 2020 exhibited draft versions of the DCP show this new road extending to connect with Edwin Flack Avenue. However the DCP shows that connection occurring on adjoining SOPA land, an outcome that cannot be implemented through this application.

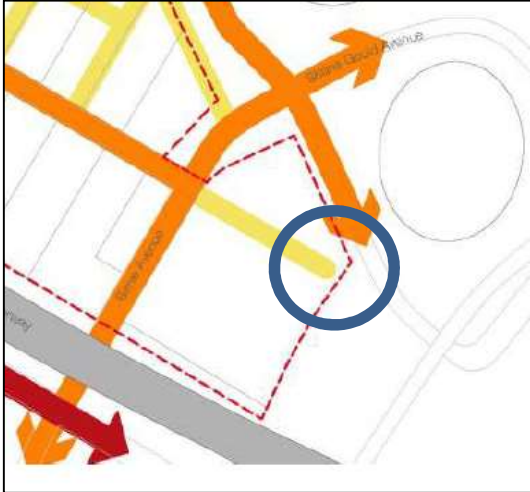


Figure 8: Road network, existing DCP

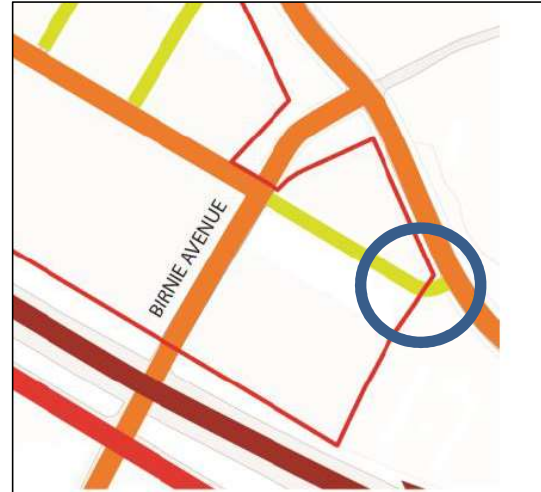


Figure 9: Road network, draft DCP

The DA responds to the current DCP, but includes a driveway exit that will allow residents direct access to Edwin Flack Avenue. This is an important feature as the entry from Birnie Avenue will be “left in/left out” only until traffic signals are installed at the intersection of Carter Street and Birnie Avenue. Funding for the signals is included in the current Contributions Plan however timing for those works is not known, in part due to uncertainties associated with Stage 2 of the Parramatta Light Rail project.

Council’s Traffic team is satisfied with the design of the proposed road, including its limited connection with Edwin Flack Avenue. SOPA raised no objection provided no adverse outcomes resulted for the local road network, which is the case.

### Status of new road

The current and Draft DCPS contemplate all new roads being public roads. It is an instance however council’s Civil assets team does have advised the new road should remain a private asset, as the proximity to pipelines presents a risk which would significantly limit council’s ability to undertake future maintenance.

Council’s Traffic team has no objection to this road being a private asset in this instance as it is not a critical component of the local road network.

Public access across the site will be limited to pedestrians and cyclists only.

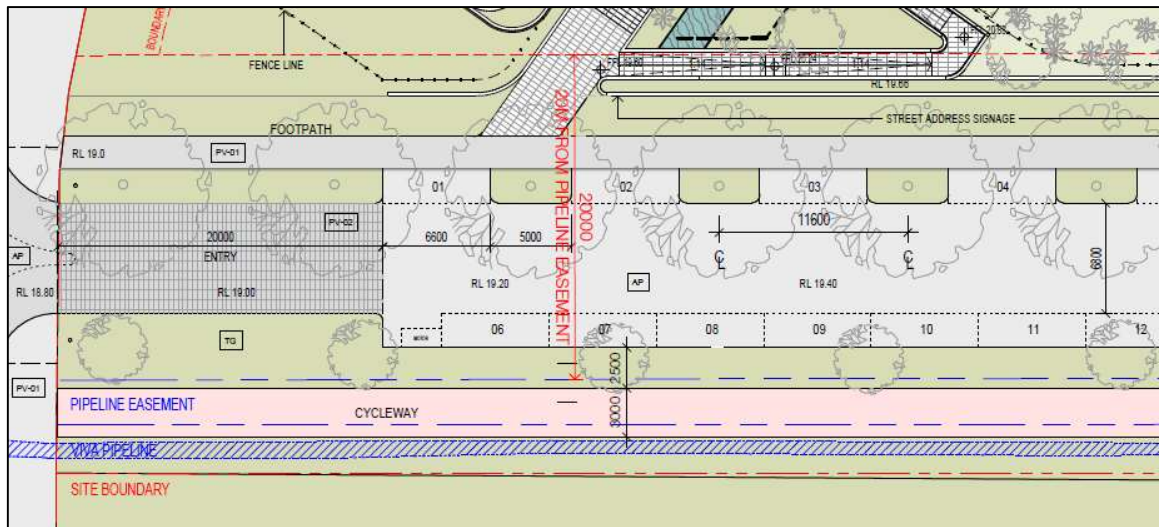


Figure 10: Proposed new road – location of easements for pipeline shown in blue

### Setbacks

Site boundary setbacks of 5m as nominated in the DCP are achieved for both above and below ground elements other than for a pinch point near the new vehicle connection with Birnie Avenue. Both DEAP and council's landscape officer are satisfied with setbacks in terms of limiting impacts on existing vegetation to be retained, and allowing for implementing the intended landscape treatment.

### Building separation

Building separation distances are consistent with the criteria nominated by the ADG,

### Height, bulk and scale

The bulk and scale of the proposal is consistent with the outcomes contemplated by the precinct planning controls, and is also satisfactory on merit. Note that the scheme has been the subject of particular review by the DEAP, which is now satisfied with the built form outcomes.

### External materials

The schedule of external materials has been the subject of particular scrutiny by council's City DEAP and ESD consultant, and are satisfactory.

### Accessibility

The application is supported by a technical report which concludes the proposal is able to achieve compliance with the requirements of the BCA and relevant Australian Standards subject to resolution of nominated design matters. Those matters are minor and can be addressed at the time of the Construction Certificate.

## Landscaping

Council's Tree Management and Landscape Officer is satisfied with the landscape treatment for the private (on site) elements of the scheme.

## Future development on adjoining land

Adjoining Lot 65 DP 1191648 is located within Sydney Olympic Park. While its current condition presents as landscape entry to SOP, the SOPA masterplan nominates that land as supporting hotels/serviced apartments, with a built form of 7 storeys a density of 7:1, and a 0m setback to Edwin Flack Avenue and most of the Birnie Avenue frontage.

The ADG suggests that its separation distances should also apply where a site adjoins non-residential land, with each site contributing half of the nominated distances. This proposal achieves or exceeds that outcome excepting at the south west corner of building A, where the podium level is setback 4m.

This outcome is acceptable as it is expected that site planning of any future building on Lot 65 will locate built form at the northern end of the site, consistent with the Masterplan and where site dimensions allow for the largest floorplates, and where separation from this proposal would meet or exceed ADG requirements.

It is also noted that SOPA did not raise any concerns regarding the site planning or design of this proposal relative this adjacent site.



Figure 11: Adjoining SOPA site

## **6.5 Amenity considerations**

### Solar access

While the scheme is able to meet ADG criteria for a minimum of 70% of apartments achieving 2 hours of solar access, it does not meet the ADG criteria that only 15% of units (62 units)

achieve no solar access. Instead, 23.6% or 99 units have no solar access. The applicant contends this outcome arises due to the following constraints:

- Challenging site setback constraints due maintaining the alignment of Carter Street
- Proximity to pipelines and associated easements
- 5m setback
- Difficult triangular geometry due to long frontage to both Edwin Flack Avenue and the new road (Carter Street extension)

In support of this non-compliance the scheme seeks to improve the amenity of the affected apartments by:

- Increasing the size of apartments by 4m<sup>2</sup>
- Increasing the size of balconies by 0.7m<sup>2</sup>

The applicant also notes that affected units:

- Do not face due south
- Over half enjoy a dual aspect
- Have full height glazing to living areas
- Do have cross ventilation
- Benefit from expansive views.

Given the degree of departure from the ADG criteria, Council sought specific consideration of this matter for the DEAP, who advised:

*The Panel recognizes that the geometry of the site and the development controls may constrain the design solutions in relation to solar access. The site is triangular, with the two shorter sides of the triangle offering good N-E and N-W aspects, whereas the longer side of the triangle is orientated to the south. It is inevitable that a certain percentage of the apartments need to be orientated along the southern boundary.*

*While the percentage of apartments receiving no sun between 9am and 3pm is greater than 15%, those apartments have dual aspect and natural ventilation and will receive some sun before 9am and 3pm. On balance, the Panel is of the view that the proposed approach is acceptable and no further amendments are required.*

#### Wind impacts

The application was accompanied by a desktop wind assessment which provided only a very limited assessment of wind impacts and concluded that “*Key areas which are expected to experience high wind speeds have been demonstrated to be safe to occupy and have comfort levels suitable to their purpose.*”

However, given the heights of these towers the applicant was requested to provide a wind tunnel report to demonstrate that pedestrian comfort and safety criteria was achieved, both within the site and at relevant points within the adjoining public domain.



The report provided analysed 45 locations across the ground plane, of which 6 are outside the site, and established:

- 26 locations failed the comfort criteria (of which 2 are outside the site)
- 3 of those locations (all within the site) are also shown to be at the maximum wind speed for the safety criterion.
- A further 7 locations (5 of which are inside the site) are just under the maximum wind speed for the safety criterion.

The report then nominated the mitigation measures (the locations for which are shown at Figure 12 and concluded:

*Architectural treatment solutions have been recommended to ameliorate the uncomfortable wind within and around the site. These include:*

- *Localised 1.5m high porous screens (with a maximum porosity of 50%), as shown in Figure 7, to provide local direct shielding for minor exceedances in comfort.*
- *2-3m high porous screens (with a maximum porosity of 50%), as shown in Figure 7, to reduce the effect of corner accelerations and funnelling between the towers resulting in higher exceedances in comfort.*
- *Localised full height corner screen (with a maximum of 30% porosity, or impermeable such as glazing), as shown in Figure 7, to mitigate comfort and safety exceedances. Awnings along the north-eastern aspect of the eastern tower, and north-western aspect of the western tower that wrap around the corners, as shown in Figure 7, to mitigate adverse downwash effects due to the tower form.*

*With the inclusion of these treatments to the final design, it is expected that wind conditions for all ground floor outdoor trafficable areas around the development will be suitable for their intended uses, or be better than or equivalent to existing wind conditions.*

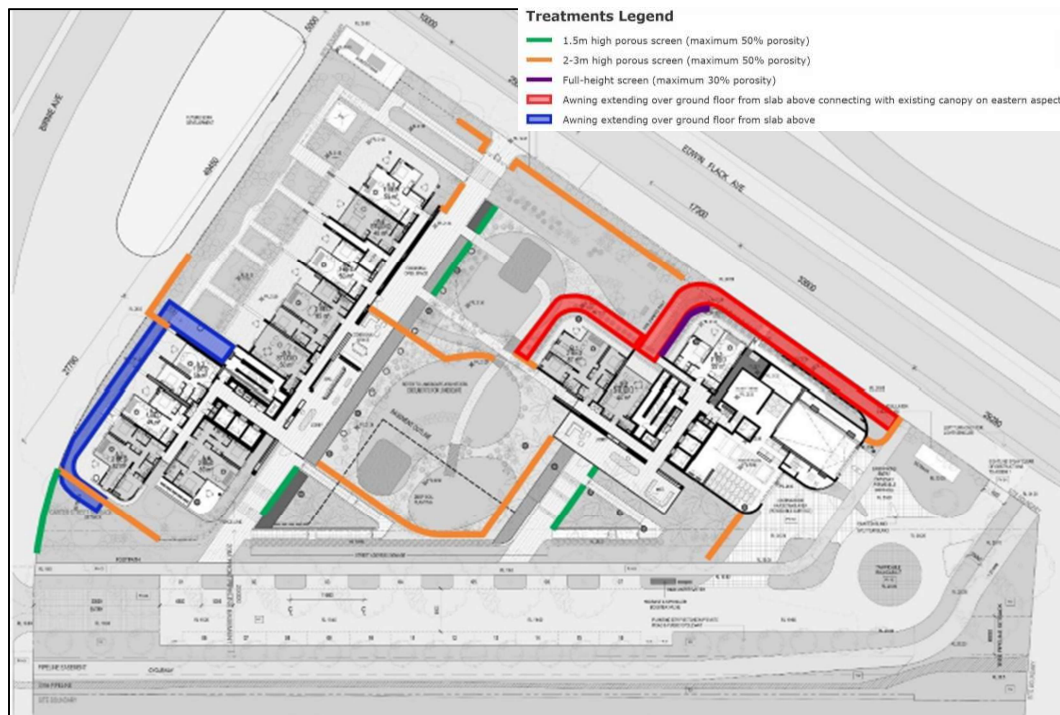


Figure11: Location of proposed wind mitigation measures

The applicant's wind report was peer reviewed by Council's consultant wind expert. That peer review agreed with the methodology and safety/comfort criteria used, however raised the following concerns:

- A reliance upon only 6 study locations outside the development site is not a sufficient assessment
- The report fails to address wind conditions on the podium communal areas (Level 5 building A) private balconies and roof terraces (Building A and B)
- There are several locations where the existing wind speeds are shown to already exceed the safety criteria, and that is unexpected given existing built form and wind conditions.
- The 3 locations which are shown to exactly meet the safety wind criteria should actually be categorised as failing that criteria, because that criterion is based upon young, physically able pedestrians – however the outcome recorded would be dangerous for people who are less able or have impaired mobility.
- The explanation provided for locations 27, 28 and 29 (between the towers) exceeding the comfort criteria is questionable.
- The nominated mitigation measures have not been tested to quantify their effectiveness, which is essential given the multiple and significant exceedances of both comfort and safety criteria. Further, those mitigation measures only respond to windflow that is horizontal to the ground, and do not address downwash from the buildings themselves. Such downwash would reduce the effectiveness of the mitigation measures. Finally, the proposed screens are likely to in fact funnel and accelerate wind through the gaps between the screens.
- Landscaping should not be used for mitigating 'safety' exceedances, and therefore landscaping between the towers should not be relied upon. Similarly, landscaping should not be relied upon outside the site.
- Wind impacts at locations 40 and 44, which are opposite the site on Birnie Ave and Edwin Flack Ave and which exceed the comfort criteria and only just satisfy the safety criterion, are likely caused by wind deflected from upper levels of the building, and mitigation measures will likely require changes to the tower form.

On the information provided the wind impacts are so significant that the application in its current form cannot be supported.

### Reflectivity

Given the height and built form of the proposal the application is supported by a Reflectivity report which considers the potential glare impact on traffic and pedestrians based upon an analysis at 8 locations around the site. That report provides the following conclusion:

*This analysis has shown that all façades can achieve compliance provided specular reflectance of the façade does not exceed the values listed below (in line with Sydney DCP 2012 - section 3.2.7), along with the percentage of the specularly reflective façade for respective orientations..”*

That report was peer reviewed by Council's consultant who raised detailed concerns with regard to the scope, methodology, results and conclusions of that report.

Discussions between both parties was then arranged to ensure the required revised report responded to those concerns.

The updated report was then also reviewed by Council's consultant, and was again found to be inadequate. The issues of concern are technical, and are outlined in Attachment 4. However in summary it is concluded;

*The methodology applied remains fundamentally flawed and cannot be relied upon to identify risks of glare adequately. The recommendations for mitigating glare risk are also unacceptable as either unresolved or unsubstantiated. By way of example, there is one facade that is now identified with a high potential for glare and the recommendation is to increase the density of shading, without any objective measure for such.*

On the information provided the glare impacts are so significant that the application in its current form cannot be supported.

#### Noise impacts

The Carter Street DCP nominates "recommended" and "maximum noise criteria for internal areas of new development in response to the setting and context of the site, which is subject to intrusive noise road traffic, existing industrial uses and major events at the adjacent SOP precinct. That "recommended" criteria is consistent with the ISEPP provisions for residential development adjoining arterial roads.

The acoustic report supporting the application notes that the DCP criteria should be achieved, and nominates required mitigation measures (e.g. glazing standards) but states that a full assessment of all recommended treatments should be conducted after building designs have been finalised.

The report has been evaluated and confirmed as satisfactory by council's Environmental Health Officer.

#### Noise generation

Mechanical plant and equipment for required services and facilities is located either within the basement levels, or at various levels of the tower buildings. The acoustic report supporting the applicant advises that while detailed plant selection has not yet been undertaken mitigation to ensure satisfactory noise levels are achieved will be possible via the use of standard acoustic treatments such as duct lining, acoustic silencers and enclosures.

The report has been evaluated and confirmed as satisfactory by council's Environmental Health Officer.

#### Noise from the adjacent Olympic Stadium precinct

The issue was the subject of particular review by the Panel in October 2017 when determining DA 1005/2016 at 29 Carter Street Lidcombe, which is at the western end of the precinct. At that time the Panel was concerned to understand any conflict between high density residential development in the Carter Street precinct and the mooted refurbishment of the nearby Olympic Stadium. It was not clear whether the refurbishment included an expansion to the capacity of the stadium.



Council officer's advice to the Panel, at that time, was:

- No government agency would confirm the likely seating capacity of any refurbished stadium; and
- While not applicable to this site, the current SOP Master Plan noise mapping nevertheless extends into the Carter Street Precinct. For the subject site it identifies the need for "substantial noise mitigation" while the more recent draft Master Plan Review (2016) identifies the need for "some" to "substantial" noise mitigation. Of interest is that the noise criteria in both the current and draft SOP Master Plans is identical, and is less onerous than the recommended criteria in the Carter Street DCP.

Council officer's advice to the Panel, at that time, was:

- This development is required to satisfy the recommended noise criteria in the Carter Street DCP which, as noted, is more onerous than the equivalent provisions in the SOP masterplan;
- A covenant would be registered on the title of the land alerting purchasers to the proximity and characteristics of events in Sydney Olympic Park; and
- Council now includes a notation on its section 10.7(5) planning certificates:

*Advisory Note – Proximity to Sydney Olympic Park*

*The land is within proximity to the Sydney Olympic Park precinct. The nature and scale of facilities within that precinct, and events that it supports, may affect the use and enjoyment of the land as a result of operating hours, noise, lighting, traffic and measures associated with event management. The Sydney Olympic Park precinct also includes a liquid waste treatment plant which operates 24 hours a day except Sundays when operating hours are 7am until 4pm.*

The Panel accepted the above in electing to grant its consent to DA 1005/2016. Since that time:

- The same approach (application of DCP noise criteria and imposition of event covenant) was applied to DA 1269/2016 for a high density residential development at 5 Uhrig Road. That development is east of this site and essentially adjacent to the stadium;
- Council is reviewing a State Significant development (SSD) application for the refurbishment of the stadium. That proposal reduces seating capacity from 83,000 to about 70,000.

If this application was to be supported, the imposition of the events covenant and compliance with the DCP noise criteria would be addressed by means of conditions.

### Odour

The site is about 1 km south east of the Homebush Bay Liquid Waste Treatment Plant (LWTP). That Plant is critical infrastructure, as it treats liquid wastes for which there are no alternative treatment options in NSW. The Odour Assessment which informed the (then) DPI preparation of the initial Carter Street rezoning controls noted that odour impacts from this facility would impact this site, but only under 1 of the 4 scenarios modelled. That same scenario would also impact all of the suburb of Newington, much of Silverwater and some of Lidcombe.

The 2015 Finalisation Report prepared by the (then) DPE in support of the rezoning proposal for the Carter Street Priority Precinct, acknowledged LWTP would impact on future residents of the precinct. It also noted:

- The site of the plant has been identified for mixed use (residential and commercial) under the Sydney Olympic Park Master Plan 2030, and zoned B4 Mixed Use under the State Environmental Planning Policy (Major Development) 2005;
- The LWTP site is leased by a private operator from the NSW government, with the current lease due to expire in 2025. Given the existing adverse impacts and changing land uses within the vicinity of the facility it is considered that it will need to cease operations, such that the lease should not be extended; and
- A plan is required to establish arrangements for the long term treatment of liquid waste streams across Sydney and NSW.

This issue was the subject of particular review by the Panel when determining DA 1005/2016, which was for the site in the Carter Street precinct the closest to the LWTP. In reaching a conclusion on that matter the Panel accepted the following position:

- The DPE had the opportunity to address staged development of the Carter Street Precinct if it considered odour from the LWTP was a significant constraint;
- The lease for the LWTP is due to expire in 2025, and on available information, is unlikely to be extended;
- The SOP Master Plan, adopted in August 2018, has no objectives or provisions to mitigate odour impacts.

Noting those circumstances and given the many other recent approvals within the Precinct, no concerns arise.

## **6.6 Public domain**

### Built form relationship to public domain

A positive public domain outcome will result given:

- The buildings achieve a desirable interface with public areas in terms of the relationship between the ground floor levels and the adjoining footpaths;
- The buildings address street frontages;
- Vehicle access is consolidated to two edges of the site;
- Service areas are integrated into the building design and do not visually dominate the streetscape or pedestrian areas adjoining the site;
- The building provides for a direct visual connection to streets ensuring a high degree of passive surveillance which will encourage a sense of safety within the public spaces around the site;
- The architectural treatment will achieve a suitable streetscape presentation; and
- An appropriate landscape treatment is achieved for those edges of the site that contribute to the public domain.

## Public domain design and associated works

Council's Urban Design (Public Domain) has had significant input into the design and treatment of the access road and associated spaces and is satisfied with the outcome.

### Lighting

Adequate lighting of street frontages will be necessary for pedestrian amenity and safety. The recommendation includes a condition to ensure such lighting will be to relevant standards, while also designed to avoid nuisance.

## **6.7 Access, transport and traffic**

### Car parking supply

The Carter Street Precinct DCP parking controls are a maximum rate, meaning a lesser supply is compliant provided it is also adequate on merit. Application of those controls results in the following maximum requirements:

**Table 14: Parking assessment**

<i>Maximum car parking requirements</i>	<i>Proposed</i>
Residential <ul style="list-style-type: none"><li>0.5 space/ studio = <math>0.5 \times 3 = 1.5</math></li><li>1 space/ 1 and 2 bedroom units = <math>1 \times 359 = 359</math></li><li>2 spaces/ 3 and 4 bedroom units = <math>2 \times 57 = 114</math></li></ul> Maximum required supply = 474.5 (474)	406
Visitor <ul style="list-style-type: none"><li>0.2 spaces per dwelling = <math>0.2 \times 419 \text{ units} = 83.8 \text{ (84)}</math></li></ul>	46 on site 16 within new road
Total maximum supply = 558	468

The proponent justifies a supply of 90 spaces less than the maximum due to the site's proximity to existing and future public transport services within the Carter Street Precinct and Sydney Olympic Park, including Metro West, the station for which will be around 800m north of this site.

Council's traffic team has no objection to the parking supply as proposed, noting it is consistent with RMS guidelines. From a planning perspective a lesser supply than the DCP maximum has been consistently supported across multiple applications within this precinct. Further, there is now a clear strategic position from DPIE, via the exhibited Draft LEP amendments, to link bonus densities to a reduced parking supply, as a direct consequence of the Metro West heavy rail service.

The parking supply of 468 spaces as proposed is therefore satisfactory.

The scheme also includes 4 car share spaces, which satisfies the current and draft DCPs.

### Bicycle parking supply

Unlike car parking, this provision of the DCP is expressed as a minimum. The scheme only

provides for 344 bike spaces, 88 less the DCP requirements. This matter could be resolved by way of a condition.

#### Parking access and design

The design and geometry of parking and service areas have been assessed as satisfactory by Council's Traffic team. That review includes an analysis of swept paths for both cars and service vehicles.

#### Construction Traffic

A Construction and Pedestrian Traffic Management Plan is to be submitted for council's endorsement prior to works commencing.

#### Operational Traffic

The application is supported by a technical report which has identified traffic generation associated with the proposal and modelled those details against the operating characteristics of key intersections to determine the extent of impacts on the efficiency of the local road network, at both the AM and PM peaks. (SIDRA analysis)

Council's Traffic team has reviewed that data and advises that the additional traffic generated by the proposed development is not expected to compromise the safety or function of the surrounding road network.

### **6.8 Water management**

#### Water quality during construction

This matter would be addressed by conditions if the application is to be supported.

#### On site stormwater collection and disposal

Stormwater from the development sites will be managed via an Onsite Detention System that will connect to existing infrastructure within Hill Road and another connection point elsewhere within the site.

Council's Development and Catchment Engineer is satisfied with the proposed arrangements subject to conditions, which could be included if the application was to be approved.

### **6.9 Waste management**

#### Construction phase

A Waste Management Plan is to be endorsed by council prior to commencement of works, as recommended by Council's Environmental Health Officer.

## Operation phase

The application is supported by a operational Waste Management Plan addressing arrangements for the storage and collection of general waste/recyclables and trade waste. The residential component development will be serviced by council, with a contractor required for the retail/commercial components. Appropriate conditions were provided if the application was to be approved.

### **6.10 Construction Management**

To minimise nuisance during the construction period the recommendation requires the preparation of a construction management plan (condition 74) addressing the following matters:

- Dilapidation reports;
- Demolition and removal of hazardous materials;
- Sediment and erosion control and water quality during construction;
- Construction traffic management plan;
- Hours of works;
- Construction noise and vibration;
- Material delivery and storage;
- Safety fencing;
- Traffic and pedestrian safety;
- Dust control; and
- Tree protection.

### **6.11 Safety, security and crime prevention**

Crime Prevention Through Environmental Design (CPTED) is a recognised model that provides that if development is appropriately designed it is anticipated to assist in minimising the incidence of crime and contribute to perceptions of increased public safety.

Evaluation of the application with consideration of the principles which underpin CPTED (surveillance; access control; territorial reinforcement and space management) indicates the design has given due regard has been given to those considerations.

To ensure a suitable outcome is achieved, if the application was to be supported the following measures would be required.

- Internal and external lighting to Australian Standards;
- Installation of CCTV to the basement entry;
- Way finding measures within the parking levels;

### **6.12 Social and economic impacts**

No adverse impacts have been identified.

## 7. Site suitability

### 7.1 Does the proposal fit the locality

Subject to the conditions provided within the recommendation to this report the site is suitable for this development given:

- The proposal is an appropriate “fit” for the locality given the preceding analysis which demonstrates a lack of adverse built form and operational impacts; and
- Site attributes are conducive, noting a lack of natural constraints/hazards.

### 7.2 Public submissions

As noted in the Executive Summary, 15 submission were received however:

- 9 were identical, and a further 5 were essentially the same ; and
- One was an individual submission.

As there are not 10 or more unique submissions there level of public interest does not trigger the need for a public determination meeting. The issues raised in the submissions are summarised and considered below:

#### Issues - Proforma submission (14 submitters)

- *The development may affect our complex and immediate environment, our buildings, roads and parks*
- *There has been many examples recently of major defects within apartment buildings for various reasons. As a measure to protect our complex "The Retreat" 3 Carter Street Lidcombe, I would like a Dilapidation Report before works start at the developers cost on our buildings and immediate surrounds to ensure we have an independent inspector (of our choice) for our protection and that of the developers.*

#### Response

No specific concerns were provided in relation to the first matter, however:

- No adverse amenity impacts for any nearby existing residential development noting has been identified given:
  - the location of this proposal to the southeast from its nearest neighbour
  - the separation from existing development afforded by the road network
- No adverse amenity impacts for potential future residential development has been identified given that this site is at the easternmost end of the Carter Street precinct.
- No adverse impacts are anticipated for the local road network noting the outcomes for the traffic impact assessment
- The proposal is consistent with nominated planning controls and the supply of public open space within the precinct was determined relative to that density

Regarding concerns expressed about major defects in apartments and the need to protect existing building during construction:

- If the reference to defects is a reference to the Opal Tower in neighbouring Sydney Olympic Park, it is understood that matter was not as a result of impacts from adjacent construction;
- The recommended condition of consent includes the requirement for a dilapidation report to be prepared for adjacent buildings, but only if they fall within the 'zone of influence' from the proposed works.

#### Issues - Individual submission

*No objection in principal however:*

- *The proposal exceeds the height controls in ALEP 2010 and instead relies upon the LEP amendments exhibited in 2018.*
- *In the interests of transparency, a consistent and logical approach to the assessment of DAs in the precinct is required*
- *If council supports a departure from the LEP height controls on this site, then it should similarly support height departures on other land within the precinct.*

#### Response

This submission is from a developer of neighbouring land in Carter Street. at the time the submission was lodged there was uncertainty as to the status and timing for the implementation the DLEP controls. Much has changed since then, and this developer has now secured approval for all 4 of its developments. Two are complete and occupied, and the remaining two are under construction.

## **8. Public interest**

The Greater Sydney Commission's five District Plans are a guide for implementing *A Metropolis of Three Cities* - the Greater Sydney Region Plan at a District level, and these 20-year plans are a bridge between regional and local planning.

Broadly, the planning priorities and actions within the plan for the Central City District relate to:

- Infrastructure and collaboration
- Liveability
- Productivity
- Sustainability
- Implementation

This application is generally consistent with the specific controls introduced by the Department of Planning and Environment for the Carter Street Precinct, and the wider planning framework, and therefore accords with this District Plan.





## **ATTACHMENT B – REASONS FOR REFUSAL**

<b>SWCCP reference</b>	PPSSCC-28
<b>DA No.</b>	528/2019

1. The application is not satisfactory for the purposes of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that insufficient information has been provided to demonstrate compliance with the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
2. The application is not satisfactory for the purposes of section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that the proposal will result in adverse wind outcomes that will affect the comfort and safety of residents and those using the adjoining public domain.
3. The application is not satisfactory for the purposes of section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 in that the proposal has not demonstrated the design will avoid adverse glare outcomes that would otherwise affect the amenity and safety of residents and those using the adjoining public domain and roads.