

COUNCIL ASSESSMENT REPORT
SYDNEY WESTERN CITY PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSSWC-312 – DA-28/2022
PROPOSAL	Construction of a 10-storey residential flat building comprising 28 residential units above two levels of basement car parking, landscaping and associated works. The application is submitted under the State Environmental Planning Policy (Housing) 2021
ADDRESS	Lot 11 & 12 DP 1204506 20-22 Hume Highway Warwick Farm
APPLICANT	VM & KTP Holdings Pty Ltd C/- Gran Associates
OWNER	VM & KTP Holdings Pty Ltd
DA LODGEMENT DATE	13/01/2022
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 5, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : Affordable Housing over \$5 million
CIV	\$17,379,994 (excluding GST)
CLAUSE 4.6 REQUESTS	N/A
KEY SEPP/LEP	<i>State Environmental Planning Policy (Planning Systems) 2021; and</i> <i>State Environmental Planning Policy (Housing) 2021; and</i> <i>State Environmental Planning Policy (Transport and Infrastructure) 2021; and</i> <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021; and</i> <i>State Environmental Planning Policy (Resilience and Hazards) 2021; and</i> <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; and</i> <i>State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development; and</i> <i>Liverpool Local Environmental Plan 2008</i>

TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	1 submission received. Key Issues: a) Development does not achieve minimum deep soil zone of 15% required by the Housing SEPP. b) Overshadowing of landscaped area and communal open space on southern-adjoining property c) Excessive parking provided and construction of basement on southern boundary and associated potential structural impacts.
DOCUMENTS SUBMITTED FOR CONSIDERATION	• Architectural Plans • Landscape Plan • Design Excellence Panel Minutes • Compliance Assessment
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Approval subject to conditions
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	11 December 2023
PREPARED BY	Nabil Alaeddine
DATE OF REPORT	25 November 2023

1. EXECUTIVE SUMMARY

The development application (DA-28/2022) seeks consent for the construction of a 10-storey residential flat building comprising 28 residential units above two levels of basement car parking, landscaping and associated works. The application is submitted under the State Environmental Planning Policy (Housing) 2021.

The subject site is legally described as Lots 11 & 12 DP 1204506, and is known as No. 20-22 Hume Highway, Warwick Farm. The site is irregular in shape, with a frontage to Hume Highway of 36.6m and a total site area of 1048.9m². The site is relatively flat and is currently vacant.

The site is located on the northern periphery of the Liverpool Town Centre and is zoned R4 High Density Residential. The proposed residential flat building development is permitted on the site pursuant to the Liverpool Local Environmental Plan 2008.

The application was placed on public exhibition from 24 March 2022 to 7 April 2022. One (1) submission was received objecting to the development on the grounds of insufficient deep soil zone; overshadowing of landscaped area and communal open space of southern-adjoining development; and the structural implications of constructing a basement level on the southern boundary. These issues are considered further in this report.

The application is referred to the Sydney Western City Planning Panel as the development is classified as '*regionally significant development*', pursuant to Section 2.19(1) and Clause 5 of

Schedule 6 of *State Environmental Planning Policy (Planning Systems) 2021* as the proposal is for affordable housing with a CIV over \$5 million.

The development requires the concurrence of Transport for NSW pursuant to Section 138 of the Roads Act 1993 as the proposal involves works and structures within a State Classified Road (Hume Highway). In consultation with TfNSW, the amended application was considered satisfactory, and the roads authority subsequently provided their concurrence on 30 October 2023.

Jurisdictional prerequisites to the granting of consent imposed by the following controls have been satisfied including:

- Section 4.6 of SEPP (Resilience and Hazards) 2021 for consideration of whether the land is contaminated;
- Clause 28(2)(a) of SEPP 65 in relation to advice of any design review panel; and
- Section 2.119(2) of SEPP Transport and Infrastructure in relation to the safety, efficiency and ongoing operation of the classified road (Hume Highway).

The Design Excellence Panel has considered the application on two occasions and provided their support for the amended proposal, subject to the implementation of a number of design recommendations.

The principal planning instruments relevant to the proposal include *SEPP (Housing) 2021*, *SEPP No. 65 – Design Quality of Residential Apartment Development* ('SEPP 65'), the Apartment Design Guide ('ADG'), the *Liverpool Local Environmental Plan 2008* ('LEP') and the *Liverpool Development Control Plan 2008* ('DCP').

The key issues associated with the proposal include:

1. **Building Separation** – The proposed development does not comply with the building separation requirements as prescribed within the ADG, primarily for the upper levels.
2. **Overshadowing** – The cumulative impact of the proposed development, when combined with existing buildings on adjoining lots, results in overshadowing of ground level landscaped area and communal open space on southern-adjoining properties.
3. **Front Setbacks** – The proposal does not comply with the required setbacks to the Hume Highway. The required setback to the Hume Highway is an 8m landscaped setback, however, the proposal provides a setback ranging from 3m to 8m.

Having regard to the matters for consideration under Section 4.15(1) of the EP&A Act, in particular 4.15(1)(a), (b), (c), (d) & (e), the proposal is able to be supported. Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the *EP&A Act*, DA-28/2022 is recommended for approval subject to the draft conditions contained at **Attachment A** of this report.

2. THE SITE AND LOCALITY

2.1 The Site

The development site is located at 20-22 Hume Highway, Warwick Farm and is comprised of 2 standard allotments, being Lot 11 & 12 in DP 1204506. The site is irregular in shape, with a frontage to Hume Highway of 36.58m and a total site area of 1048.9m².

The site is relatively flat and is currently vacant. All essential services including electricity, telecommunications, NBN, reticulated water & sewer are available to the site. The site fronts the Hume Highway, which is a Classified State Road. Vehicular access to the site is via the Hume Highway.



Figure 1: Aerial Image of the subject site (Source – GeoCortex Data: 2023)

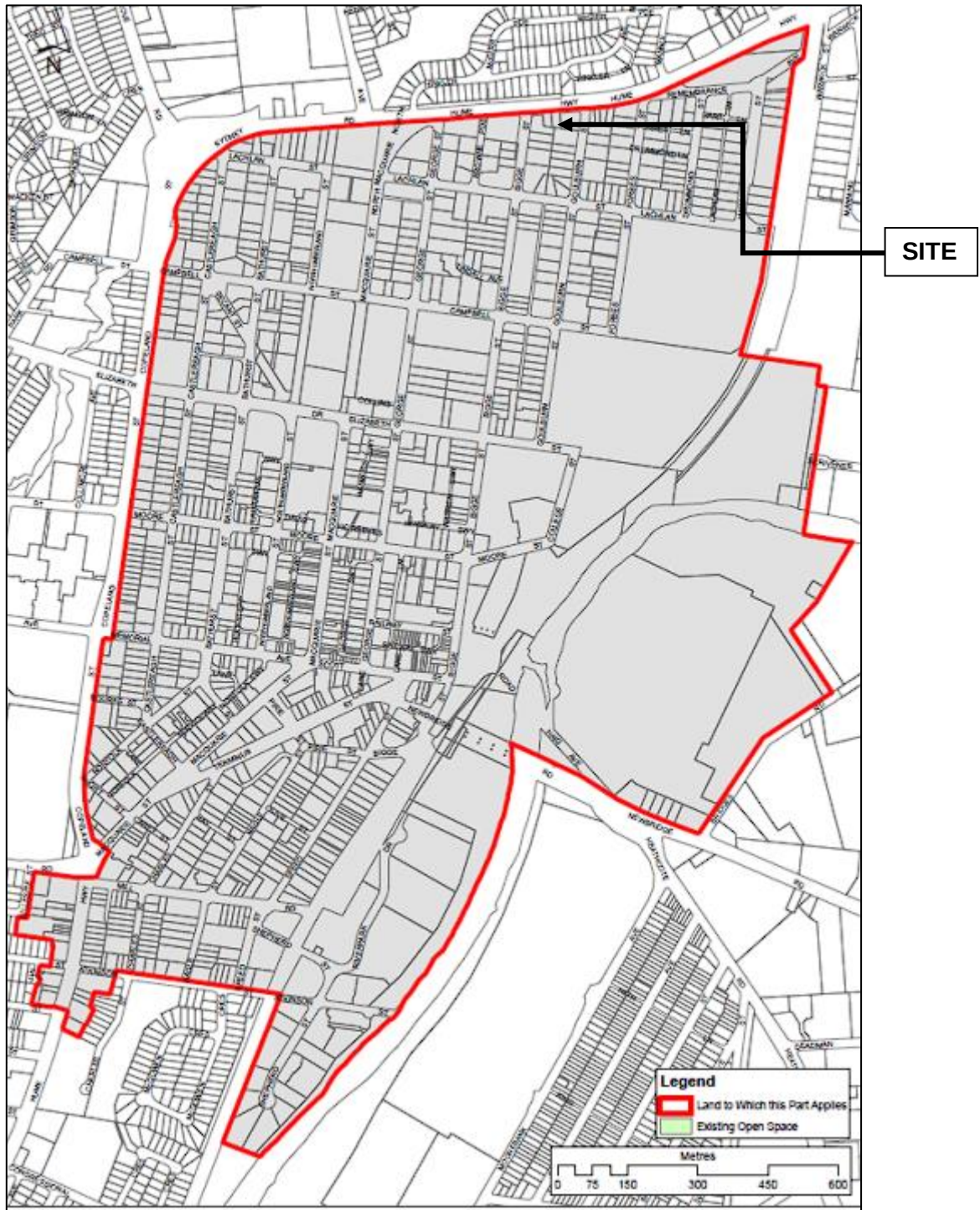


Figure 2: Locality Map (Source: Liverpool Development Control Plan 2008)

2.2 The Locality

The subject site is situated on the northern periphery of the Liverpool Town Centre and is surrounded by high density residential flat building development of varying heights and architectural character.

The table below outlines developments within close proximity to the site.

Table 1: Adjacent Developments

Address	Location	Development
1 Goulburn Street	Adjacent site to the east	6 Storey residential flat building
3-5 Goulburn Street	Adjacent site to the south-east	5 Storey residential flat building
2 Bigge Street	Adjacent site to the west and south-west	5 Storey residential flat building
4 Bigge Street	Site south of 2 Bigge Street	11 Storey residential flat building



Figure 3: Street Image of the subject Site (Source – Google Maps: 2023)



Figure 4: Existing 6 storey residential flat building on adjacent site to the east
(Source – Google Maps: 2023)



Figure 5: Existing 6 storey residential flat building on adjacent site to the south-east
(Source – Google Maps 2023)



Figure 6: Existing 6 storey residential flat building on adjacent site to the west
(Source – Google Maps 2023)

3 THE PROPOSAL AND BACKGROUND

3.1 The Proposal

The proposed development involves the construction of a 10-storey residential flat building comprising 28 residential units above two levels of basement car parking, landscaping and associated works. A summary of the development is described in Table 2.

Note: Architectural plans used for the assessment are prepared by Gran Associates Australia Architects Pty Ltd, Revision C, dated 24 July 2023.

Table 2: Development Data

Control	Proposal
Site area	1048.9m ²
GFA	Allowable GFA: 2,620m ² Total proposed GFA: 2,553m ² Proposed Affordable Housing GFA: 1,280m ²

FSR (residential)	Allowable FSR: 2:1 Bonus FSR under Housing SEPP: 0.5:1 Total Allowable FSR: 2.5:1 Proposed total FSR 2.44:1
Clause 4.6 Requests	No
No. of Apartments	28 residential units comprising: • 10 x studio units • 6 x 1 bedroom units • 8 x 2 bedroom units • 4 x 3 bedroom units 19 units are proposed as affordable housing.
Max Height	53.53m AHD
Car Parking spaces	23 car parking spaces over 2 basement levels, including 4 accessible spaces.

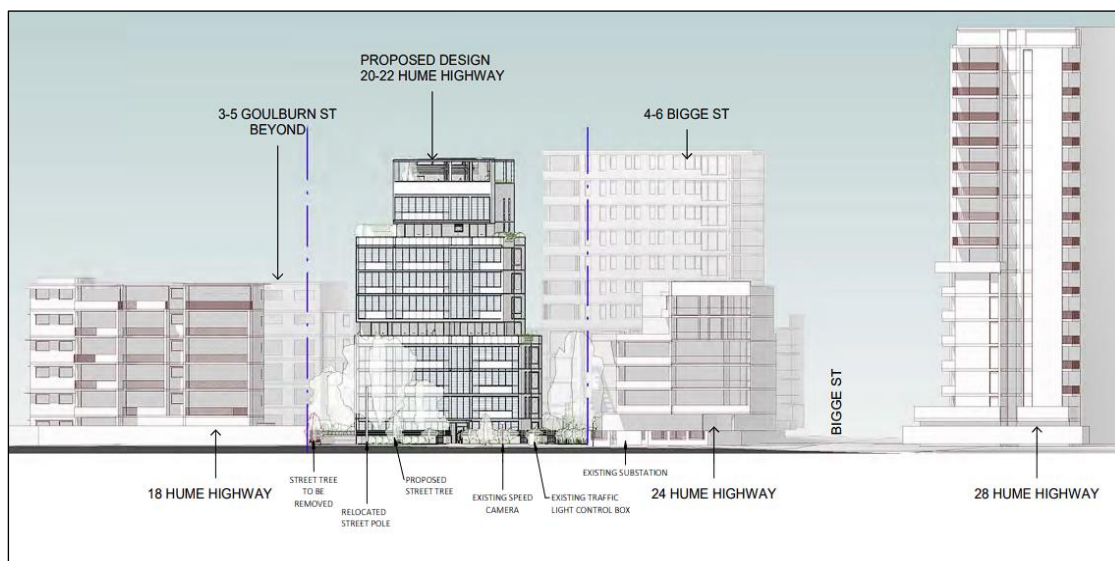


Figure 7: Streetscape elevation of the proposal relative to development context



Figure 8: 3D illustration

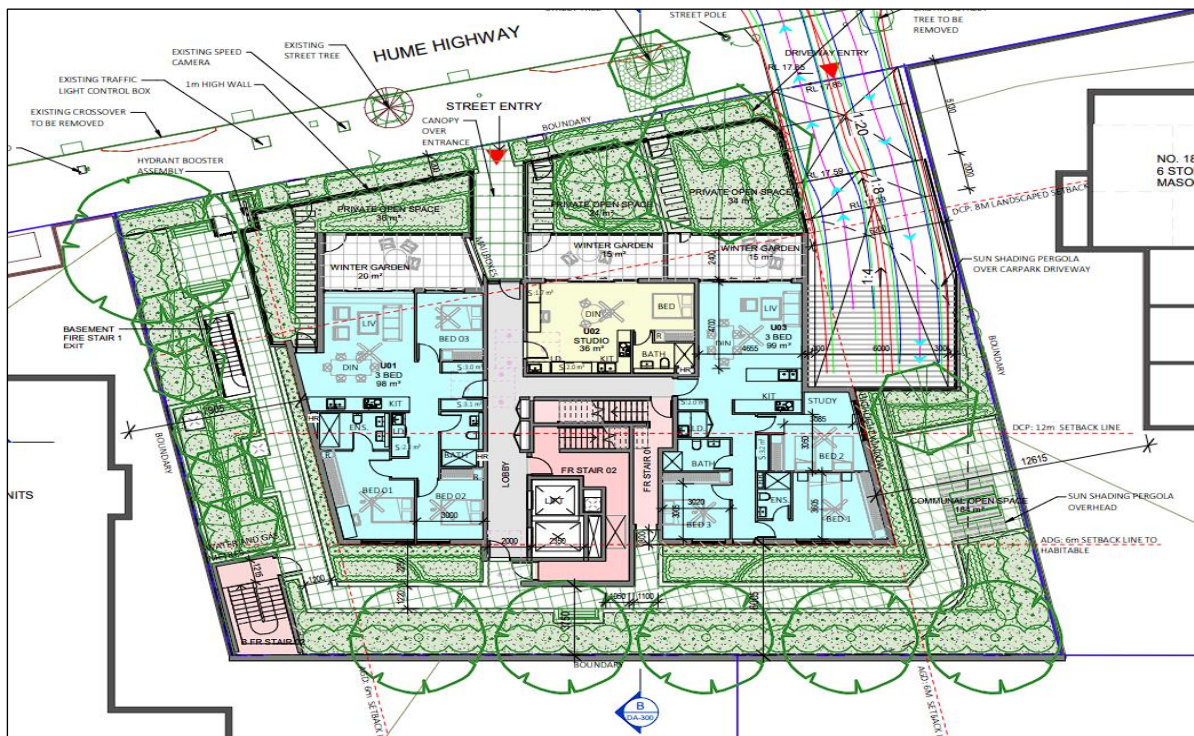


Figure 9: Proposed Site & Ground Floor Plans

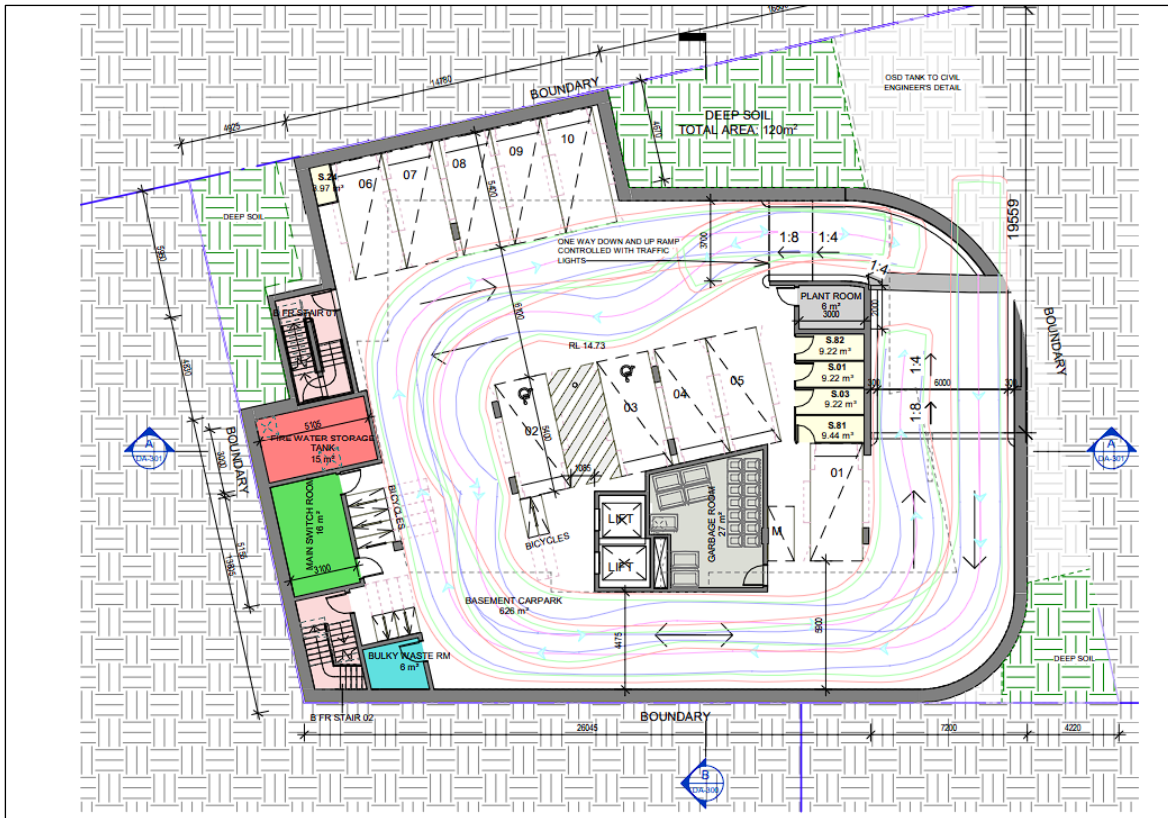


Figure 10: Basement 1 Plan of the proposal

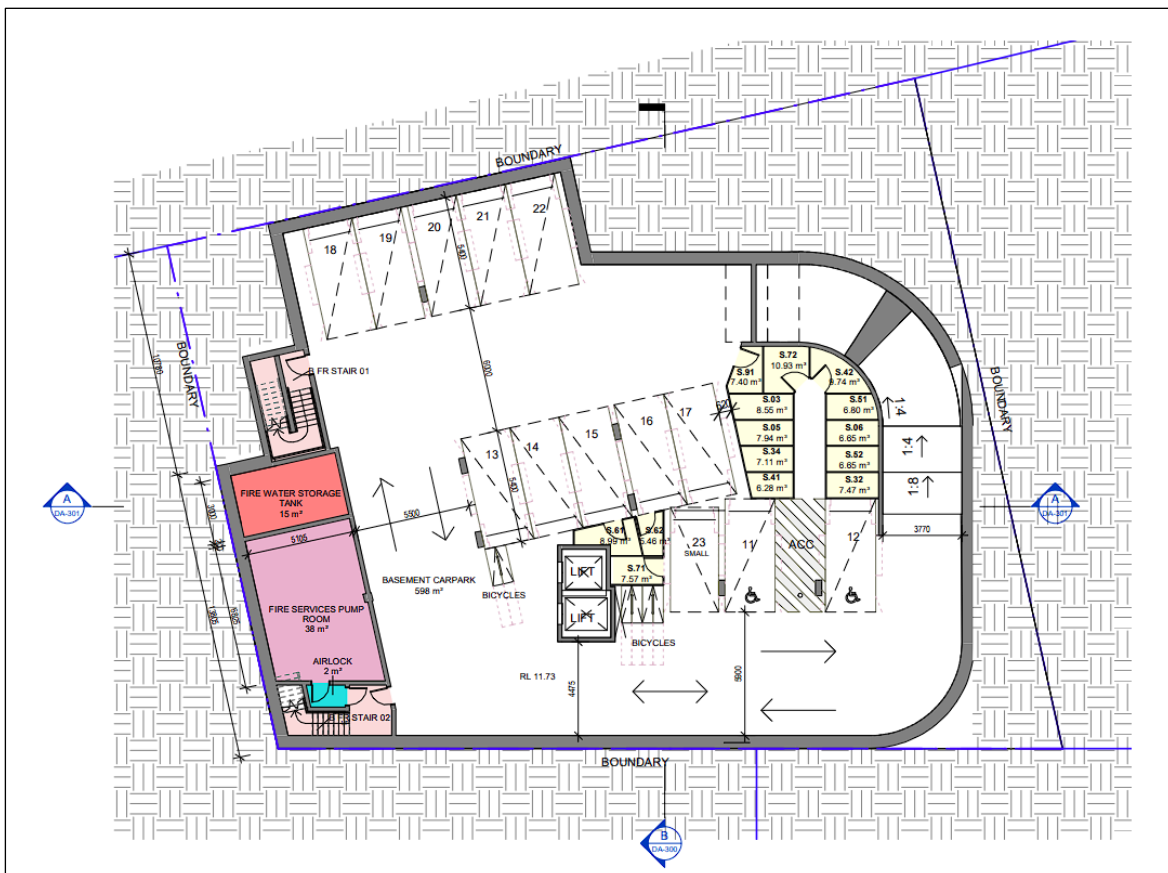


Figure 3: Basement 2 Plan of the proposal



Figure 4: Northern Elevation of the proposal as seen from the Hume Highway

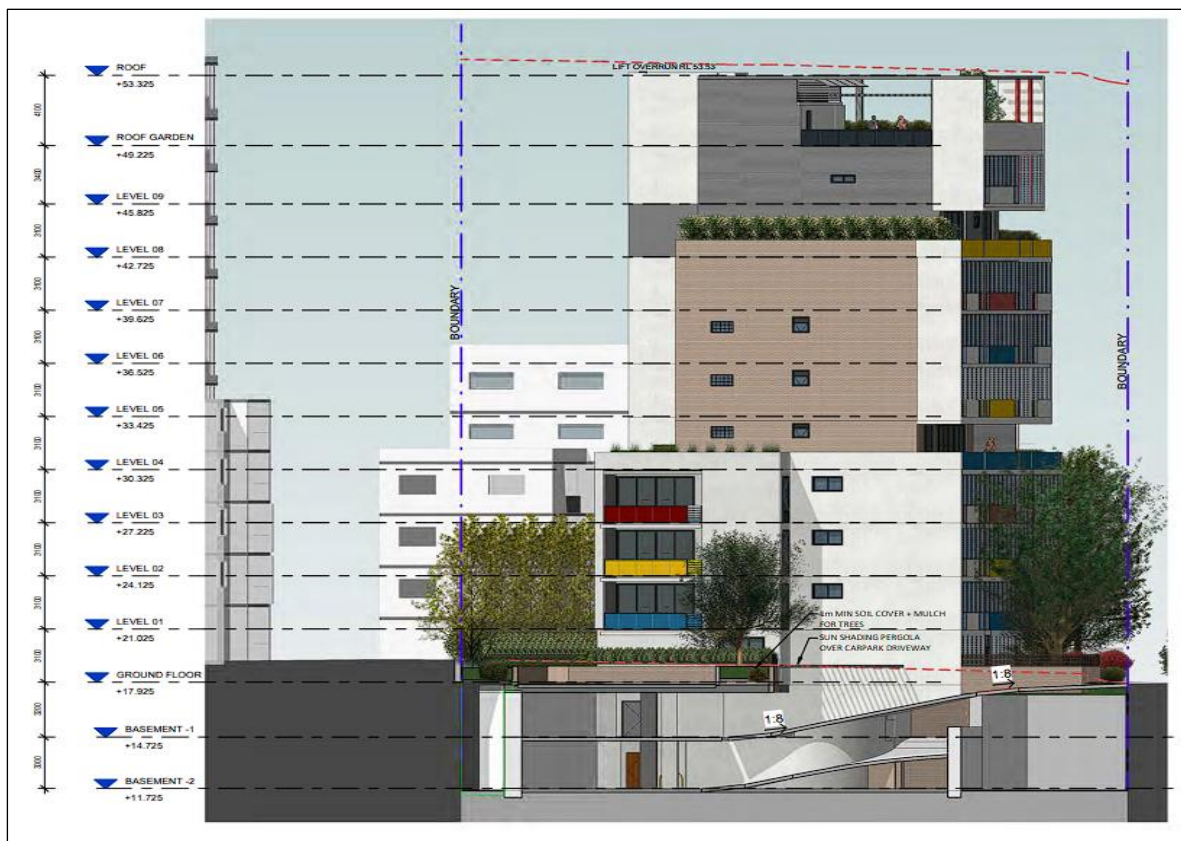


Figure 5: Eastern Elevation of the proposal

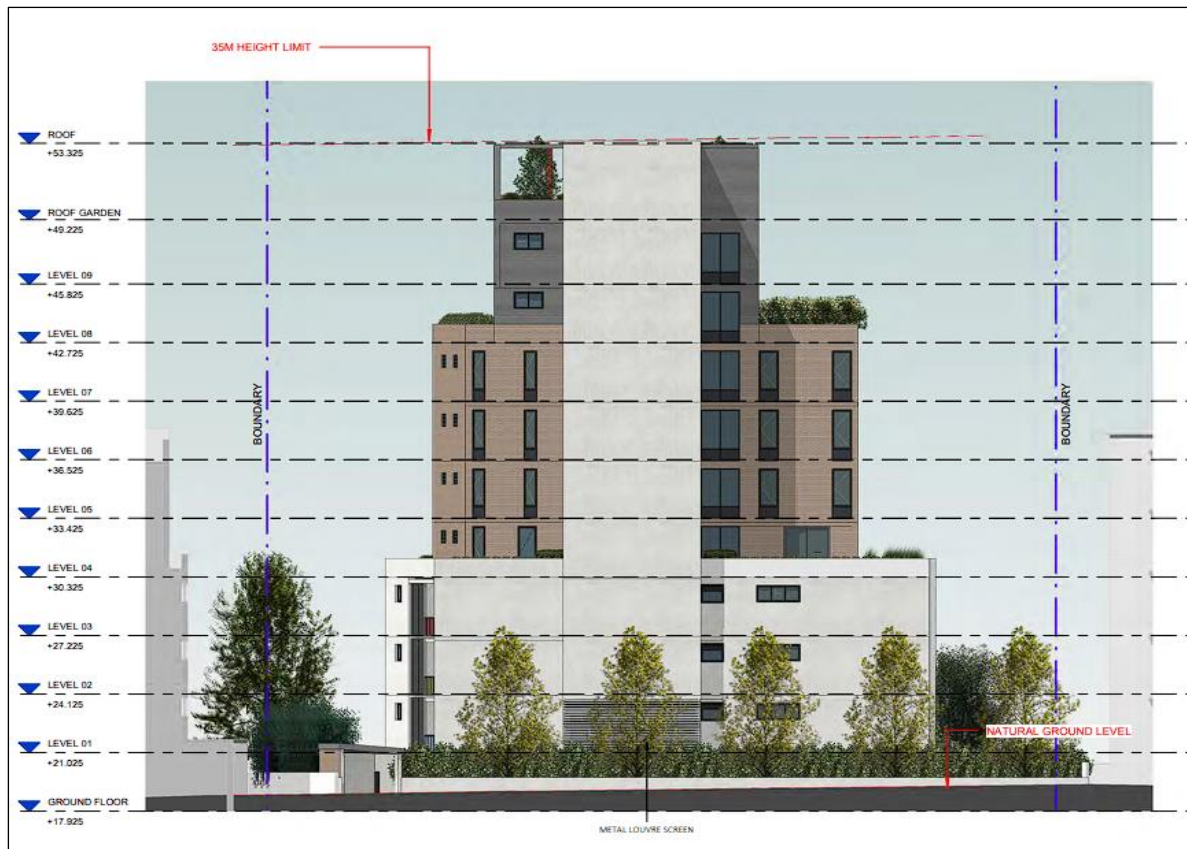


Figure 6: Southern Elevation of the proposal



Figure 7: Western Elevation of the proposal

3.2 Background

A pre-lodgement meeting with the Liverpool Design Excellence Panel (DEP) was held on 12 November 2020 prior to the lodgement of the application where various issues were discussed. The proposal was not supported by the DEP, who noted the following:

The Panel notes that the permissible building height and Floor Space Ratio (FSR) within the planning control outline the maximum permissible limit, however the proposed outcome should not undermine the design quality of the development, nor the amenity of neighbouring buildings, while trying to maximise the yield. The Panel recommends the applicant reconsider the proposed building height and FSR on the site to achieve a better overall design and amenity outcome.

3.3 Design Excellence Panel

The application was referred to the Design Excellence Panel for comment on two occasions. The 9 design principles of the ADG were considered and the Panel identified a number of amendments to improve the overall scheme of the development.

Comments and Issues raised by the Panel at their meeting of 11 May 2023 are detailed in the table below with comments provided on how the concerns have been addressed by the Applicant.

Table 3: DEP Comments

DEP Comments	Response
Context & Neighbourhood Character - The Panel thanks the applicant for providing comprehensive set of architectural drawings, landscape drawings and 3D views provided as part of this application and further commends the overall architectural expression and well-planned internal apartment layouts considered within the proposal. - The Panel discussed overshadowing of the habitable areas and private open spaces within the existing apartments on neighbouring property to the south. Particularly, whether the proposed height and floor space ratio are justified for the subject site. - The Panel understands that the proposed height of 10 storeys already complies with the 35m LEP height limit and proposed floor space ratio of 2.43:1 (including the affordable housing bonus) is below the maximum permissible floor space ratio of 2.5:1.	Noted Noted Noted

- The Panel further discussed that due to the east-west orientation of the proposed building, overshadowing at mid-winter is likely to occur and this creates complex relationship with the southern neighbour. Given that the proposal complies with the overarching height and FSR controls, the Panel is willing to offer support for the proposal, subject to acceptable resolution of the further recommendations made in this Report. - Additionally, Council's officer should review mid-winter solar access drawings for its consistency with the guidance offered within Part 3B-2 of the NSW Apartment Design Guide (ADG) – <i>where an adjoining property do not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%</i>. As an alternative strategy, the Panel suggests sun eye diagrams at equinox should be provided at hourly intervals for Council's review of solar access impact on the adjoining property to the south.	Noted The Applicant has prepared sun eye diagrams at hourly intervals on the equinox. A detailed discussion on overshadowing is provided further below in the Community Consultation section and Key Issues section of this report.
Built Form + Scale Refer recommendations offered in <i>Principle 9 – Aesthetics</i>	Noted
Density As discussed in Principle – 1 Context & Neighbourhood Character, the Panel offers support for the proposal including its height and density, subject to acceptable resolution of the further recommendations made in this Report.	Noted
Sustainability - Provision of ceiling fans to all habitable areas is encouraged as a low energy alternative to any A/C system. - The applicant is encouraged to include a rooftop photovoltaic system for environmental benefits and for use in power/lighting of common areas. - Provision of a rainwater tank shall be required to allow water collection, storage and reuse for irrigation of	- Ceiling fans have been added to all habitable rooms (Refer to drawings DA-100 through to DA-106). - Rooftop photovoltaic systems have been shown on the roof plan (DA-107). - The applicant is open to the provision of rainwater harvesting on the roof (which can be located on the mechanical

landscape and other uses within the site, such as toilet flushing etc.	equipment deck) – indicatively shown (DA-107 & DA-300.
Amenity - The Panel considers the internal apartment layouts are generally well-resolved and the proposal will achieve an acceptable, ADG compliant level of residential amenity. - The Panel recommends the applicant should maximise opportunities to improve natural cross ventilation across multiple level through inclusion of highlight operable windows. This can also improve the solar access and daylight within the development.	Noted Additional highlight windows (to ensure visual privacy is maintained) have been incorporated into the Eastern Elevation (Level 1 through Level 6, and Level 9), which is illustrated on Drawing DA-201. Solar access and daylight have therefore been improved throughout the development.
Housing Diversity + Social Interaction - The Panel notes that considerable number of studio apartments are proposed and recommends some of the smaller apartments should be combined to create more two and three bedroom apartments. - Council's assessment officers should confirm details of the apartments nominated for the purpose of affordable housing including the affordable housing provider and perpetuity.	- The applicant has argued that their social impact analysis recommends the provision of more studio and 1 bedroom apartments. - The plans now identify which units are for affordable housing.
Aesthetics - The Panel notes that lighter colour materials close to other structures tend to reflect more light, and recommends that the building base should be expressed in concrete with brick elements above. - The Panel recommends a darker colour palette for the top two floors to help make them appear recessive and reduce the visual impact on the surroundings. At the same time colours and finishes with a solar absorptance rating below 0.76SA should be considered for thermal benefits. - The Panel suggests further addition of glass blocks to the side walls within setbacks or with privacy concerns to increase natural light.	- Elevations have been revised to show a concrete base with brick element above (Refer to Drawings DA201 – DA203). - The darker palette for the upper two (2) floors has been integrated into the design (refer to Drawings DA-201 to DA-203). - Glass blocks to the wide walls within setbacks (Levels 4 – 6) have been provided to increase natural light (Drawing DA-201) and to the western

• The applicant should provide a detailed schedule of external materials, finishes and colours, and nominate the relevant building materials and manufacturers on the architectural drawings. • Use of rendered and painted surfaces should be avoided considering longevity and associated long term maintenance costs. Self-finished materials with an integral finish – such as face bricks, concrete, opaque/seraphic glass for the balconies are suggested as suitable alternatives. • Architectural drawings should identify location of A/C condenser units and other mechanical equipment. The Panel recommends that these should not be located within balconies (unless thoughtfully screened and/or integrated into the building fabric). • Developed architectural drawings should include details of the proposed design intent with at least three 1:20 detail sections indicating materials, balustrade types and fixing, balcony edges, junctions, rainwater drainage including any downpipes and similar details within the proposal. • Given the scale of the proposal, consideration should also be given to appropriate design of the building soffits. Soffits facing the street, should use sound absorbing material to help mitigate against traffic noise.	elevation (Levels 1 – 8: Drawing DA-203). • Façade sections have been provided, detailing proposed materials (Drawings DA-610 and DA-611). Additional <i>Schedule of External Materials, Finishes and Colours</i> provided on Drawing DA-400. • Rendered and painted materials have been avoided, with the use of finished materials and cladding. • Where condenser units are located on balconies, they are provided with screening devices to integrate into the building fabric (Drawings DA-101, DA-102 and DA-104). • Architectural details have been provided (Refer Drawing DA-610). • Sound absorbing soffits (perforated CFC panels) are shown on Drawing DA-610.
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3.4 Planning Panel Briefing

The application was initially briefed to the Sydney Western City Planning Panel on 20 March 2023.

A follow-up Planning Panel Briefing meeting was held on 13 November 2023 for the application.

3.5 Development Application Assessment History

The development application was lodged on **13 January 2022**. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals, etc) with the application:

Table 4: Chronology of the DA

Date	Event
13/01/2022	Application Lodged
24/03/2022	Internal Referrals initiated
09/06/2022	First Design Excellence Panel Meeting
17/10/2022	External Referrals Initiated
21/11/2022	First Request for Information Issued
30/01/2023	Amended plans (Issue B)
11/05/2023	Second Design Excellence Panel Meeting
06/06/2023	Second Request for Information Issued
28/07/2023	Amended plans (Issue C)
4/09/2023	Internal and External Referrals initiated
30/10/2023	Concurrence received from TfNSW
13/11/2023	SWCPP Briefing Meeting

4. STATUTORY CONSIDERATIONS

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *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, and*

- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
- (b) *that apply to the land to which the development application relates,*
- (c) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (d) *the suitability of the site for the development,*
- (e) *any submissions made in accordance with this Act or the regulations,*
- (f) *the public interest.*

These matters are further considered below.

It is noted that, pursuant to Section 138 of the Roads Act, the proposed development requires the concurrence of Transport for NSW (TfNSW) as the proposal involves works within a Classified State Road. The roads authority provided their concurrence on 30 October 2023.

4.1 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

4.1 Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- (a) *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- (b) *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- (c) *State Environmental Planning Policy (Housing) 2021*
- (d) *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*
- (e) *State Environmental Planning Policy (Planning Systems) 2021*
- (f) *State Environmental Planning Policy (Resilience and Hazards) 2021*
- (g) *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- (h) *Liverpool Local Environmental Plan 2008*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 5** and considered in more detail below.

Table 5: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas The site is vacant,	N/A
	Chapter 6: Water Catchments The proposed development is not in conflict with the objectives of Chapter 6 of the SEPP which seeks to	Y

	promote the protection of the Georges River Catchment.	
SEPP BASIX	There are no compliance issues identified subject to the imposition of conditions on any consent granted.	Y
State Environmental Planning Policy (Housing) 2021	Chapter 2: Affordable Housing The proposed development provides for 19 units (50.1% of GFA) as affordable housing units. The proposal is consistent with the provisions and standards within the SEPP, except to the extent where they are inconsistent with the ADG.	Y
SEPP 65	- Clause 30(2) – Design Quality Principles (a) The proposal is considered to be consistent with the design quality principles. (b) The proposal is considered to satisfy the objectives specified within the ADG, notwithstanding non-compliance with the numerical requirements for building separation.	Y Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 5 of Schedule 6 as the development proposes affordable housing with a CIV over \$5 million.	Y
SEPP (Resilience & Hazards)	Chapter 4: Remediation of Land Section 4.6 – Contamination and remediation have been considered in the DSI Contamination Report and the proposal is satisfactory subject to conditions.	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure - Section 2.48(2) (Determination of development applications—other development) – electricity transmission. The proposal is satisfactory subject to conditions. - Section 2.118(2) – Development with frontage to a Classified Road. Concurrence received from TfNSW. - Section 2.119(2) – Impact of road noise or vibration on non-road development. Acoustic report submitted and considered satisfactory.	Y Y Y
Liverpool LEP 2008	- Clause 2.3 – The proposed RFB development is permitted within the R4 zone and meets the zone objectives. - Clause 7.5 – Design Excellence in Liverpool City Centre. The proposal was considered by the DEP, with the latest plans supported subject to recommendations.	Y Y
Liverpool DCP 2008	Section 4.2.7 Street Alignments and Street Setbacks The DCP requires a setback to Hume Highway of 8 metres. The proposed setback of 3m – 8m is consistent	Y

	with adjoining development and is considered satisfactory. In addition, the Hume Highway frontage of the site was acquired by TfNSW that enabled the construction of a left-turn lane into Bigge Street, which attributed to the reduction of the setback to the Hume Highway.	
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Consideration of the relevant SEPPs is outlined in greater detail below.

(a) State Environmental Planning Policy (Biodiversity and Conservation) 2021

i. Chapter 2 – Vegetation in non-rural Areas

Not applicable, as the site is vacant and devoid of any vegetation.

ii. Chapter 6: Water Catchments

It is considered that the proposed development is not in conflict with the objectives of Chapter 6 of the SEPP which seeks to promote the protection of the Georges River Catchment. It is considered that appropriate conditions can be imposed relating to erosion and sediment control and storm water runoff mitigation.

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

State Environmental Planning Policy – Building Sustainability Index BASIX – 2004 ('BASIX SEPP') applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by BASIX Certificate No. 1217078M prepared by Aspire Sustainability Consulting Pty Ltd, dated 15 December 2021 committing to environmentally sustainable measures. The Certificate demonstrates that the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

(c) State Environmental Planning Policy (Housing) 2021

The development provides for 19 affordable housing units (50.1% of proposed GFA) and thus the development falls under Chapter 2 of the Housing SEPP, entitled 'Affordable housing'. The proposal is consistent with the provisions and standards within the SEPP, except to the extent where they are inconsistent with the ADG, as follows:

- Clause 18 (2)(d) requires that a deep soil zone of 15% of the site area be provided. However, as per Cl. 20, the provisions of the Apartment Design Guide prevails. The ADG requires a deep soil zone of 7%, and the development provides 11%.
- Clause 18 (2)(e) requires that living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter. However, the ADG requires a minimum 2 hours of direct sunlight to living areas and private courtyards for 70% of dwellings. The proposal achieves at least 2 hours to 22/28 dwellings or 78.5%.

A full assessment of the relevant provisions within SEPP Housing is provided as an attachment to this report.

(d) State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

The proposal has been evaluated against the provisions of SEPP 65 which aims to improve the design quality of residential apartment development. SEPP 65 does not contain numerical standards, but requires Council to consider the development against 9 key design quality principles, and against the guidelines of the associated Apartment Design Guidelines (ADG).

The ADG provides additional detail and guidance for applying the design quality principles outlined in SEPP 65. The proposal is considered to be consistent with the design quality principles as outlined within the SEPP 65 and is considered to satisfy the objectives specified within the ADG, notwithstanding non-compliance with the numerical requirements for building separation.

A full assessment of the relevant provisions within SEPP 65 and the ADG is provided at **Attachment B**.

(e) State Environmental Planning Policy (Planning Systems) 2021

Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 5 of Schedule 6 of the Planning Systems SEPP as the proposal is development for the purposes of Affordable Housing with a capital investment value of over \$5m. Accordingly, the Sydney Western City Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

(f) State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* have been considered in the assessment of the development application. Section 4.6 of the SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out. In order to consider this, a Detailed Site Investigation ('DSI') has been prepared for the site.

The Detailed Site Investigation report accompanying the development application concluded that the site is suitable for its intended purpose. Council's EHO has reviewed the report and consider the findings to be satisfactory.

(g) State Environmental Planning Policy (Transport and Infrastructure) 2021

Clause 2.119 – Development with frontage to a classified road

The application is subject to Clause 2.119 of the SEPP as the development has frontage to a classified road. Clause 2.119 relevantly provides:

2.119 Development with frontage to classified road

- (2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*
 - (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
 - (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) *the design of the vehicular access to the land, or*
 - (ii) *the emission of smoke or dust from the development, or*
 - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
 - (c) *the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment

In addition to the above considerations, Section 138 of the Road Acts 1993 states that *consent may not be given with respect to a classified road except with the concurrence of TfNSW*. Accordingly, the application was referred to TfNSW for their concurrence.

Having regard to the consideration provided above in Clause 2.119, it is firstly noted, that vehicular access to the site via a road other than the Classified Road is not practicable. In consultation with TfNSW, the applicant was able to demonstrate that the entrance to the development would not have an adverse impact on the operation of the Classified Road. The roads authority subsequently granted their concurrence on 30 October 2023.

Point (c) regarding traffic noise is discussed below.

Clause 2.120 – Impact of road noise or vibration on non-road development

The application is subject to Clause 2.120 of the SEPP as the Hume Highway has an average daily traffic volume of more than 20,000 vehicles per day and the proposed residential development is identified as a sensitive land use. In this regard, the consent authority is required to ensure that the design of the development can meet the relevant noise criteria as stated. In order to achieve the required noise criteria, an acoustic report was prepared by a qualified acoustic consultant demonstrating that the design can meet the stated environmental noise criteria as provided within the SEPP.

(h) Liverpool Local Environmental Plan 2008

The relevant local environmental plan applying to the site is the *Liverpool Local Environmental Plan 2008* ('LEP'). The aims of the LEP include the following:

- (a) *to encourage a range of housing, employment, recreation and services to meet the needs of existing and future residents of Liverpool,*

(b) to promote a high standard of urban design that responds appropriately to the desired future character of areas,

The proposed development is consistent with these aims as the proposal provides for a range of apartments including affordable housing units within a high density residential zone for existing and future residents. The proposal has also undergone assessment by the Design Excellence Panel and is considered to be appropriate for the site and locality.

(i) Zoning and Permissibility (Part 2)

The site is located within the R4 High Density Residential zone pursuant to Clause 2.2 of the LEP.

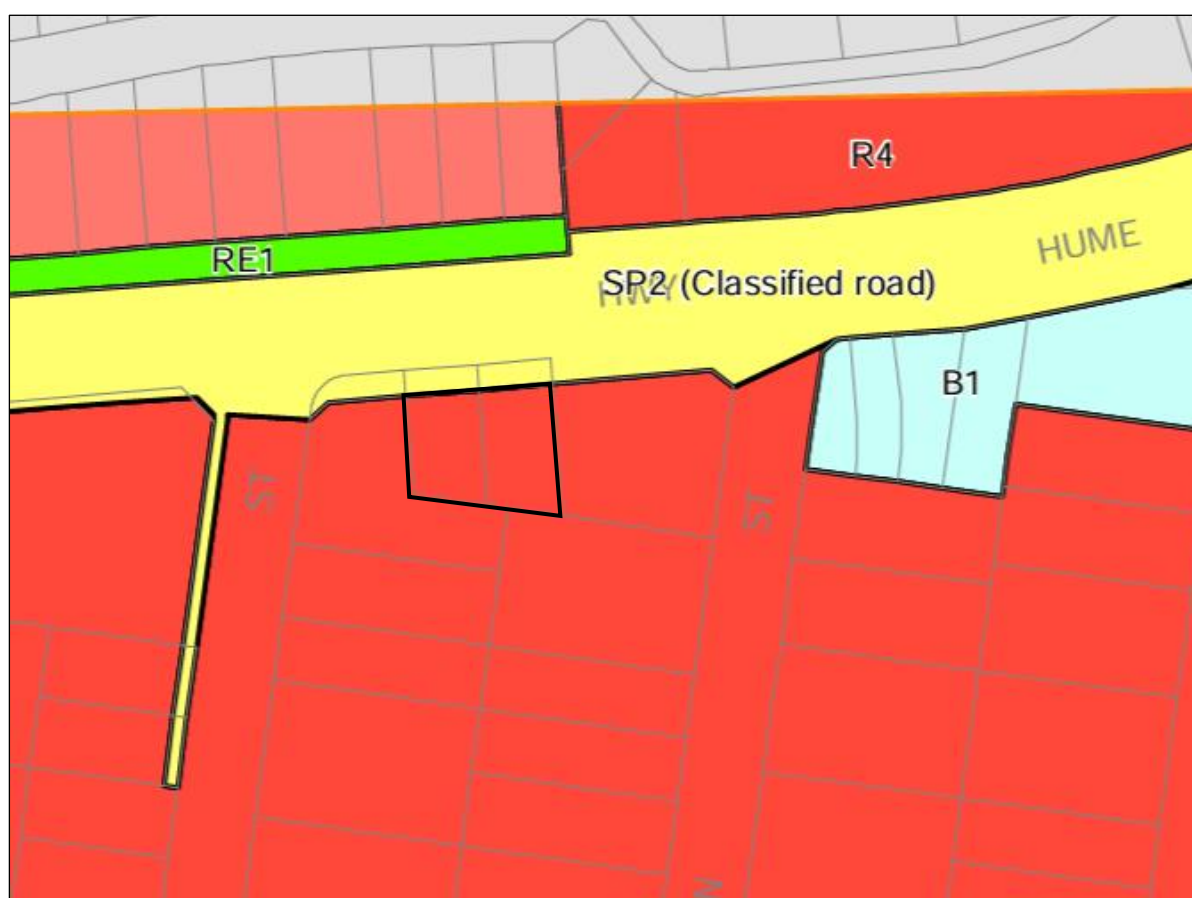


Figure 16: Zoning map (Source – Legislation website: 2023)

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of Residential Flat Building, which is a permissible use with consent in the Land Use Table in Clause 2.3.

The zone objectives for the R4 zone include the following (pursuant to the Land Use Table in Clause 2.3):

- *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 provide for a high concentration of housing with good access to transport, services and facilities.
- To minimise the fragmentation of land that would prevent the achievement of high density residential development.

The proposal is considered to be consistent with these zone objectives as the proposal provides for a range of apartments including affordable housing units in close proximity to public transport, services and facilities.

(ii) General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 6** below.

Table 6: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Minimum subdivision Lot size (CI 4.1)	1000m ²	1048.9m ²	Yes
Height of buildings (CI 4.3(2))	35 metres	34.63 metres	Yes
FSR (CI 4.4(2))	Max. 2.0:1 (T) + Bonus 0.5:1 ARH	2.44:1	Yes
Land acquisition (CI 5.1/5.1A)	Land required to be dedicated as public road	Already dedicated	Yes
Heritage (CI 5.10)	The land is not identified as a heritage item or land within a heritage conservation area.	N/A	N/A
Flood planning (CI 5.21)	Provisions relating to development on flood prone land.	The site is not identified within LEP maps as being affected by flood	N/A
Building separation in Liverpool City Centre (CI 7.4)	(a) 9 metres for parts of buildings between 12 metres and 25 metres above ground level (finished)	9 metre separation is provided where required.	Yes Yes

	(b) 12 metres for parts of buildings between 25 metres and 35 metres above ground level (finished)	12 metre separation is provided where required.	
Design Excellence (CI 7.5)	Development in Liverpool City Centre to be exhibit design excellence	The Design Excellence Panel is supportive of the amended design subject to the implementation of design recommendations.	Yes
Acid sulphate soils (CI 7.7)	Provisions relating to development on land affected by acid sulfate soils	The subject site is not affected by acid sulfate soils.	N/A

The proposal is considered to be generally consistent with the LEP.

4.2 Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no proposed instruments which have been the subject of public consultation under the EP&A Act, and are relevant to the proposal.

4.3 Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Liverpool Development Control Plan 2008* ('the DCP')

The proposed development complies with the controls outlined within the DCP, with the exception of the setbacks to the Hume Highway. The required setback to the Hume Highway is an 8m landscaped setback, however, the proposal provides a setback ranging from 3m to 8m.

- *Liverpool Contributions Plan 2018 – Liverpool City Centre*

This Contributions Plan has been considered and included within the recommended draft consent conditions.

4.5 Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

4.6 Section 4.15(1)(a)(iv) - Provisions of Regulations

These provisions of the EP&A Regulation 2021 have been considered and are addressed in the recommended draft conditions (where necessary).

4.7 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

(a) Natural and Built Environment

Built Environment

This section of the Liverpool City Centre is zoned R4 High Density Residential, and the immediate and surrounding locality comprises of higher density, multi-storey residential apartment buildings. It is therefore considered that the proposal is consistent with the existing and future character of the locality.

The proposal is considered satisfactory in terms of potential impacts to adjoining and surrounding properties and does not result in any significant adverse impacts.

Whilst located on a Classified State Road, the proposed vehicular access has been designed so that the safety, efficiency and ongoing operation of the classified road will not be affected.

Natural Environment

It is considered unlikely that the development will result in any adverse impacts to the natural environment, subject to the implementation of water quality control devices within the stormwater management system and erosion and sediment control measures during construction.

(b) Social Impacts and Economic Impacts

Social Impacts

The proposal includes 19 of 28 units as affordable housing, which will assist in alleviating housing stress for lower income earners. Having regard to the findings of the accompanying social impact assessment, it is considered unlikely that the proposal will result in any adverse social impacts to the area.

Economic Impacts

It is considered that the proposed residential development will have a positive impact upon the Liverpool City Centre through the increase in residential density and consequent increase in economic activity within the centre.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

4.8 Section 4.15(1)(c) - Suitability of the site

The site is considered suitable for the proposed development. The proposal is permitted within the R4 zone, meets the objectives of the zone, and has demonstrated general compliance with the relevant development controls contained within Council's DCP.

The site is provided with all essential services including electricity, telecommunications, NBN, reticulated water & sewer. Whilst the site fronts a Classified State Road, vehicular access to the site is satisfactory.

The site represents one of the remaining undeveloped parcels of land within a higher density residential zoned area which comprises other higher density, multi-level apartment buildings. The site is also ideally located in close proximity to the Liverpool Town Centre and has good access to public transport.

4.9 Section 4.15(1)(d) - Public Submissions

During the public exhibition period, one (1) submission was received objecting to the development on the grounds of insufficient deep soil zone; overshadowing of landscaped area and communal open space of southern-adjointing development; and the structural implications of constructing a basement level on the southern boundary.

The objections received are considered in detail in Section 5 of this report.

4.10 Section 4.15(1)(e) - Public interest

The proposed development is permitted within the R4 zone and meets the objectives of the zone. The development provides additional housing opportunities within close proximity to employment and public transport and is considered to result in positive social and economic benefits to the community.

Notwithstanding the submissions received, it is considered that the proposal is considered to be in the public interest.

5. REFERRALS AND SUBMISSIONS

5.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 7.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 7: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Transport for NSW	Section 138 of the Roads Act 1993 – Works and structures within a classified road.	In consultation with TfNSW, the applicant was able to demonstrate that the access to the development would not have an adverse impact on the operation of the Classified	Y

		Road. The roads authority subsequently granted their concurrence on 30 October 2023.	
Rail authority for the rail corridor	Section 2.98(3) – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	N/A	N/A
Referral/Consultation Agencies			
Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Endeavour Energy raise no objection subject to conditions, including details surrounding the location of any future substation if required – to be conditioned prior to CC.	Y
Bankstown Airport	Development within the approach slopes to Bankstown Airport (Airports Act 1996 and Protection of Airspace Regulations 1996)	Bankstown Airport Pty Limited advised that it has no objection to the proposal up to 53.53m AHD.	Y
Sydney Water	Sydney Water Act 1994, Section 78	No issues raised, subject to conditions	Y
Transport for NSW	Section 2.121 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development that is deemed to be traffic generating development in Schedule 3.	N/A	N/A
Design Review Panel	CI 28(2)(a) – SEPP 65 Advice of the Design Review Panel ('DRP')	The advice of the DEP has been considered in the proposal and is further discussed in the SEPP 65 assessment and the Key Issues section of this report.	Y
Integrated Development (S 4.46 of the EP&A Act)			
RFS	S100B – <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	N/A	N/A
Natural Resources Access Regulator	S89-91 – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	N/A	N/A

5.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 8: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Section has reviewed the submitted stormwater concept plan and raise no objections subject to conditions.	Y
Flooding	Council's Flooding Section has raised no concern as the site is not affected by flooding.	Y
Traffic	Council's Traffic Section has reviewed the proposal having regard to comments from TfNSW and raise no objections to the proposed access to the site and the design of the on-site parking area.	Y
Building	No issues raised subject to conditions	Y
Environmental Health	Council's Environmental Health Section has reviewed the submitted contamination report and acoustic report and raise no objections subject to conditions.	Y
Waste Management	No issues raised subject to conditions	Y
City Design and Public Domain	Council's City Design and Public Domain Section has reviewed the amended proposal and raise no concern subject to the recommendations made by the DEP being implemented. <u>Outcome:</u> The amended design (Issue C) adopts all of the design measures recommended by the DEP.	Y
Fire Safety	Objection raised by Council's Fire Safety Section requesting any future substation to be illustrated on plan. <u>Outcome:</u> To be condition for prior to CC.	Y, by condition
Community Planning	Council's Community Planning Section has assessed the accompanying Social Impact Assessment and are satisfied that the proposal will not result in any adverse social impacts to the surrounding area. However, Community Planning did request the submission of a Plan of Management by Evolve Housing, which wasn't provided. <u>Outcome:</u> To be condition for prior to CC.	Y, by condition
Landscaping	No issues raised subject to conditions	Y

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

5.3 Community Consultation

The proposal was notified in accordance with the Council's Community Participation Plan from 24 March 2022 until 7 April 2022. The notification included the following:

- Notification letters sent to adjoining and adjacent properties within 75m radius of the site;
- Notification on the Council's website.

The Council received a total of 1 submission objecting to the proposal. The issues raised in the submission are considered in **Table 9**.

Table 9: Community Submissions

Issue	No of submissions	Council Comments
Deep Soil Zone The development does not achieve minimum deep soil zone of 15% required by SEPP Housing.	1	Clause 18(2)(d) of SEPP Housing requires that a deep soil zone of 15% of the site area be provided. However, as per Cl. 20, the provisions of the Apartment Design Guide prevail. The ADG requires a deep soil zone of 7%, and the development provides 11%. Outcome: The development is considered to be compliant with respect to the provision of deep soil zone.
Overshadowing The development results in constant overshadowing of the landscaped area and communal open space area on the northern side of adjoining development to south (3-5 Goulburn St).	1	As noted below in the Key Issues section, when considered in isolation, the development complies with the solar access provisions of the ADG, as illustrated in the 2D shadow diagrams and 3D sun-eye diagrams. In this regard, the shadow effect from the proposed development alone maintains direct solar access to the living rooms and private open spaces of adjoining developments for at least 2 hours between 9am and 3pm at mid-winter. However, the cumulative impact of all the RFB developments fronting the Hume Highway means that some north-facing units and particularly north-facing landscaped areas of the southern-adjoining developments are overshadowed to some degree. It is important to note that the southern-adjoining buildings also overshadow the buildings to their south throughout the day. This is an inevitability of higher-density, multi-level apartment buildings, particularly where sites are orientated east-west. Outcome: It is considered that the proposed development does not unreasonably overshadow the southern-adjoining development, and all attempts

		have been made to maximise and maintain solar access to neighbouring properties.
Basement structure The basement is proposed to be built on the southern boundary, which has the potential to impact the adjoining site.	1	The development will be subject to standard conditions with respect to structural adequacy and dilapidation. Outcome: Standard conditions to be imposed prior to issue of CC.

6. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

6.1 Building Separation

The following table illustrates the areas of compliant and non-compliant building separation for the proposed development:

Requirement:			
Building Height	Habitable Rooms and Balconies	Non Habitable Rooms	Side / Rear
Up to 12m (4 Storeys)	6m	3m	Up to 4 storeys: <u>G/F, Levels 1, 2, 3</u> - 6m to sides / rear habitable Yes - 3.75m to rear non-habitable Yes
Up to 25m (5-8 Storeys)	9m	4.5m	5 to 8 storeys: <u>Level 4</u> - 6m to side / rear balconies No - 5m to rear non-habitable Yes
Over 25m (9+ storeys)	12m	6m	<u>Levels 5,6,7</u> - Ranges 6-9m to east side habitable No - 8.14m to west side habitable No - 9.255m to rear habitable Yes - 5m to rear non-habitable Yes 9+ storeys: <u>Level 8</u> - 6.45m to east No - 9m to west No - 10m to rear habitable No

	- 5m to rear non-habitable	No
	<u>Level 9</u>	
	- Min. 11m to east non-habitable	Yes
	- 10.15m to west habitable	No
	- 5m to rear non-habitable	No
	<u>Rooftop COS</u>	
	- Min. 11.65m to east habitable	No
	- Min. 11m to west habitable	No
	- 9m to rear habitable	No
	- 5m to rear non-habitable	No

Whilst non-compliant with required separation distances, this relates more to the irregular nature of the block, which results in point encroachments into the required setback areas, mainly at the upper levels. The adjoining buildings are also not perpendicular to the boundary, and this assists in providing greater separation between buildings, if not to the boundary itself.

The non-compliant separation does not result in an inappropriate built form, and it is considered that the tiered nature of the development presents well to the public domain.

With respect to overshadowing, when considered in isolation, the development complies with the solar access provisions of the ADG, and in this regard, the shadow effect from the proposed development alone maintains direct solar access to the living rooms and private open spaces of adjoining developments for at least 2 hours at mid-winter during the hours of 9am and 3pm. The cumulative impact of overshadowing is discussed further below.

It is also considered that privacy is maintained despite the non-compliant separation distances, through the use of hi-light windows, glass blocks, screening and planter boxes.

Having regard to the above, it is considered that the proposed variations to building separations as stated in the above table can be supported in this instance having regard to the merits of the proposed design and the architectural response to site constraints.

6.2 Overshadowing

As noted above, when considered in isolation, the development complies with the solar access provisions of the ADG, as illustrated in the 2D shadow diagrams and 3D sun-eye diagrams. In this regard, the shadow effect from the proposed development alone maintains direct solar access to the living rooms and private open spaces of adjoining developments for at least 2 hours at mid-winter during the hours of 9am and 3pm.

However, the cumulative impact of all the RFB developments fronting the Hume Highway means that some north-facing units and particularly north-facing landscaped areas of the southern-adjoining developments are overshadowed to some degree. It is important to note that the southern-adjoining buildings also overshadow the buildings to their south throughout the day. This is an inevitability of higher-density, multi-level apartment buildings, particularly where sites are orientated east-west.

To their credit, the applicant has taken into consideration the comments provided by Council and the DEP and have reduced the building footprint (over the course of a number of iterations) to a slenderer built form that maximises solar access to southern-adjoining buildings.

The impact at ground level is not due to height or width of the development. The shadow diagrams indicate that the building at No. 18 Hume highway also overshadows the front landscaped area of the development at No. 3-5 Goulburn Street throughout the day, although this area achieves compliant sunlight from midday onwards. This means that any development on the subject lot will overshadow the front landscaped area of No. 3-5 Bigge Street from 11am onwards.

Whilst it is often remarked that the shadow affectation on June 21 is a worst-case scenario, it remains true that on all other days of the year, direct sunlight is increased. This is evident in the sun-eye analysis which shows that, for the spring and autumn equinox periods, overshadowing is negligible.

The site represents the last parcel of land to be developed in this neighbourhood block. The site has an east-west orientation and is located on the northern side of this neighbourhood block and therefore some level of overshadowing is to be expected, particularly from a cumulative perspective. This is the nature of high rise living, and this situation would exist throughout the surrounding R4 zoned locality.

In view of the shadow analysis diagrams including the sun-eye diagrams, it is considered that the extent of shadow impacts upon surrounding residential flat buildings are not unreasonable under the circumstances of the case, having regard to the east-west orientation of the site and the allowable building height and FSR permitted for the site under the Liverpool LEP.

6.3 Front Setbacks

Section 4.2.7 of the Liverpool DCP 2008 requires an 8 metre landscaped setback to buildings with a boundary to the Hume Highway. However, the proposal provides a front setback ranging from 3m to 8m. The proposed setbacks are considered satisfactory having regard to the following:

- The front portion of the development site is subject to acquisition and dedication for the purpose of public road. This portion of land has already been dedicated as public road and now forms part of a left-hand turn lane into Bigge Street.
- All Residential Flat Buildings along this section employ similar setbacks to the Hume Highway as the proposal. In this regard, the proposal is consistent with the prevailing street setbacks.
- The development site is not perpendicular to the Hume Highway but is angled. Accordingly, the proposed development adopts a varying setback ranging from 3 metres to 8 metres. The buildings on adjoining lots have adopted a similar approach. The proposed front setback is considered to be appropriate for the site and the immediate locality and provides for an appropriate landscaped transition to the public domain.

7. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and Regulation as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

As discussed in Section 5 above, it is considered that the key issues of building separation, overshadowing and front setbacks do not result in significant adverse impacts to adjoining or surrounding development. The site is considered suitable, and the proposed development is considered appropriate for the locality.

8. RECOMMENDATION

That the Development Application DA No. 28/2022 for the construction of a 10-storey residential flat building comprising 28 residential units above two levels of basement car parking, landscaping and associated works at 20-22 Hume Highway, Warwick Farm be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent – TRIM No. 417585.2023
- Attachment B: Tables of Compliance – TRIM No. 417713.2023
- Attachment C: Architectural Plans – TRIM No. 416122.2023
- Attachment D: Landscape Plans – TRIM No. 353945.2023
- Attachment E: Design Excellence Panel Minutes
 - June 2022 Meeting – TRIM No. 214723.2022
 - March 2023 Meeting – TRIM No. 177607.2023
- Attachment F: Response to DEP Minutes - 300479.2023