

COUNCIL ASSESSMENT REPORT
SYDNEY WESTERN CITY PLANNING PANEL

PANEL REFERENCE	PPSSW-348
DA NUMBER	DA-380/2023
PROPOSAL	Demolition of existing structures and the construction of a 6 story Residential flat building with associated Basement parking and 20% Affordable units pursuant to SEPP (Housing) 2021
ADDRESS	Lot 16 DP 236405 and Lot 17 DP 236405 28 McKay Avenue, Moorebank and 30 McKay Avenue, Moorebank
APPLICANT	MORFOSIS ARCHITECTS PTY LTD
OWNER	MEIKA GROUP PTY LTD
DA LODGEMENT DATE	3 July 2023
APPLICATION TYPE	Development Application
REGIONALLY SIGNIFICANT CRITERIA	Clause 5(b), Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : Private infrastructure and community facilities over \$5 million – affordable housing.
CIV	\$12,476,862
CLAUSE 4.6 REQUESTS	Clause 4.6 variation to Clause 4.3 Height of Building
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 & SUBMISSIONS ISSUES SUBMISSIONS	<p>Four unique submissions were received for the application.</p> <p>Key issues:</p> <p>a) height of building,</p> <p>b)privacy and overshadowing impacts,</p> <p>c) parking</p> <p>d)lack of infrastructure.</p>
DOCUMENTS SUBMITTED FOR CONSIDERATION	<ol style="list-style-type: none"> 1. Recommended conditions of consent 2. Architectural plans 3. Landscape plans 4. Stormwater plans 5. Survey Plan 6. Statement of Environmental Effects 7. Clause 4.6 Variation Request 8. Design Verification Statement 9. Traffic Management Response 10. Traffic Impact Assessment 11. Waste Management Plan 12. Access Compliance Report 13. Geotechnical Report 14. BASIX Commitment Report and Certificate 15. NatHERS Certificates 16. Design Excellence Panel Comments
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	N/A
RECOMMENDATION	Approval subject to conditions
DRAFT CONDITIONS TO APPLICANT	No
SCHEDULED MEETING DATE	14 October 2024
PLAN VERSION	31/7/2024 Version C
PREPARED BY	Greg Mottram
DATE OF REPORT	8 October 2024

1. EXECUTIVE SUMMARY

The development application (DA-380/2023) seeks consent for the demolition of existing structures, construction of a six (6) storey residential flat building development comprising 28 units, two levels of basement car park, landscaping and associated works. The application is submitted under the State Environmental Planning Policy (Housing) 2021.

The subject site is legally described as Lot 16 DP 236405 and Lot 17 DP 236405 and is located at 28 and 30 McKay Avenue, Moorebank. The site is an irregular rhomboidal shape, with a frontage to McKay Avenue of 37.53m and a total site area of 1,365.8sqm. The site is relatively flat and is currently occupied by two detached brick veneer dwellings.

The site is located in the central of the Moorebank 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 three times from 9 August 2023 until 24 August 2023 (no submissions), from 24 June 2024 until 8 July 2024 (2 submissions received) and from 27 August 2024 until 12 September 2024 (2 submissions received). The submissions received were objecting to the development on the grounds of the following: - excess height of buildings, overshadowing, lack of parking and infrastructure and privacy impacts. 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.

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

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 (Chapter 2 and Chapter 4)*, 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. Clause 4.6 - Concern raised by the Panel in relation to height non-compliance. This is discussed further in the report.
2. Application of SEPP(Housing) 2021 - Whether the site is in an accessible area which Council is satisfied that it is.
3. Building Separation - The proposed development has minor non-compliance with the building separation requirements as prescribed within the ADG, primarily for the lower levels at the rear of the site. These have assessed as supported further in report.
4. Setbacks – minor non-compliance with the front setback in order to provide better amenity for the interiors of the units in comparison to a compliant design that would create awkward unusable space due to the irregularity of the site.
5. Access Safety – The Panel had concerns about issues of site line conflicts with the entrance and pick up and drop off arrangements of the public school opposite the site. This issue is discussed further in the report.

Following a detailed assessment of the proposal, pursuant to Section 4.16(1)(b) of the

EP&A Act, DA-380/2023 is recommended for approval subject to the conditions contained at **Attachment A** of this report

2. THE SITE AND LOCALITY

2.1 The Site

The development site is located at 28-30 McKay Avenue, Moorebank and is comprised of 2 standard allotments, being Lot 16 & 17 in DP 236405. The site is an irregular rhomboidal shape, with a frontage to McKay Avenue of 37.53m and a total site area of 1,365.8sqm. The site is relatively flat and is currently occupied by two detached brick veneer dwellings. There are currently two single vehicle access point to the site, including from McKay Avenue across the two existing sites.

The site is relatively flat and is improved by two detached single storey dwellings. All essential services including electricity, telecommunications, NBN, reticulated water & sewer are available to the site. The site is opposite fronts



Figure 1: Aerial Image of the subject site (Source – GeoCortex Data: 2024)



Figure 2: Locality (Source: Geocortex)

2.2 The Locality

The site is located in Moorebank directly opposite the local public school (Nuwarra Public School) and approximately 100m from the Moorebank Library and Community Centre, 200m from the local shopping centre (Moorebank Plaza) and 850m to the nearest public high school (Moorebank High School) to the northeast. It is approximately 3.2 km from Liverpool Railway Station with ready access to regular connecting bus services.

The site is located on the northern side of McKay Avenue between Lucas Avenue in the west and Dredge Avenue to the northwest.

The subject site is surrounded by single storey dwelling houses on large lots. The houses generally have deep front setbacks and sizeable back yards. The adjacent site to the east contains a residential flat building and there are other approvals for the like in the vicinity and the area is transitioning into the high density residential area envisaged by the zoning for the site. The site to the east of the development has had a recent approval for a 99 place childcare centre.

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

Table 1: Adjacent Developments

Address	Location	Development
23-29 Harvey Avenue	Adjacent site to the rear	2 X 6 Storey residential flat buildings (Approved under DA-627/2018 – not yet commenced)

32-34 McKay Avenue	Adjacent site to the east	5 Storey residential flat building (Approved under DA-995/2017) Nearing Completion)
24-26 McKay Avenue	Adjacent site to the west	99 Place Childcare centre (Approved under DA-42/2024 - not yet commenced)



Figure 3: *Street Image of the subject Site*



Figure 4: Existing 5 storey residential flat building on adjacent site to the east



Figure 5: Existing dwellings on adjacent sites to the west under demolition



Figure 6: multistorey residential development under construction further to the east on Nuwarra Road.

3 THE PROPOSAL AND BACKGROUND

3.1 The Proposal

The application generally proposes demolition of existing structures and the construction of a six-storey residential flat building comprising:

- 28 residential units consisting of:
 - 8 x 1-bedroom units (2 adaptable)
 - 19 x 2-bedroom units (1 adaptable)
 - 1 x 3-bedroom units
- Excavation to create Two (2) x basement parking levels
- 32 x on-site vehicle parking spaces plus visitor parking.
- Associated landscaping and communal open spaces.

As well as providing the three adaptable units, the development is proposing to operate 15 units as affordable housing which are to be operated and managed a registered housing provider for a minimum of 15 years after the occupation of the building.

The units nominated as affordable housing units are units Unit GL-01 to GL-05, L1-U1 to L1-U5, L2-U1 to L2-U3, L2-U5 and L3-U4. Details of the operator of the affordable housing units for the first fifteen years following the issue of an occupation certificate will be conditioned to be provided prior to the issue of a construction certificate.

Note: Architectural Plans used for the assessment are prepared by Morfosis Architects Pty Ltd Rev C, dated 31/7/2024

Table 2: Development Data

Control	Proposal
Site area	1,365.8sq.m
GFA	Proposed 2,223.02sq.m or 1.63:1
FSR (retail/residential)	1.20:1 permitted by the LLEP 2008 plus a further 0.50:1 pursuant to SEPP (Housing) 2021 giving a total permitted FSR of 1.70:1
Clause 4.6 Requests	Yes, The development includes a Clause 4.6 variation request for the non-compliance with Clause 4.3 Height of Building development standard. The Maximum height of building for the site is mapped as 18m with the development proposing a maximum height of 22.6m or a 25.6% variation of the numeric standard.
No of apartments	28
Max Height	18m permitted - 22.6m proposed
Landscaped area	364.5sq.m at ground level and 71.2sq.m on the rooftop communal open space giving a total of 435.7sq.m
Car Parking spaces	32
Setbacks	Front Variations have been to the front and rear setbacks as a result of encompassing the recommendations of Council's Design Excellence Panel. These are outlined in the DCP Compliance Tables and are considered acceptable in this instance.

3.2 Background

A pre-lodgement meeting was not held prior to the lodgement of the application.

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 14 September 2023 and a follow up meeting on 20th May 2024 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 14 th September 2023	DEP Comments 20 th May 2024	Council Response	Officer
<p>The Panel appreciates the applicant for providing a comprehensive set of architectural drawings and 3D views as part of the submission.</p>	<ul style="list-style-type: none"> • The Design Excellence Panel (DEP) commends the project team including the Architect, Landscape Architect, Client and Project Manager for a comprehensive and detailed presentation, and their efforts in engaging with the Design Excellence process. The Panel thanks the applicant and appreciates that the previous DEP recommendations were carefully considered, and positive refinements have been incorporated, resulting in a well-designed residential building with good amenity, generous landscaping and the necessary deep soil for healthy, sustainable plantings. The process, project and design outcomes are considered to be an exemplar of a successful DEP process. 	Noted	
<ul style="list-style-type: none"> • A site analysis is required that demonstrates the development of the design has been influenced by the study of the context. The Panel strongly encourages the applicant to consider the recently approved residential flat buildings within the vicinity and the existing school in both 2D and 3D, geography, viewlines and existing vegetation as part of their urban design analysis of the site. • It is appreciated the applicant has considered the planning setbacks in their approach for the site. This has produced a parallelogram-shaped building envelope that creates odd internal corners and spaces which will be hard to furnish or use well. • The Panel recommends the applicant to consider a more relaxed approach for the front and rear setbacks by 'squaring-off' the habitable rooms (living rooms and bedrooms). The Panel's 		Noted	

<p>objective with this recommendation is to maximise efficiency with the internal layouts and provide some relief for spatial planning by adopting an average setback approach rather than strictly complying with the front and rear DCP setback controls.</p> <ul style="list-style-type: none"> • The Panel further discussed that a ‘serrated’ edge (in plan), particularly to the front setback addressing the school would add more depth to the streetscape elevation. • It is recommended that the applicant to maximise the full extent of their building envelope, including the southwestern corner by considering appropriate internal planning strategies. The additional floor area could be allocated to the apartments improving the overall residential quality and amenity. 		
<p>Built Form + Scale</p> <ul style="list-style-type: none"> • The driveway structure at the vehicular entry should be well-integrated with the building and the landscape design. A suggested strategy is to create a pergola structure with vegetation screening the ramp. • The Panel notes that the internal apartments on Levels 4 and 5 needs a greater degree of resolution and refinement. The ground level offers great connectivity to the communal areas and similarly, Levels 1 to 3 offer openings to the sides and the front to capture daylight and natural ventilation. The Panel recommends that the same quality within common corridor should be reflected on Levels 4 and 5. • The Panel notes excessive use of awning windows within the proposal, and recommends these window types should be replaced by other operable window types (such as louvres, sliding or double hung windows). Awning windows only offer a limited extent of opening and should be replaced with other window types to allow effective natural ventilation and natural cross ventilation within the apartments. 	<ul style="list-style-type: none"> • The communal rooftop space and the required strategies incorporated in the building design to support its success are commended, including the well-considered provision of soil depths and floor-to-floor heights to allow compliance with the detailed design aspects such as drainage and cross-falls required for the compliance with the Design & Building Practitioners Act 2020 and the NCC provisions. • The applicant should confirm details (provided as 1:5 or 1:10 drawings) and materials used for screening the AC Condenser units in the revised DA submission, demonstrating thoughtful consideration of the operational needs for AC condensers and visual appearance. It is the Panel's preference that condensers should not be visually apparent from any point within the surrounding public domain. 	<p>Noted</p> <p>Amended plans have been provided to address this point. (Sheet DA350)</p>

Density <ul style="list-style-type: none"> • Nil 	<ul style="list-style-type: none"> • Nil 	Noted
Sustainability <ul style="list-style-type: none"> • The Panel considers the applicant has presented a considered scheme which will be able to achieve the expected targets for solar access, natural cross ventilation, deep soil zone and other principal design criteria within the ADG with some development of the design. The Panel encourages the applicant to achieve further sustainability targets as discussed below. • Use of ceiling fans is encouraged within all bedrooms and living areas as a low energy alternative/ augmentation to mechanical A/C systems. • Provision of a rainwater tank should be considered to allow collection, storage and reuse within the subject site. • The applicant should include details of an appropriate photovoltaic system on all architectural drawings and 3D views. • Full building electrification is encouraged along with the inclusion of EV charging points within the basement carpark. • The Panel notes that bathrooms located along the building perimeter should be provided with windows for natural light and ventilation, and to improve natural cross ventilation within the apartments. • Drying space should be allocated for each apartment that is screened from public view. 		<ul style="list-style-type: none"> • Ceiling fans have will be conditioned to be provided in the prior to construction certificate conditions • Rooftop photovoltaic systems have been included in the revised design (Drawing Number DA-218) • The recommendation of the panel not already incorporated in the amended plans will be conditioned to be provided prior to the issue of a CC. These include the provision of rainwater harvesting on the roof, EV charging points in the basement and windows to the perimeter bathrooms, and screened drying spaces where possible.
Landscape <ul style="list-style-type: none"> • The Panel discussed that the current arrangement of COS on the ground floor may comply with the ADG in terms of its numerical requirement, however, it would only offer a limited benefit to the residents. 	<ul style="list-style-type: none"> • The communal rooftop space and the required strategies incorporated in the building design to support its success are commended, including the well-considered provision of soil depths and floor-to-floor heights to allow compliance with the detailed 	Noted

<ul style="list-style-type: none"> • The Panel recommends the applicant consider a roof-top COS provided with maximum amenity for its residents, including - a unisex accessible toilet, outdoor kitchen/ barbecue, sink, shaded areas, seats, and planter boxes. The applicant should refer guidance offered within ADG Parts 4O and 4P to develop further details. • The Panel acknowledges that introduction of a rooftop communal open space would require a barrier-free lift access and fire stairs to encroach beyond the 18m LEP height plane. The Panel offers in-principle support to such height exceedance if the proposal demonstrates consistency with other recommendations offered in this report. • Furthermore, the Panel recommends the ground floor front, rear and side setbacks should be offered as private open spaces/gardens to the ground floor apartments. The ground floor apartments should benefit from direct and individual street entries which could be also used for removing green waste from the individual private gardens. • Detailed landscape design proposal should confirm medium-to-large canopy trees and shrubs within the above-mentioned private open spaces to enhance the amenity and outlook of the ground floor residents. • The Panel notes trees have been removed from the rear of the site, and suggests the applicant provide replacement canopy tree plantings (i.e., species with a mature height of 8m or greater). • There are inconsistencies between the architectural plans and 3D renderings regarding the tree planting along the east boundary. Additionally, the Panel emphasizes the importance of ensuring that adequate soil volumes have been taken into consideration to support the tree planting. In the absence of a section provided at 	<p>design aspects such as drainage and cross-falls required for the compliance with the Design & Building Practitioners Act 2020 and the NCC provisions.</p> <ul style="list-style-type: none"> • The Panel discussed that planter boxes require ongoing maintenance, and if not maintained properly these could risk impacting the visual appearance and amenity within a building. In this proposal, the Panel notes that there is generous landscaping and deep soil offered on the ground floor that will enable substantial tree canopy and landscape design amenity around the building. The Panel recommends planter boxes should be removed from the private balconies, and balcony areas should be maximised for outdoor seating. The Panel further discussed that such planters are recommended only in communal areas where they can be managed by a building manager for any maintenance, irrigation and removal of green waste. • The Panel recognises through this proposal that private and communal gardens provide gardening opportunities for its residents. It is also recommended that water taps be introduced to balconies and private open spaces to facilitate landscape maintenance. • The Panel appreciates the applicant's positive response of adding pergolas covered with vines over the driveway. The applicant should provide further details on how vine growth is facilitated and nominate appropriate species as part of the landscape drawings. The Panel further suggests extending the balcony slab edge of the apartment type U1 balcony so the pergola edge can be straightened and allow better integration with the building design. 	<ul style="list-style-type: none"> • Planter boxes have been removed from the balconies of apartments in the architectural plans and a condition of consent will require the provision of an amended landscape plan to reflect this change. • Water taps have been provided accordingly. • The landscape plan will be conditioned to be updated to detail the provision of star jasmine to the pergola area. • Amended plans have been provided to include the extension of the slab edge for Unit 1 as suggested here.
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<p>this location, the Panel requires the applicant provides further information to demonstrate the proposed development can successfully achieve the tree planting as intended.</p> <ul style="list-style-type: none"> • The Panel suggests that by rationalizing the built form, there will be greater opportunities and flexibility for landscape design at the ground level. • The Panel recommends consideration of Designing with Country principles in the selection of plant and tree species when preparing the landscape plan. Species should be selected that provide habitat and forage for native insect, bird, reptile and fauna species. • With the removal of trees on the northern boundary, the landscape design should seek to capitalise on the deep soil area and reinstate significant canopy along this boundary edge. Species should be selected be endemic to the area and provide habitat and shade. • More detail is required in the landscape plan to demonstrate that appropriate soil volumes will be provided on all podium areas to support the proposed planting. This should be demonstrated with calculations on soil volume and with sections through podium planting. • The Panel recommends thoughtful resolution of building services elements – substation (if required), fire hydrant booster assembly, fire indicator panel should be well-integrated with either built form and or the landscape design. 		
<p>Amenity</p> <ul style="list-style-type: none"> • The Panel appreciates the applicant has introduced three access points to the building, which enhances site permeability. However, there is a concern regarding the access point along the western boundary, where there are opportunities to incorporate additional planting to help mitigate the impact caused by the driveway. 	<ul style="list-style-type: none"> • The Panel notes that storage provisions are important for apartment living however some apartments do not have any storage (outside of the bedrooms). The NSW Apartment Design Guide (ADG) Part 4G offers guidance on storage size requirements that are required to be provided in addition to kitchens, bathrooms 	<ul style="list-style-type: none"> • Conditions of consent will be imposed that will require the provision of amended plans showing the appropriate storage is provided for approval by Council prior to the issue of any construction certificate.

<ul style="list-style-type: none"> • The Panel notes that the internal apartment sizes exactly comply with the minimum ADG Part 4D area requirement, however the non-orthogonal planning doesn't allow for full use of the spaces and some rooms do not meet minimum dimensions eg. Master bedroom within the typical apartment U2. Within the same apartment, the living, dining and kitchen areas appear highly constrained. It appears that the layout will not allow intuitive circulation and movement around furniture. • The balcony size and orientation of the typical apartment U4 creates an awkward relationship with the living area. The kitchen aisle within this apartment overlaps with the main circulation corridor and not in-line with the guides provided in the ADG Part 4D. The layout needs full reconfiguration to allow a more efficient and amenable living, dining, kitchen and balcony arrangements. • The bedroom sizes within the typical apartment U3 are below the ADG Part 4D requirements. • The balcony layouts for all apartments need to demonstrate consistency with the minimum area and the overall objective of the ADG Part 4E. For example - the orientation of the longer side should face outwards. Minimum depths of 2m (for 2 bedroom) and 2.4m (for 3 bedroom) apartments should be achieved. The layouts should demonstrate adequate space for a small outdoor table with chairs. • The Panel acknowledges that, as per the Land and Housing Corporation Design Requirements, there is no requirement for two bathrooms in 2-bedroom apartments. Therefore, the Panel recommends considering the removal of one bathroom for those 2-bedroom units. • As recommended in 4.2 Built Form and Scale, the apartment layouts on Levels 4 and 5 should benefit from a greater degree of resolution in terms of vertical alignment of services, unless the floor-to-floor height is further raised to allow transfer of services. 	<p>and bedrooms. The Panel recommends the apartment layouts be reviewed to incorporate storage cupboards outside of the bedroom and ensure consistency is achieved with the ADG.</p> <ul style="list-style-type: none"> • The Panel discussed that the rendered and painted façade materials require on-going maintenance incurring cost every 7-10 years. Alternatively, the Panel prefers use of self-finished materials with an integral finish such as - face bricks or concrete. Please refine the design using more low-maintenance external façade materials such as face brick and concrete. • The Panel discussed that typically, darker colours absorb more heat compared to lighter colours. Since the Liverpool LGA experiences severe urban heat island effect, the darker colours could be problematic as they maximise heat gain and result in potential thermal loading issues. If the applicant continues with rendered and painted surfaces then lighter colours (with a lower solar absorptance (SA) rating) are recommended. • The windows open to the sky at the end of corridors throughout the foyers, improve amenity and are supported. The Panel recommends introduction of openable highlight windows (and translucent if necessary) to the bathrooms in the indents adjacent to these foyer windows, to allow natural airflow. • The Panel notes that excessive glazing within the façade would contribute to solar heat gain, while creating potential privacy issues within habitable areas. The applicant should review the location of the glazed balconies and full height windows in relation to visual privacy and orientation to the neighbouring 	<ul style="list-style-type: none"> • This recommendation has been adopted. Main portions of Ground up to Level 3 units have been changed to face brick materials. To provide balance and composition to overall architecture, painted and rendered façade has been maintained but remains a secondary façade element on the lower levels, provided to Level 4 and 5 only. • This recommendation has been adopted identified as 'HL', refer legend and detailed plans • This recommendation has been adopted. Refer elevations, legend identifying window types, window schedule and detailed plans. Glazed balconies have been removed
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<ul style="list-style-type: none"> • The Panel appreciates that the common corridors within the lower levels of the proposal have openings that align with building gaps creating opportunities for natural light, ventilation and outlook for the common areas. And suggests that the layouts for Levels 4 and 5 should have a similar approach that maximises natural light, ventilation and outlook within the common corridors. 	<p>buildings, and as a balance introduce solid balustrades where appropriate. For example it may be more appropriate for the first 4- storeys to have greater proportion of solid balustrades, and the upper recessed stories could maintain glazing.</p>	<p>to the first 4 storeys and replaced with solid balustrades. All full height glazing windows facing east and west and been replaced with standard height windows for bedrooms and highlight windows to living areas.</p>
<p>Housing Diversity + Social Interaction</p> <ul style="list-style-type: none"> • A suitably qualified access consultant should review whether all apartments need to be 'visitable'. It is noted that some of the apartments allow visitable entries but not exits. • The applicant should demonstrate that all communal areas and common areas have barrier-free access and circulation. • The applicant welcomes this opportunity for inclusion of 16 apartments as part of the affordable housing offering within the scheme. The Panel recommends that details of the Community Housing Provider and its perpetuity of the arrangement should be confirmed with Council's assessment officer as part of this development application stage. • Details of the pre and post adaptation layouts should be provided as part of the next revision. The Panel recommends the extent of alteration required from pre to post adaptation should be minimised, particularly with regards to structure and services such as plumbing points, location of sinks, floor-wastes and the like. 	<p>No further comment on this section was noted in the DEP minutes for the review of the amended plans.</p>	<ul style="list-style-type: none"> • The details of the Housing Provider that will operate the 15 Affordable Housing units will be conditioned to be provided to Council for approval prior to the issue of any construction certificate for the development.
<p>Aesthetics</p> <ul style="list-style-type: none"> • The applicant should provide a comprehensive design proposal for the primary façade/s at a future meeting. This must include 1:20 sections and details to clearly show materials, balustrade design, balcony edges, junctions, integration of rainwater drainage 	<ul style="list-style-type: none"> • The applicant should confirm details (provided as 1:5 or 1:10 drawings) and materials used for screening the AC Condenser units in the revised DA submission, demonstrating thoughtful consideration of the operational needs for AC condensers and visual 	<ul style="list-style-type: none"> • This has been addressed.

<p>including any downpipes and similar details within the proposal. Sections should also demonstrate that a 3.1m floor to-floor height will be adequate in achieving compliance with the relevant NCC provisions, whilst also achieving minimum 2.7m floor-to-ceiling heights within all habitable spaces of the apartments.</p> <ul style="list-style-type: none"> • Location of A/C condensers and other mechanical equipment should be confirmed on drawings and 3D views. The Panel these should not be located within balconies (unless thoughtfully screened), the rooftops or anywhere apparent from the public domain. 	<p>appearance. It is the Panel's preference that condensers should not be visually apparent from any point within the surrounding public domain.</p> <ul style="list-style-type: none"> • The Panel recommends the applicant investigate rotating the fire hydrant booster and substation 90 degrees to reduce these large services dominating the street frontage, improve the pedestrian experience and interface with the public domain. • The Panel discussed that the adaptable unit layouts appear constrained and would barely fit a 2-seater lounge. The layout should be improved to enable a 2-seater lounge to fit comfortably and allow intuitive movement around the furniture post-adaption. • The Panel recommends further refinement of the apartment type U3. For example – the entry door opens directly onto the laundry and storage on the left-hand side creating a poor entry experience. The layout should benefit from further resolution to improve the entry experience. 	<ul style="list-style-type: none"> • The revised plans have rotated followed this requirement however conditions of consent will be imposed to ensure that site lines are not impaired. • This has been addressed. • While the Panels' comments in relation to the U3 type entrance experience is noted it is considered that this design is acceptable as the laundry is normally behind closed doors and when entering the unit, half of these doors will be obscured by the units and the new revised design is considered appropriate.
<p>Final Notes - The Panel identified that the previous recommendations are unaddressed. These recommendations are still applicable and should be provided as part of the next submission:</p>	<p>1. 'The Panel notes excessive use of awning windows within the proposal and recommends these window types should be replaced by other operable window types (such as louvres, sliding or double hung windows). Awning</p>	<ul style="list-style-type: none"> • Amended plans will be conditioned to provide alternate windows to achieve better cross ventilation, provide confirmation of the

As described in the Previous DEP minutes, 'the Panel could support height exceedance if the proposal demonstrates consistency with other recommendations in this report'. In the Panel's view, the proposal successfully responds to the previous DEP recommendations as part of the revised DA documentation, and results in acceptable architectural, urban design and landscape design outcomes, therefore the Panel supports the height exceedance in this instance.	<p>windows only offer a limited extent of opening and should be replaced with other window types to allow effective natural ventilation and natural cross ventilation within the apartments.'</p> <p>2. 'The applicant welcomes this opportunity for inclusion of 16 apartments as part of the affordable housing offering within the scheme. The Panel recommends that details of the Community Housing Provider and its perpetuity of the arrangement should be confirmed with Council's assessment officer as part of this development application stage.'</p> <p>2. Furthermore, the previous DEP included several sustainability recommendations and it is unclear how these have been addressed. These items still apply, should be provided in the revised DA submission and will be review by Council in further detail.</p>	operator of the affordable housing units and sustainability recommendations prior to the issue of a Construction Certificate
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The DEP meeting minutes are found in the attachments to this report.

3.4 Planning Panel Briefing

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

A follow-up Planning Panel Briefing meeting was held on 20 November 2023 for the application.

3.5 Development Application History

The development application was lodged on **27 June 2023**. 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
27 June 2023	DA lodged
9 August 2023	Exhibition of the application
9 August 2023	DA referred to external agencies

21 August 2023	Panel Kick Off briefing
14 September 2023	Design Excellence Panel
20 November 2023	Panel Briefing
25 March 2024	Amended plans received
9 May 2025	Second Design Excellence Panel
24 June 2024	Exhibition of the application
24 June 2024	RFI issued
19 August 2024	Amended plans received
27 August 2024	Exhibition of the application

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,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is not considered to be:

- Integrated Development (s4.46)

- Designated Development (s4.10)
- Requiring concurrence/referral (s4.13)
- Crown DA (s4.33) - written agreement from the Crown to the proposed conditions of consent must be provided

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.

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

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Industry and Employment) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *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	N/A
	<ul style="list-style-type: none"> • The proposal is for the removal and replacement of existing residential vegetation 	Y
	Chapter 6 : Water Catchments	
	<ul style="list-style-type: none"> • 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. 	
	Chapter 11: Georges River Catchment	Y
	<ul style="list-style-type: none"> • The application has been assessed by Council's Land Development engineers with no objection subject to conditions of consent 	

BASIX SEPP	No compliance issues identified subject to imposition of conditions on any consent granted.	Y
State Environmental Planning Policy (Housing) 2021	<p>Chapter 2: Affordable Housing</p> <ul style="list-style-type: none"> The proposed development provides for 15 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. <p>Chapter 4: Design of residential apartment development</p> <p>- Clause 147</p> <p>(a) The proposal is considered to be consistent with the design quality principles.</p> <p>(b) The proposal is considered to satisfy the design review and the objectives specified within the ADG, notwithstanding non-compliance with the numerical requirements for building separation.</p>	<p>Y</p> <p>Y</p> <p>Y</p>
State Environmental Planning Policy (Planning Systems) 2021	<p>Chapter 2: State and Regional Development</p> <ul style="list-style-type: none"> 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)	<p>Chapter 4: Remediation of Land</p> <ul style="list-style-type: none"> Section 4.6 – The development site has been continuously used as dwelling houses so there is no evidence to suggest that the land is contaminated – standard conditions of consent are to be imposed to account for unexpected finds and asbestos. 	Y
Proposed Instruments	No proposed instruments apply to the site.	N/A
LEP	<ul style="list-style-type: none"> Clause 2.3 – The proposed RFB development is permitted within the R4 zone and meets the zone objectives. Clause 4.3 – Maximum Height of Building is non-compliant. A variation pursuant to Clause 4.6 has been recommended) Clause 4.6 – Variation to Development Standard -- Clause 4.3 has been detailed further in the report. 	Y (Clause 4.6 Variation Considered acceptable in this instance)
DCP	Part 3.7 Section	Y (variation to front and rear setback considered acceptable as

		discussed in the relevant appendices.)
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Consideration of the relevant SEPPs is outlined 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. 1764140M prepared by LOKA CONSULTING ENGINEERS PTY LTD dated 12 September 2024 committing to environmentally sustainable measures. The Certificate demonstrates 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

Chapter 2 Affordable housing

The development provides for 15 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)(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 24/28 dwellings or 85.7%.

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

Chapter 4 Design 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 Chapter 4. The proposal is considered to be consistent with the design quality principles as outlined within the Chapter 4 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 Chapter 4 and the ADG is provided at **Attachment B**.

(d) *State Environmental Planning Policy (Planning Systems) 2021* ('Planning Systems SEPP')

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.

(e) *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* ('the Resilience and Hazards SEPP') have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards 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.

The subject sites have been continuously used for residential uses for at least past twenty years and a search of Council records reveals no evidence of illegal dumping or any reason to expect that the sites will not be suitable for continued residential use.

The proposal is considered to be consistent with SEPP 55, subject to imposition of relevant conditions of consent in relation to demolition works and during construction on any consent granted.

(f) *Liverpool Local Environmental Plan 2008*

The relevant local environmental plan applying to the site is the *Liverpool Local Environmental Plan 2008* ('the 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

The site is located within the R4 High Density Residential Zone pursuant to Clause 2.2 of the LEP as per excerpt below.

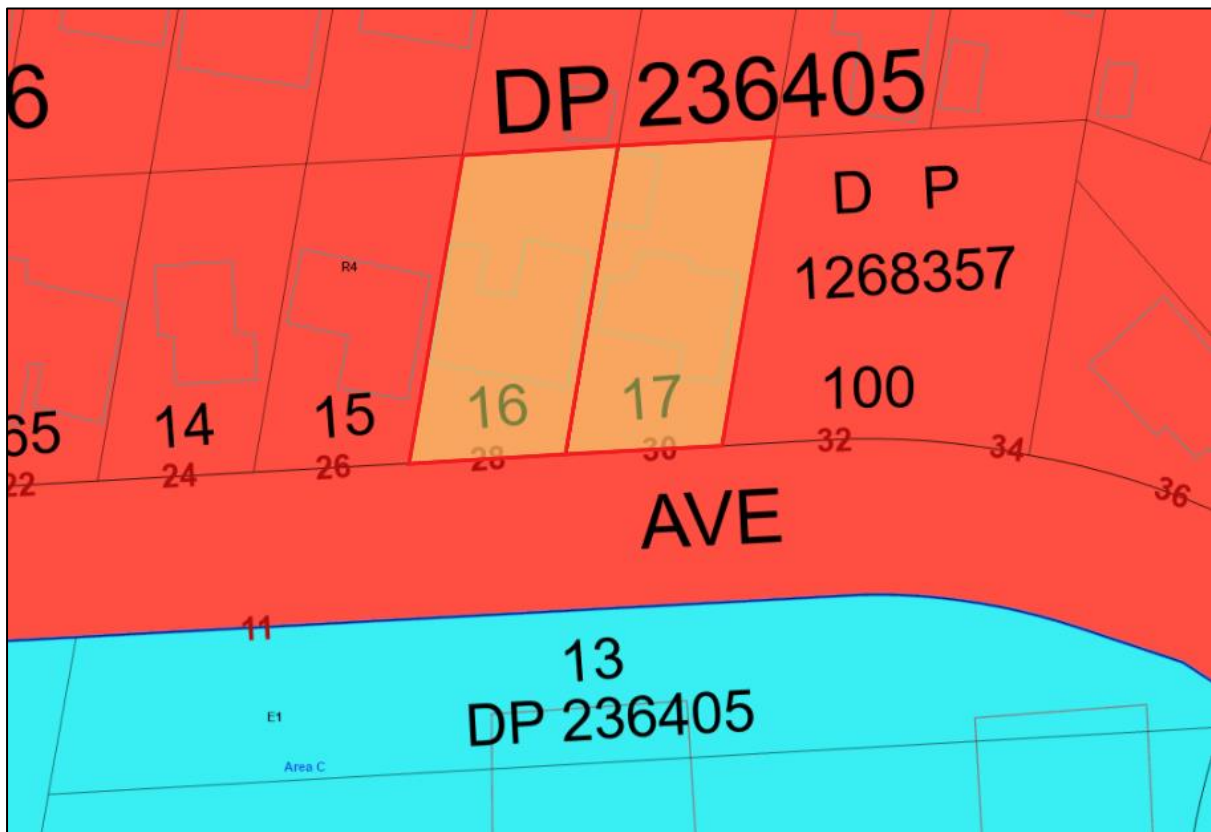


Figure 7: Zoning Map pursuant to Liverpool Local Environmental Plan 2008

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

The zone objectives 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 for the following reasons:

- The development will provide a range of dwelling types and also provide affordable housing within this emerging high density setting which is in appropriate access to transport and facilities. The site is located between two existing permitted uses in the zone so will avoid land fragmentation which would prevent the achievement of high density residential development.

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

The LEP also contains controls relating to 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)	1,000m ² Area 2	Lot consolidation proposed resulting in 1,365.8sq.m	Yes
Height of buildings (CI 4.3(2))	18 metres		No – Please refer to Clause 4.6 discussion
FSR (CI 4.4(2))	1.2:1 (1,638.96sq.m GFA) The provisions of SEPP (Housing) 2021 permit and additional FSR of 0.50:1 which permits a total GFA of 2,321.86sq.m	Total proposed GFA 2,223.02sq.m = 1.63:1	Yes
Land acquisition (CI 5.1/5.1A)	The site is not mapped for land acquisition.	No impact expected	N/A
Heritage (CI 5.10)	The site is not mapped as a heritage item or is within a heritage zone.	No impact expected	N/A
Acid sulphate soils (CI 6.1)	The site is not mapped as being affected by acid sulphate soils	No impact expected	N/A

Flood planning (CI 6.3)	The site is not mapped as being flood prone land.	No impact expected	N/A
Stormwater Management (CI 6.4)		The application was referred to Council's Land Development Engineers who have no objection to the development.	Yes

The proposal is considered to be generally consistent with the LEP except in relation to the variation to the height of building which is detailed below.

Clause 4.6 - Exceptions to development standards

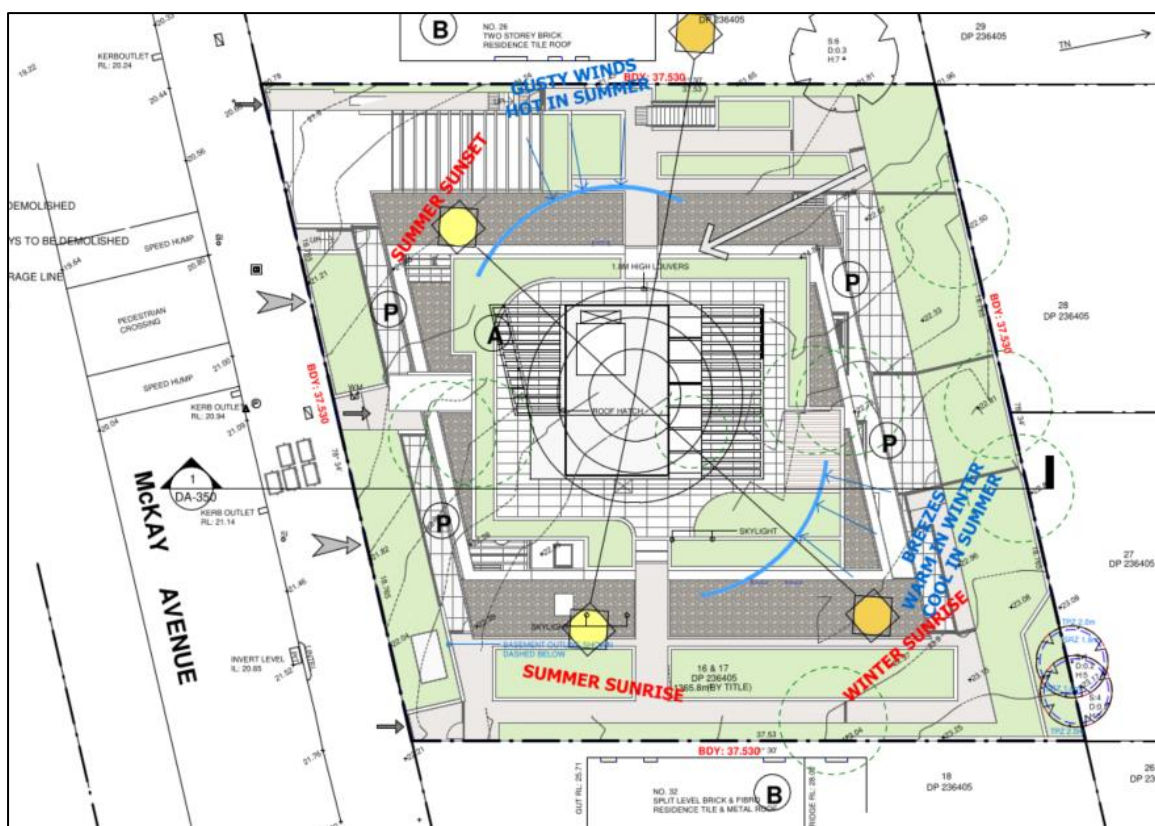
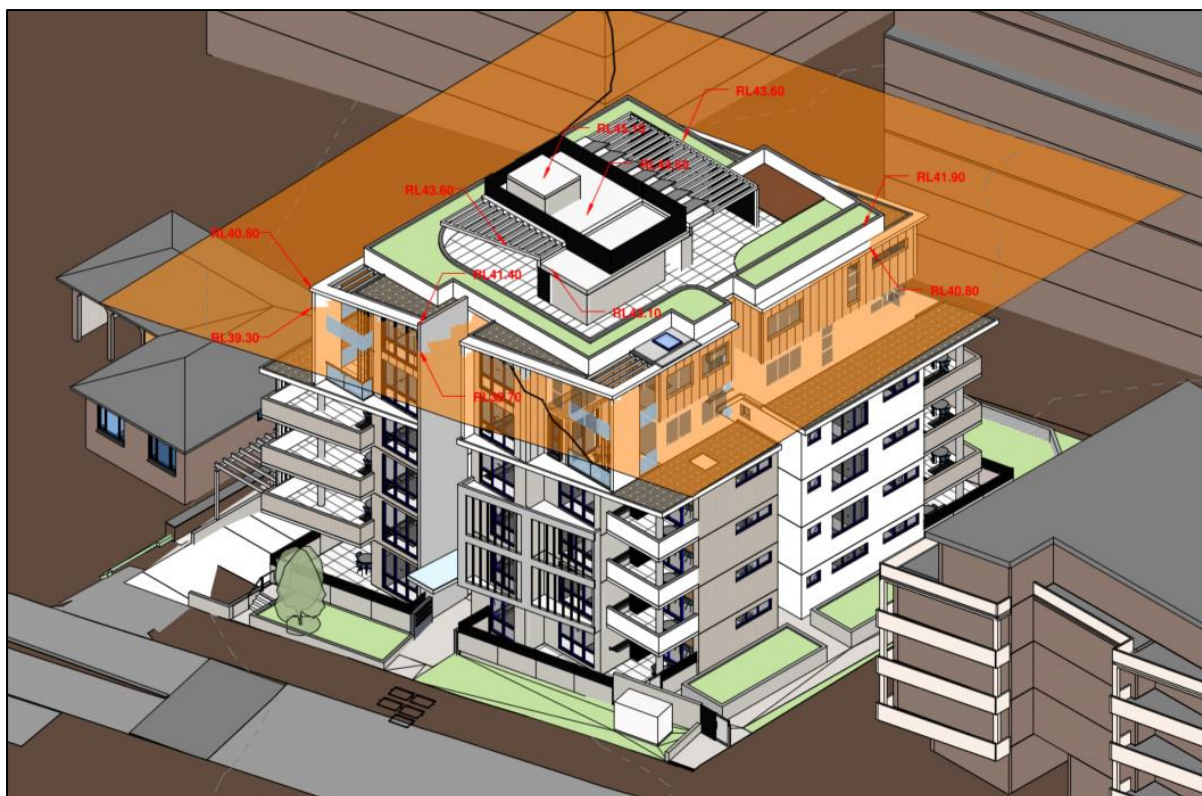
(Variation to Clause 4.3 - Height of Buildings)

Clause 4.3 of the Liverpool Local Environmental Plan (LLEP) 2008 states:

"The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map."

The subject proposal seeks a variation to the maximum 18m height of buildings development standard contained in LLEP 2008. The subject development has a maximum building height of 22.6m, at the proposed centrally located lift overrun and the proposal also includes a height of 19.45m to a portion of the roof in level 5 at the front of the building and 18.8m to a portion of the roof in level 5 at the rear of the building.

The maximum extent of the variation is 4.6m, or 25.6% over the development standard. The extent of the variation can be found in the figures below.



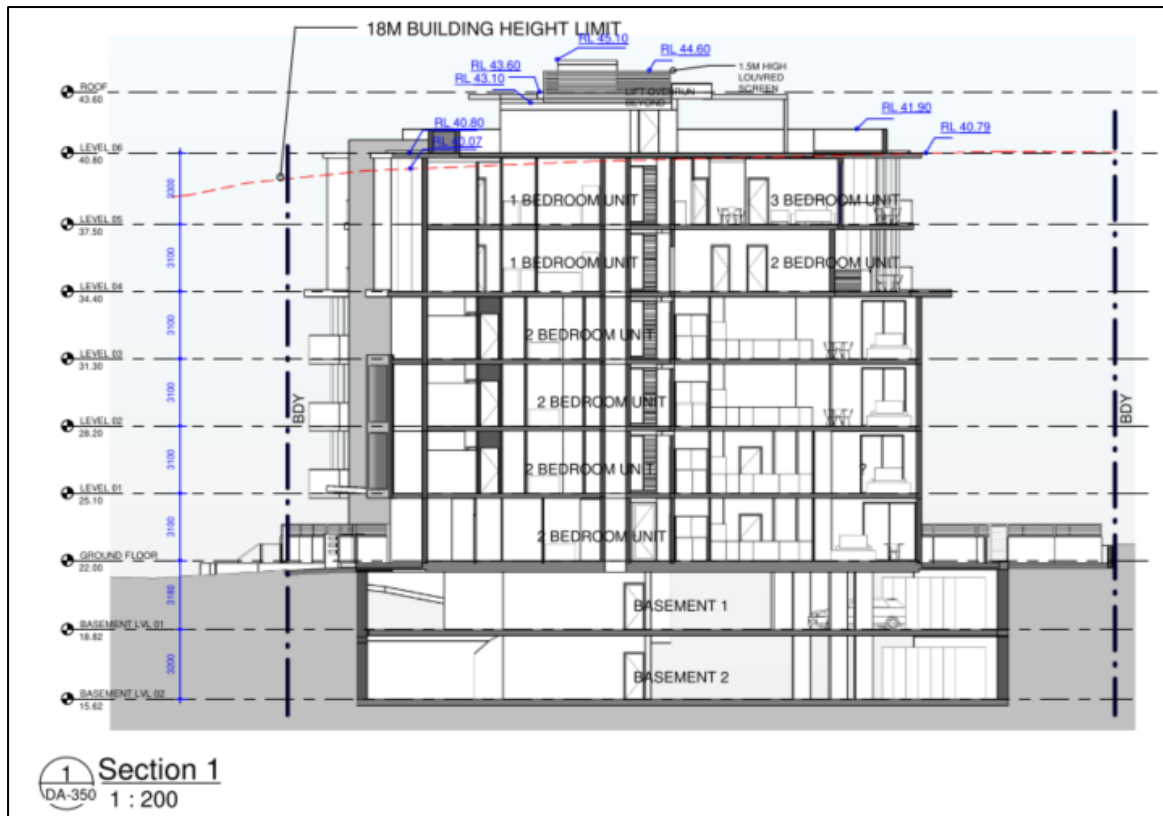


Figure 10: Cross section showing maximum extent of variation



Figure 11: South elevation



Figure 12: West Elevation with Height Limit shown at boundary



Figure 13: North Elevation with Height Limit shown at boundary



Figure 14: North Elevation with Height Limit shown at boundary

Consequently, pursuant to Clause 4.6 of the LLEP 2008, the applicant has submitted a written request seeking a variation to the maximum height of buildings as prescribed by Clause 4.3.

The objectives and standards of Clause 4.6 of the Liverpool Local Environmental Plan (LEP) 2008 are as follows:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *The consent authority must keep a record of its assessment carried out under subclause (3).*

The applicant submitted a Clause 4.6 Variation Statement to the Height of Buildings development standard in order to justify the variation described above. This document provides the following justifications based on the merits of the proposal:

Variation to Height of Buildings, Clause 4.3:

Written request addressing why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there

are sufficient planning grounds to justify the contravening of the development standard

(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

The applicant has provided the following justification for the contravention of the development standard:

Applicant Comment

This variation adopts Method 1 in Wehbe which requires an applicant to demonstrate that the objectives of the relevant development standard will be achieved, despite the non-compliance with the numerical standard.

Yes - in this instance, strict numerical compliance with the development standard for Height of Buildings is unreasonable and unnecessary for the following reasons that are specific to this site and proposal:

- The reasons and context discussed in the section above (the exceedance in height is related mostly to the lift overrun to accommodate the rooftop COS and that there are minor height exceedances to part of the frontage to McKay Ave), including the accommodation of additional gross floor area for affordable housing and the absence of associated impacts.*
- Despite numerical non-compliance, the proposal remains consistent with the relevant environmental and planning objectives of the R4 Zone and Height of Building development standard.*
- The variation results in a scale and character that remains compatible with the surrounding locality and envisioned future character of the area. A development compliant with the building height development standard contained in the LLEP 2008 would not achieve a perceivably different or better planning outcome.*
- Strict compliance with the development standard would likely require the loss of several units, currently proposed as affordable development in an appropriate and accessible location. This outcome would result in no discernible benefit to the site or surrounding locality.*
- It is unreasonable to require removal of significant portions of the development, that is within the permissible FSR, when the variations do not result in material adverse impact or discernible visual difference to the surrounding and emerging character.*

Council Comment

In response to the applicant's justification raised above, Council provides the following comments:

- The maximum point of the height exceedance occurs at the lift overrun of the building. The lift overrun is located further towards the centre on the roof of the building and is not readily visible when viewed from the street and does not generate additional overshadowing on adjoining properties. There are minor exceedances of the 18m height of building at the McKay Avenue frontage to the development which are considered to be indistinguishable from a compliant design from the street perspective.
- The proposed development is considered to be of an appropriate bulk and scale and is consistent with the design principles and relevant standards and objectives of the ADG. The extent of the variation is 25.5%, which while a significant numerical variation is considered minor in this instance as it will not significantly contribute to additional visual bulk and scale of the development.

- As demonstrated by the positive feedback from Councils' Design Review Panel, the development does achieve a high-quality urban form, notwithstanding the contravention of the development standard.
- The development provides a consistent floor to floor height of 3.1m, which exceeds the minimum in the ADG. The additional height provides added amenity for the units by enabling better solar access and cross-ventilation and enables a better urban design outcome. The floor-floor height may be reduced to achieve a height compliance, however, will result in a less the ideal design outcome. Additionally, the upper most floor includes a 3.3m floor to floor height to accommodate roof top services within the ceiling providing better design outcomes.
- The development is deemed to appropriately respond to the site topography, considering the majority of the built form is below the height limit, however where the site slopes most towards the street, a small portion of the building encroaches within the height limit.
- No significant visual or acoustic privacy impacts would occur as a consequence of the contravention of the development standard.
- The development provides for a mostly compliant height of the building, notwithstanding full compliance with the ADG and the floor space ratio bonus provided under the SEPP (Housing) 2021. The design of the building is commendable noting that the additional floor space afforded to the development does not result in non-compliances with the ADG and extra floor plates/ levels in the building.
- The additional height permits the provision of additional rooftop communal open space providing alternates locations for this space that will have minimal noise or visual privacy impacts on neighbouring development and greater solar access.
- The location of the site means that the exceedance of the building height will not be any greater than that of a compliant building in terms of overshadowing neighbouring sites.
- The development benefits from the additional gross floor area provisions of 0.5:1 over the LLEP GFA of 1.2:1 pursuant to SEPP Housing which equates to additional floor area of 682.9sq.m. It is noted that the design does not fully utilise this with a total FSR of 1.63:1.

Compliance with the standard is unreasonable in this case as the development can be sited with adherence to local provisions and any future development on the allotments would still be able to provide a valuable housing product suitable for the area and provide for the housing needs for the community.

Based on the applicant's comments and investigation into the 4.6 variation to the building height, and the review of the potential impact of the height extrusion, it is considered that strict compliance is unlikely to reduce any impact and that it is argued the height variation provides improved amenity for future residents and does not negatively impact on the local area in terms of additional overshadowing or determinantal impact to the design of the building.

Further, the additional height is not contributing to any detrimental increases in bulk and scale over the site including compliance with the floor space ratio provisions for the

development. Compliance with the standard is unreasonable in this case as a development can be constructed on the site that generally adheres with the planning controls and provisions for a form of development that is consistent with the future anticipated high density residential character. Having regard to the above, it is considered that there are sufficient environmental planning grounds to vary Clause 4.3 – Height of Buildings in this instance.

(b) There are sufficient environmental planning grounds to justify contravening the development standard

Applicant Comment

In the circumstances of the case, there are sufficient environmental planning grounds to justify the variation to the development standard, namely:

- *The reasons and context discussed in the section above (a) Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, including the accommodation of additional gross floor area that is provided as an incentive for the inclusion of affordable housing, and the absence of associated impacts.*
- *A variation to the prescribed maximum building height occurs to the lift overrun and rooftop communal open space, located centrally within the building floorplate. The location and scale of height variation mean that there are negligible adverse impacts in terms of overshadowing, view loss or visual impact while allowing the development to accommodate significant affordable housing in an accessible area and appropriately utilise the rooftop for the benefit of future occupants.*
- *Some elements of the street-facing elevation are marginally above the prescribed building height. This is in part due to a variation in the topography across the site, sloping down towards McKay Avenue to the south. The need to provide a consistent level across the site for the ground floor results in a partial variation to the height limit at the uppermost level. Accordingly, the extent of variation reflects the natural fall relative to the consistent ground level (which will not be perceived following completion). The street facing elevations are a lesser variation to the height standard than the central lift overrun and do not result in unreasonable adverse impacts.*
- *The public interest is better served by supporting the variation as it provides additional affordable housing stock that is designed to achieve SEPP 65 requirements, in an accessible location.*
- *The proposal satisfies the objectives of the R4 High Density Residential zone and the objectives of the Height of Buildings development standard, having regard to the particular nature of the development and the particular circumstances of the Site.*
- *The non-compliance with the standard will nevertheless result in a scale of development that is compatible with both the existing and future character of the locality.*
- *The variation to the building height standard will not have unreasonable visual impact from the public domain. The extent of variation is greatest at the lift overrun, which does not present to the street and are considerably setback from side boundaries.*

Council Comment

It is considered that compliance with the height of buildings development standard is unreasonable or unnecessary due to the circumstances of this case and that there are sufficient environmental planning grounds to justify contravening the development

standard. The increase in the height proposed ensures that better amenity can be provided to the future occupants of the buildings with sufficient floor to floor heights being maintained, which allows for the minimum floor to ceiling heights to be achieved as well as space for services between floors. The additional 0.5:1 floor space permitted by SEPP Housing equates to 682.9sq.m which has been accommodated largely within the development standard.

The objectives of the Height of Buildings clause, as per the Liverpool LEP 2008, have also been addressed, as well as the objectives of the zone.

Consistency with objectives of the development standard Clause 4.3 Height of Buildings

The objectives of Clause 4.3 and assessment are as follows:

- (a) *to establish the maximum height limit in which buildings can be designed and floor space can be achieved*
- (b) *to permit building heights that encourage high quality urban form,*
- (c) *to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
- (d) *to nominate heights that will provide an appropriate transition in built form and land use intensity.*

The Clause 4.6 application provides response as to the consistency of the development with the objectives of Clause 4.3 as follows:

- (a) *to establish the maximum height limit in which buildings can be designed and floor space can be achieved.*

Applicant Comment: *As this objective notes, the prescribed maximum heights have been established with consideration of the associated FSR prescribed for each site. In this instance, additional gross floor area is permitted for the development under SEPP (Housing) 2021, due to the desired provision of affordable housing within an accessible area. Accordingly, this additional FSR needs to be accommodated within the built form and the approach taken has respected the setbacks and general envelope stipulated by the controls, which results in the marginal variation to the height. This objective is met as the height proposed reflects the floor space that can be achieved in this instance.*

Council Comment: The breach in building height does not result in a breach in the floor space ratio pursuant to SEPP (Housing) and is consistent with this objective.

- (b) *to permit building heights that encourage high quality urban form.*

Applicant Comment: *The proposal is a high-quality, well considered and articulated design that is largely compliant with SEPP 65, SEPP Housing 2021 and LLEP 2008, despite resulting in minor variation to the height. The proposal reflects the outcomes of a meeting with Liverpool's design excellence panel.*

Council Comment: The building demonstrates design excellence and the breach in building height is unlikely to impact on the urban form. The height will also assist in providing a higher quality design (through the provision of the rooftop communal open space) and also providing better residential amenity for future occupants of the units.

- (c) *to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight.*

Applicant Comment: *The areas of height variation do not result in material additional overshadowing as it falls to McKay Avenue to the south of the proposed development or falls on to the roof of the subject building.*

Council Comment: The variation to building height will not cause unsatisfactory issues on adjoining sites as they will still be able to receive adequate solar access to their living rooms and private open spaces in their low density residential form as well as in the future as a developed site with appropriate building separation. The increase in roof form for the lift overrun element or the roof parapet will not exacerbate shadowing from that of a compliant building and the overshadowing falls mostly on McKay Avenue.

(d) *to nominate heights that will provide an appropriate transition in built form and land use intensity*.

Applicant Comment: *As demonstrated in Figure 1 of this Report, the proposal is located adjoining an area with a higher maximum permissible building height (21m). This means that the proposed variation will not be incompatible with buildings in close proximity to the site. The majority of the building does not perceivably vary the standard, as it is to a limited portion of the elevation and the centrally located plant room. Accordingly, the proposal does provide an appropriate transition from the adjoining higher development standard while retaining a compatible scale and bulk for the R4 Zone.*

Council Comment: The breach in building height would provide an appropriate built form in the locality, which has the same zoning and height limits. The variation is unlikely to cause noticeable visual issues when viewed from the streetscape and the building footprint and floor space ratio is consistent with the SEPP (Housing) 2021, ADG, provisions of the LEP and the desired future character of the locality. Notwithstanding, the applicants point about the permissible height of buildings on the site opposite and to the west of the subject site, it is noted that the exceedance is not inconsistent with other approvals in the immediate vicinity.

Overall Council Comments: It is considered that the proposed development is consistent with the objectives of Clause 4.3 in that the proposed development encourages high quality urban form. Despite the non-compliance, the proposed development achieves the required solar access to living areas and POS as required by the ADG. The exceedance does not exceed permissible FSR, density or bulk and scale with the proposed development providing an appropriate density outcome for the site.

Consistency with objectives of the zone – R4 High Density Residential

The objectives of the R4 High Density Residential Zone under the LLEP 2008 are as follows;

- 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 applicant has provided the following response to how the development is consistent with the **objectives** of the R4 High Density Residential Zone;

The public involvement in the planning process shapes and endorses the objectives that underpin the relevant development standard. The standards are derived as a means of achieving the public interest in delivering development that meets the objectives. Compliance with the Development Standard is accepted as being one method by which the objectives are met. Equally, the public interest can be served if the objectives are met, notwithstanding a variation to the development standard.

Approval of the proposed variation to the building height is in the wider public interest as the underlying objectives are met by virtue of the variation.

The proposal remains consistent with the relevant objectives of the Height of Buildings development standard outlined in subclause 4.3 (1) of the LLEP 2008, despite the numerical non-compliance with subclause 4.3 (2), as demonstrated below:

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

The proposal results in a residential flat building that directly responds to the housing needs of the community and addresses the state-wide need for greater affordable housing within accessible areas.

- To provide a variety of housing types within a high density residential environment.

The site is located in an accessible area and integrates an appropriate high-density mix of dwellings in close proximity to a wide range of services and facilities, including numerous public transport options.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

N/A – the proposal solely provides residential uses.

- To provide for a high concentration of housing with good access to transport, services and facilities.

The proposal optimises use of the site by providing a concentration of housing, including affordable housing, close to services, facilities and public transport options.

- To minimise the fragmentation of land that would prevent the achievement of high density residential development.

- The development amalgamates two current lots to provide the residential development.

Council Comments

The proposed variation in height facilitates the ability of the proposed development to provide the affordable housing needs for the community. The proposed development also provides an opportunity for the provision of a variety of housing types and densities in a developing area. Additionally, the development is amalgamating two sites which will reduce land fragmentation in the area and achieves a high-density

development. Having regard to the above it is considered that the proposed development is consistent with the objectives of the R4 High Density Residential Zone.

Consistency with Clause 4.6 objectives

- a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development*
- b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances,*

It is considered appropriate in this instance for the reasons stated above to apply a degree of flexibility when applying the maximum height development standard.

Conclusion and Recommendation

It is considered that the proposed variation to Clause 4.3 – Height of Buildings, would adequately address the provisions of Clause 4.6 including the objectives of the development standard and the zone. The proposal is also considered to be in the public interest and is therefore supported in this instance.

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 McKay Avenue. The required setback to the McKay Avenue is 5.5m however, the proposal provides a setback ranging from 3m to 8m.

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- ***Liverpool Contribution Plan 2018 – Established Areas***

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

4.4 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.

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

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

If demolition of a building proposed - provisions of AS 2601;

Section 62 (consideration of fire safety) of the 2021 EP&A Regulation are relevant to the proposal.

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

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

The likely impacts of that 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.

The consideration of impacts on the natural and built environments includes the following:

(a) Natural and Built Environment

- ***Built Environment***

This section of the Moorebank is zoned R4 High Density Residential, and the immediate and surrounding locality comprises of higher density, multi-storey residential apartment buildings either approved or under construction. 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. The site not contain or adjoin a heritage item nor is within a Heritage conservation area so will have no impact in this regard.

The development has a southern frontage to McKay Avenue and thus any overshadowing impacts would predominately impact the street or the roof of the subject development. The development is a single building with multiple ground floor access points that will assist in it achieving the public safety aspects found in the CPTED principals.

Whilst located opposite a Public School with its basement driveway in close proximity to a pedestrian crossing, the access arrangement through design elements is supported by Councils' Traffic management section.

- ***Natural Environment***

It is considered unlikely that the development will not 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. The development includes a substantive landscape plan which employs many native species which will replace any lost in the construction of the development.

(b) Social Impacts and Economic Impacts

- ***Social Impacts***

The proposal includes 15 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 comment, it is considered unlikely that the proposal will result in any adverse social impacts to the area.

The development may potentially involve some noise and vibration impacts to adjoining properties during the construction phase. Conditions of consent will be imposed to mitigate these as far as possible. It is not expected that the development will generate any noise and vibration impacts to the neighbouring properties and standard residential operational conditions will be imposed for the ongoing use of the site.

- ***Economic Impacts***

It is considered that the proposed residential development will have a positive impact upon Moorebank through the increase in residential density permitted by the zone 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.

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

- The proposed 28 unit residential flat building is in keeping with development envisaged for the R4 High density Residential zoning of the site, noting that there was a recent review of the R4 zoning areas in the locality with this site remaining as R4.
- There are adequate services, transport and infrastructure and open space in the vicinity to support the development.
- The site is not affected by any natural hazards (bushfire, flooding, coastal hazards, climate change, land slip) that are relevant to the application.
- The site is relatively level which minimises changes in the topography and hydrology that would require significant alterations to the site apart from the excavation of the two levels of basement car parking.
- There are no existing developments or land use zones adjoining the site that would potentially adversely impact the proposed development on the site.

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

The public submissions are considered in Section 5 of this report.

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

Apart from the variation requested to height of building development standard pursuant to Clause 4.6 of the LLEP 2008 and some relatively minor variations to the building setbacks the development is generally compliant with the applicable planning controls.

The RFB development is for a permissible use in accordance with the R4 zoning for the site and is not expected to have detrimental impacts on the health and safety of the public. The concerns raised in the submissions received from members of the public following the public exhibition of the development have been addressed in this report. In this regard is considered to be in the public interest.

It is considered that the provision of additional housing particularly that which includes a significant percentage of affordable rental housing to be operated by a registered housing provider for fifteen years after construction will be a benefit to the public.

Consistent with the principles of Ecologically sustainable development the development is compliant with the efficient use of power and water by its compliance with the requirements of SEPP BASIX, which will be enforced through conditions of consent.

It is not expected that climate change will impact on the use and that via the implementation of the BASIX inclusions, the development's impact on climate change is minimised.

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)			
Environment Agency Head (Environment, Energy & Science Group within DPIE)	S7.12(2) - <i>Biodiversity Conservation Act 2016</i>	Concurrence is not required.	N/A
Rail authority for the rail corridor	Section 2.98(3) - <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	The development site is not located in proximity to a rail corridor Concurrence is not required.	N/A
Referral/Consultation Agencies			
RFS	S4.14 – EP&A Act Development on bushfire prone land	The site is not mapped as being bushfire affected	N/A
Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	The site is not mapped as being near electrical infrastructure. The application was referred to Endeavour Energy for assessment of site servicing who had no	Y

		objection to the development subject to conditions of consent.	
Rail authority	Section 2.97 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development land that is in or adjacent to a rail corridor.	N/A	N/A
Sydney Water	Sydney Water Act 1994, Section 78	The application was referred to Sydney Water who had no objection to the development subject to conditions of consent.	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 145(2) – SEPP (Housing)2021 Advice of the Design Review Panel ('DRP')	The advice of the DRP has been considered in the proposal and is further discussed in the Chapter 4 SEPP Housing 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	The site is not mapped as being fire prone.	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	The site is not mapped as containing or in the proximity of a water course.	N/A

5.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 8**.

Table 8: Consideration of Council Referrals

Officer	Comments	Resolved
Engineering	Council's Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.	Y
Traffic	Council's Traffic Engineering Officer reviewed the proposal and raised no concerns in relation to traffic generation and car parking and pedestrian safety.	Y
Waste	Supported subject to conditions of consent	Y
Landscaping	Supported subject to conditions of consent	Y
Community Planning	Supportive of local needs and context, however required evidence of a Housing provider to be provided which can be conditioned, accessibility which has been demonstrated and safety in relation to the school crossing which has been demonstrated to be satisfactory by Councils' Traffic Management Engineers	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 2022 on three occasions from 9 August 2023 until 24 August 2023 (no submissions), from 24 June 2024 until 8 July 2024 (2 submissions received) and from 27 August 2024 until 12 September 2024 (2 submissions received) The notification included the following:

- Notification letters sent to adjoining and adjacent properties

The Council received a total of four unique submissions from two unique submitters on the two most recent dates, comprising four objections and no submissions in favour of the proposal. The issues raised in these submissions are considered in **Table 9**.

Table 9: Community Submissions

Issue	No of submissions	Council Comments
Building Height Submissions raised concern the development is above the 18m maximum height of building.	4	<p>The above concerns are planning considerations and have been addressed above. Notwithstanding, the following brief comments are made in response to each point.</p> <p>A variation under Clause 4.6 to the maximum height of building has been provided and assessed in the above report.</p>

<p>'height restrictions is not being adhered to. nothing has changed from previous application well above 18 meters –'</p> <p>'This building is in breach of the height restrictions, this structure will impact my property with overshadowing and in clear breach of my personal space and privacy, I wish that this proposal does not go ahead.'</p>		<p>The stated location of the objectors is not significantly affected by overshadowing and a fully compliant building would not change the level of overshadowing.</p> <p>Similarly, the building is generally in accordance with the ADG building controls for this type of development on the site which reasonably accounts for any privacy impacts.</p> <p>Outcome: This issue is considered to be satisfactorily addressed.</p>
<p>Parking</p> <p>Submissions received raised concern that there was insufficient parking at the street</p>	1	<p>'also there is not enough available parking for this kind of building in this street.'</p> <p>Outcome: The parking levels were assessed to be acceptable by Council's Traffic Management section.</p>
<p>Infrastructure</p> <p>Submissions received raised concern that there was insufficient infrastructure</p>	1	<p>'Infrastructure is not supported for this kind of structure in this area including the street.'</p> <p>Outcome: Referrals to the relevant service providers have been made and supported. It is therefore considered that the appropriate infrastructure will be available to the development.</p>

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:

Height of Building: As discussed in the assessment of the Clause 4.6 Variation to the height of building above, the variation proposed to the maximum height of building proposed in the development while being not insignificant in the numerical sense, is considered to be in keeping with the objectives of both the control and the zoning and

the local context. Additionally, the additional height is not considered to have significant impact to the surrounding development due to the orientation of the site. The additional height also facilitates the additional GFA permissible for affordable housing on the site pursuant to SEPP (Housing). In this regard, the variation to building height is supported this instance.

Access: Concern was raised by the Panel in regard to safe access to and from the site in relation to the proximity of the basement driveway to the pedestrian crossing which accessed Nuwarra Public School. In particular the concern was surrounding site lines from drivers leaving the site to children using the crossing. Amended plans and a traffic impact assessment response has been provided by the applicant and their traffic consultant which includes a median which will mean that vehicles accessing the development will be required to turn left in and left out. The amended plans also include revision to the front setback of the building which now includes minor encroachments into the DCP 5.5m setback. It is noted however, that these encroachments occur further east of the position of the driveway and crossing and would have not impact on site lines in this regard.

The amended material was referred to Councils' Traffic Management section and confirmation has been received that the proposal can achieve the required and appropriate site lines and conditions of consent have been imposed to further ensure that compliance with the relevant Australian Standards and DCP are achieved. These include but are not limited to amending the design of the small wall at the end of the access driveway from masonry construction to more visually permeable materials such as steel balustrade or the like.

Building separation: Part 3F of the ADG requires building separation to minimise the potential for visual privacy impacts. The controls in this section requires a separation of 12m from the ground floor to the fourth floor and 18m from the fifth floor to the eighth floor. The amendments to the design to incorporate the recommendations of the last DEP meeting results in minor encroachments to the building separation

Setbacks: Amendments to the building design in responding to Councils' Design Excellence Panel recommendations to provide improved amenity to the occupants of the units in comparison to a fully compliant design have been provided. The amended plans result in minor non-compliances with the DCP front setback. This is due to the irregular shape of the lot and the encroachments are to corners of the building and overall are considered to be minor in nature.

7. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations 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 6 above, it is considered that the key issues of building height, building separation, access, and front and rear setbacks do not result in significant adverse impacts to adjoining or surrounding development and have been resolved satisfactorily through amendments to the proposal and in the recommended draft conditions at **Attachment A**.

8. RECOMMENDATION

That the Development Application DA No 380/2023 for the demolition of existing structures, construction of a six (6) storey residential flat building development comprising 28 units, two levels of basement car park, landscaping and associated works

at Lot 16 DP 236405 and Lot 17 DP 236405 located at 28 and 30 McKay Avenue, Moorebank 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.