

TO: Sydney Central City Planning Panel

SUBJECT: 11-17 Joyner Street, Westmead

FILE No: 2019/141/1

Application lodged	26 April 2019
Applicant	Mr Joshua Wehbe
Owner	NSW Land and Housing Corporation (LAHC)
Application No.	2019/141/1
Description of Land	11 – 17 Joyner Street, Westmead (Lot 2,3,4,and 5 in DP 35287)
Proposed Development	Demolition of existing structures, consolidation of four (4) allotments), and construction of a five (5) storey residential flat building under State Environmental Planning Policy (Affordable Rental Housing) 2009 comprising 46 units (including 12 Dual key units) over two (2) levels of basement parking for 57 vehicles and a car wash bay.
Site Area	2200.4m ²
Zoning	R4 High Density Residential
Disclosure of political donations and gifts	Nil disclosure
Heritage	N/A
Principal Development Standards	<ul style="list-style-type: none">• Floor Space Ratio – 1.2 :1 (HLEP 2013)• Height of Buildings – 15m (HLEP 2013)
Issues	<ul style="list-style-type: none">• Landscaped Area• Height of Building• Site Coverage• Building Height• Public submissions (1)

SUMMARY

1. Development Application 2019/141/1 was lodged on 26 April 2019 for demolition of existing structures, consolidation of four (4) allotments, and construction of a five (5) storey residential flat building under State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP) comprising 46 units (including 12 Dual key units) over two (2) levels of basement parking for 57 vehicles and a car wash bay.
2. The application was publicly notified to adjoining and opposite owners, a notice was placed in the local press and a notice placed on the site for 21 days from 22 May 2019 to 12 June 2019. In response, one (1) submission was received.
3. The application was deferred on 27 September 2019 and additional information was submitted on 11 October 2019. The additional information and amended plans submitted by the applicant to address the deferral items did not require renotification.
4. The proposal involves the following variations to the development standards and controls, which are considered satisfactory on merit as discussed in this report:

Control	Required	Provided	% variation
Landscaped Area (ARH)	1610m ² min	670m ² (30%)	58%
Height of Building (LEP)	15m max	17.67m	17.8%
Site Coverage (DCP)	660.12m ² max	902.9m ²	36%
Building Height (DCP)	4 storeys max	5 Storeys	25%

5. The application is recommended for approval subject to the conditions as provided in the draft determination.

6. The development is proposed by the Crown with a capital investment value of more than 5 million dollars, and as such requires referral to the Sydney Central City Planning Panel for determination.

REPORT

SUBJECT SITE AND SURROUNDING AREA

The subject site comprises 4 allotments, being lots 2, 3, 4 and 5, in DP 35287. The site is known as 11 – 17 Joyner Street, Westmead. The site is a regular block with a combined frontage of 73.16m to Joyner Street, depth of 30.36m and a total site area of 2200.4m².

The site is located on the eastern side of Joyner Street. The subject site is zoned R4 High Density Residential. The adjoining properties to the north and south are zoned R4 High Density Residential Zone. Properties directly opposite the site to the west are zoned R2 Low Density Residential.

Existing improvements on the site include a single-storey dwelling house and out buildings on each lot. Adjoining development on the north and south contains single-storey dwelling houses.

Area hatched in red is 11 -17 Joyner Street, Westmead (Locality)

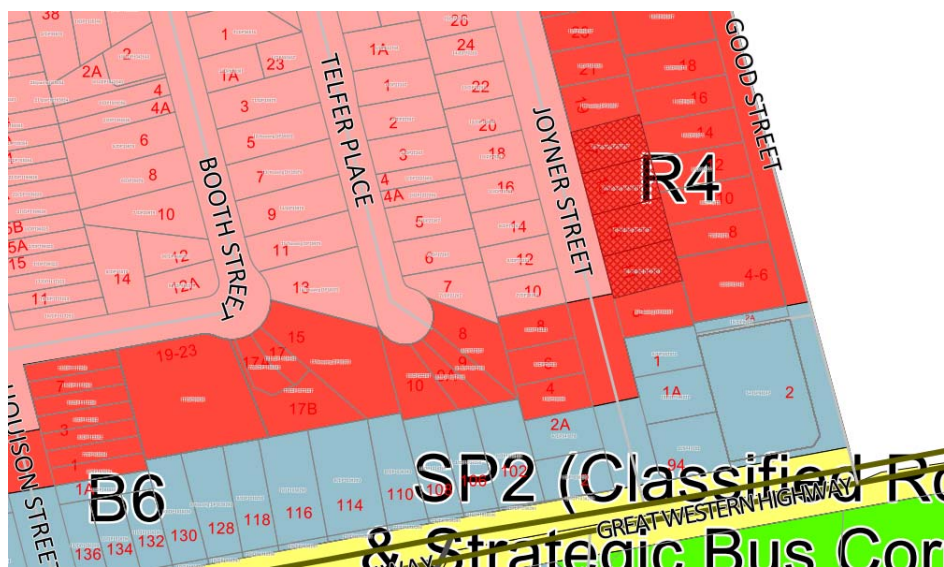


Figure 1 – Zoning map of subject site



Figure 2 – Aerial view of subject site



11 Joyner Street, Westmead



13 Joyner Street, Westmead



15 Joyner Street, Westmead



17 Joyner Street, Westmead

Figure 3 – Street view of subject site from Joyner Street

DESCRIPTION OF THE PROPOSED DEVELOPMENT

The proposed development, involves demolition of existing structures, consolidation of four (4) allotments), and construction of a five (5) storey residential flat building under State Environmental Planning Policy (Affordable Rental Housing) 2009 comprising 46 units (including 12 Dual key units) over two (2) levels of basement parking for 57 vehicles and a car wash bay.

Key features of the development proposal are as follows:-

- Demolition of the existing dwelling.

Basement Level

- Car parking in the basement (two levels) as follows:
 - 30 (4 accessible) space for residential in the lower basement level
 - 16 (3 accessible) space for residential and 11 (1 accessible) space for visitors and 1 car wash bay in the upper basement level
 - Residential storage space on both lower and upper levels
 - Plant rooms
 - Two lifts
 - 2 x Stairwell
 - Garbage rooms including bulk waste storage room in the upper basement level

1st Storey (Ground Floor)

- 10 Residential Units (4 x 1 Bedroom, 2 x 2 Bedroom, 1 x 3 Bedroom and 3 x dual key apartments)
- Two x lift cores and stair wells
- Communal open space

2nd – 4th Storey

- 10 Residential Units (4 x 1 Bedroom , 2 x 2 Bedroom 1 x 3 bedroom and 3 x dual key apartments)
- Garbage Chute
- Internal lobby area including two lift cores and stairwells

5th Storey

- 6 Residential Units (5 x 2 Bedroom, 1 x 3 Bedroom)
- Garbage Chute
- Internal lobby area including two lift cores and stairwells

HISTORY

Date	Action
5 December 2018	Pre Development Advisory PDA/814 meeting was held for demolition of existing structures; consolidation of four (4) allotments and construction of a five (5) storey residential flat building under the Affordable Rental Housing SEPP 2009 consisting 46 units (including 12 dual key units) over two levels of basement parking containing 57 parking spaces and a carwash.
26 April 2019	Development Application 2019/141/1 was lodged for demolition of existing structures; consolidation of four (4) allotments and construction of a five (5) storey residential flat building under the Affordable Rental Housing SEPP 2009 consisting 46 units (including 12 dual key units) over two levels of basement parking containing 57 parking spaces and a carwash.
14 May 2019	The application was referred to Council's internal departments for review
22 May 2019 to 12 June 2019	The application was publicly notified to adjoining and opposite owners, a notice was placed in the local press and a notice placed on the site for 21days. In response, 1 submission was received.
27 September 2019	Application was deferred due to non-compliances with SEPP (Affordable Rental Housing) 2009, Holroyd Local Environmental Plan 2013, and Holroyd Development Control Plan 2013.
11 October 2019	Amended plans and additional information were received by Council. The amended application was not considered to be notified.
14 October 2019	The application was re-referred to Council's internal departments for review.
11December 2019	Application reported to SCCPP for determination

APPLICANT'S SUPPORTING STATEMENT

A Statement of Environmental Effects prepared by Think Planners Pty Ltd dated 17 March 2019 was submitted in support of the application.

Additional correspondence from Think Planners Pty Ltd dated 11 October 2019, was submitted in support of the amended application.

CONTACT WITH RELEVANT PARTIES

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

INTERNAL REFERRALS

Development Engineer

The application was referred to Council's Development Engineer for comment. The response received 25 October 2019 indicates that the proposed stormwater management system and flood protection works is generally satisfactory with HDCP 2013 and Council's On-site Stormwater Detention Policy subject to building being raised to allow for free board above the existing flood levels. This is addressed via deferred commencement consent conditions included in draft conditions under 'Schedule A' at **attachment 6**.

Environmental Health

The development application was referred to Council's Environmental Health Officer for comment. The responses received on 29 May 2019 indicate that the proposal is satisfactory subject to conditions.

Landscape and Tree Management Officer

The development application was referred to Council's Landscape and Tree Management Officer for comment. The response received 22 November 2019 indicates that the proposed removal of trees comply. Conditions as recommended by the Tree Officer are included in the draft determination at **attachment 6**.

Waste Management

The development application was referred to Council's Waste Management Officer for comment. The response received 18 October 2019 indicates that the development is supportable in regards to bin storage room, and waste collection and management plan.

EXTERNAL REFERRALS

Transgrid

The Development Application was referred to Transgrid for comment who has raised no objections to the proposed development.

Endeavour Energy

The application was referred to Endeavour Energy for comment pursuant to clause 45 of the SEPP Infrastructure. The response received on 18 September 2019 indicates that Endeavour Energy has no objections to the proposal. The correspondence from Endeavour Energy is included as an endorsed document at condition 2 of the draft determination.

PLANNING COMMENTS

The provisions of any Environmental Planning Instruments (EP&A Act s4.15 (1)(a)(i))

The proposed development is affected by the following Environmental Planning Instruments:

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

Development of a type that is listed in Schedule 7 of SEPP (State and Regional Development) 2011 is defined as 'regionally significant development'. Such applications require a referral to a Sydney District Panel for determination as constituted by Part 3 of Schedule 2 under the Environmental Planning and Assessment Act 1979. The proposed development constitutes 'regionally significant development' as it is a Crown Development and has a Capital Investment Value (CIV) of \$12,647,173 which exceeds the \$5 million threshold. While Council is responsible for the assessment of the DA, determination of the application will be made by the Sydney Central City Planning Panel.

(b) State Environmental Planning Policy (Affordable Rental Housing) 2009

The application has been submitted under Part 2 New affordable rental housing – Division 1 In-fill affordable housing of the ARH SEPP. It should be noted that the proposal generally complies with the key planning controls contained within the ARH SEPP including site area, landscaped area, parking, accommodation size and prescribed standards for in-fill affordable housing. A comprehensive assessment against ARH SEPP is attached to this report – **Attachment 1**.

Following is an assessment of the proposal's non compliance against landscaping requirements and its consistency with the local character of the area:

14 Standards that cannot be used to refuse consent

- (1) (c) *Landscaped area*
- (i) *DA made by a social housing provider, at least 35m² landscaped area per dwelling;*
 - (ii) *any other case, at least 30% of the site area to be landscaped*

A consent authority must not refuse consent to development if the landscaped area of the proposed development satisfies the above requirements. The DA has been lodged by a social housing provider and therefore at least 35m² landscaped area per dwelling which equates to 1610m² is required. The development provides 670m² which equates to 30.44%. Non-compliance with the landscaped area provision is supported in this instance on merits given the proposal is comparable with any residential flat building which will ordinarily require 30% of the site area as landscaped. In this case the proposed development complies with the minimum 30% requirement. Furthermore, the development is fully compliant with the setback requirement and provides generous private open space and balconies at ground level where future residents may place planter boxes and the like to increase the visual aesthetic of landscape area. The subject site is suitable for the development type and therefore, the non-compliance is supported.

16A Character of local area

A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area. The SEPP (ARH) does not contain any guidance for assessing whether a proposal is compatible with the character of the local area. However, a planning principle for assessing compatibility in the urban environment was established by Senior Commissioner Roseth of the Land and Environment Court in the judgement for Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191. This involves asking the following two questions:

- *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
- *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

A merit assessment of the character of the local area should consider the following 3 steps:

- Step 1 – Identify the 'local area'.
- Step 2 – Determine the character of the 'local area'.
- Step 3 – Determine whether the design of the proposed development is compatible with the character of the 'local area'.

An assessment against each step is provided below:

Step 1 – Identify the local area.

The local area is identified in the map below.

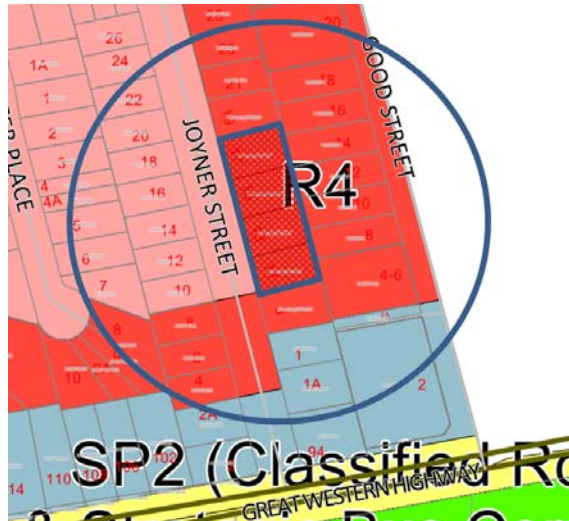


Figure 4 – Local Area catchment

The zoning of the broader locality and immediate area comprises R4 High Density Residential, R2 Low Density Residential (further along western side of the site, and B6 Enterprise Corridor under the Holroyd Local Environmental Plan (HLEP) 2013.

Present Character of the area

The character of the local area comprises the visual catchment of regular shaped allotments viewed from and surrounding the subject site, which includes:-

1. An approved Development Consent (DC 2019/3) for a six (6) storey residential flat building on the eastern side of the site (14-18 Good Street, Westmead).
2. Recently constructed 6 storey residential flat building located on the northern side of the site (20 -22 Good Street);
3. An approved Development Consent (DC 2015/222) for a 5 storey residential flat buildings located on the eastern side of the site (8 -12 Good Street);
4. Low density housing development on the western side facing Joyner Street; and
5. Higher density residential development to the east of Good Street, which falls under Parramatta Local Government Area.

Future Character of the area

The locality is in transition particularly to support the increasing demand of housing within the close proximity of public transport hub and major commercial centre. The transition issue is clear with regard to FSR, height and setbacks for the proposed development. It is considered that the height, bulk and scale of the proposed development is similar to the recently completed and newer residential flat buildings being constructed and would not be inconsistent with the desired future character of the locality.

As seen in the zoning map provided as Figure 1 earlier, properties opposite to the west of 11-17 Joyner Street are zoned R2 Low Density Residential. Accordingly, there is a low density residential zone interface to the west for the subject property which is required to be addressed as part of the design of any development on the site.

The proposal has been designed with compliant setbacks to the west as per the separation requirements under the ADG. This provides a suitable physical separation between the proposed development and the low density residential zoned. Furthermore, the 5th storey is setback by 3 metres (as required by street wall height control) and also meets the separation requirement under the ADG.

Step 3 - Determine if the development is compatible with the character of the local area.

In accordance with the Land and Environment Court's 'Planning Principle' and case law compatibility is best defined as 'capable of existing together in harmony'. In order to test compatibility two questions are to be considered. These questions, as well as a response to each, are provided below:

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

The height, FSR and landscaping of the proposed development are designed to maintain the harmony within the streetscape, whilst contributing to the site context and constraint. The height of building breaches the 15m height limit requirement for part of the roof and the lift core as discussed later in the report. However, the development does not pose any unreasonable overshadowing impacts on adjoining properties. The proposal being a permissible land use, meets the FSR requirement (in accordance with ARH SEPP, subject to the imposition of conditions) and contributes to the provision of affordable housing within the close proximity of public transport hub and major commercial centre. Appropriate setbacks and privacy treatments are provided to minimise any adverse impacts to the adjoining properties. The building is appropriately articulated to complement the existing and changing streetscape within the local area. The overall design represents the form of development that is envisaged under the planning controls. Refer to further discussion under DCP section of the report.

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

To be compatible, a development should contain, or at least respond to the key aesthetic elements that make up the character of the surrounding area. The size of the basement maximises landscaping and deep soil zones on site. The front setbacks are generous and consistent with the existing streetscape. The proposal is considered to maintain an appropriate residential character which is consistent with the streetscape. As indicated, the local area has an established high density residential built form, as such, the proposed development is not considered to be inconsistent with the existing streetscape character of the immediate area surrounding the subject site.

In conclusion, the proposal will maintain the harmony within the general streetscape, and suitably fits in the local character of the locality.

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

SEPP 65 applies to the development as the building is 3 storeys or more, and contains more than 4 dwellings. A design statement addressing the design quality principles prescribed by SEPP 65 was prepared by the project architect.

The statement addresses each of the 9 principles and an assessment of this is provided below. Council's assessing officer's comments in relation to the submission are outlined below.

SEPP 65 sets 9 design quality principles. The development has adequately addressed the principles in the following way:

Figure 5 – SEPP 65 Design Quality Principles Table

ADG design quality principle	Response
1. Context and neighborhood character	The area is designed to accommodate new development, including residential flat building that is a permitted type of development within the R4 zone. Whilst the existing character of the streetscape is dominated by one to two storey dwelling houses, the proposed development satisfies Holroyd LEP 2013 objective in that it will provide a variety of housing type within a high density environment. The siting of development has been appropriately designed to minimise any potential overshadowing and visual

	privacy impact to the adjoining properties by maintaining a buffer area at the rear for communal open space.
2. Built form and scale	The development application is seeking consent for 5 storey residential flat buildings over two level basement car park. The building will present a strong façade to Joyner Street. Similar floor plates are used for each residential floor. At grade communal open space will assist in softening the built form and minimise any potential overshadowing and visual privacy impact to the adjoining properties.
3. Density	The proposed development complies with the permitted FSR.
4. Sustainability	A BASIX Certificate and relevant reports have been submitted with the development application. The certificates require sustainable development features to be installed into the development. The proposal will incorporate features relating to ESD in the design and construction of the development inclusive of water efficient fixtures and energy saving devices.
5. Landscape	Landscaped area of 670m ² (30.44% of the site) has been provided, which will provide appropriate level of amenity to the residents and consistent with the environmental surrounds of the subject site.
6. Amenity	The proposal will deliver sufficient amenity to residents of the building. The proposal achieves compliance with the ADG in this instance which contains many amenity controls. The building design incorporates access and circulation, apartment layouts, floor area, ceiling height, private open space, common open space, energy efficiency rating, adaptability and diversity, safety, security and site facilities. The proposal is considered to generally comply with the ADG and HDCP 2013 which contains numerous amenity controls. Suitable access is provided to all parts of the building, through the efficient use of lift to access all levels. The development is considered to provide an appropriate level of amenity for future residents.
7. Safety	Suitable and secure access is provided to all parts of the building, through the efficient use of lift to access all levels.
8. Housing diversity and social interaction	The apartment mix is considered to be satisfactory. The specifics of the building are:- 28 x 1 bedroom apartments.(12 dual key apartments) 13 x 2 bedroom apartments. 5 x 3 bedroom apartments. The number of adaptable units proposed is considered satisfactory with the provision of associated accessible car spaces.
9. Aesthetics	The residential flat buildings have attractive contemporary appearance and utilises building elements that provide individuality to the development without compromising the streetscape or detracting from the appearance of existing surrounding development. The building responds well in this regard with its provision of good aesthetics through the use of high quality materials, attention to detail in its internal spaces and how it addresses the street frontage. The building provides an appropriate response to the existing and likely future character of the locality.

Integral to SEPP 65 is the Apartment Design Guide (ADG), which sets benchmarks for the appearance, acceptable impacts and residential amenity of the development.

A comprehensive assessment against SEPP 65 and the ADG is contained in **Appendix A**.

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

Clause 7 of SEPP 55 requires Council to be satisfied that the site is suitable or can be made suitable to accommodate the proposed development. The matters listed within Clause 7 have been considered in the assessment of the development application.

Matter for consideration	Yes	No
Does the application involve re-development of the site or a change of land use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Is the development going to be used for a sensitive land use (e.g. residential, educational, recreational, childcare or hospital)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Does information available to you indicate that an activity listed below has ever been approved, or occurred at the site? acid/alkali plant and formulation, agricultural/horticultural activities, airports, asbestos production and disposal, chemicals manufacture and formulation, defence works, drum re-conditioning works, dry cleaning establishments, electrical manufacturing (transformers), electroplating and heat treatment premises, engine works, explosive industry, gas works, iron and steel works, landfill sites, metal treatment, mining and extractive industries, oil production and storage, paint formulation and manufacture, pesticide manufacture and formulation, power stations, railway yards, scrap yards, service stations, sheep and cattle dips, smelting and refining, tanning and associated trades, waste storage and treatment, wood preservation	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the site listed on Council's Contaminated land database?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is the site subject to EPA clean-up order or other EPA restrictions?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Has the site been the subject of known pollution incidents or illegal dumping?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Does the site adjoin any contaminated land/previously contaminated land?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Has the appropriate level of investigation been carried out in respect of contamination matters for Council to be satisfied that the site is suitable to accommodate the proposed development or can be made suitable to accommodate the proposed development?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Details of contamination investigations carried out at the site:		
<p>The applicant has advised that <i>“given the historical use of the site for residential purposes, land contamination is not likely. Further investigation and reporting under SEPP 55 is not considered necessary as Clause 7 of SEPP 55 is not triggered.</i></p> <p><i>If any contaminated material or suspected contaminated material is unearthed during the construction process, then actions consistent with the legislative requirements and guideline documents will be undertaken”</i></p>		

(e) State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The relevant provisions of the ISEPP 2007 have been considered in the assessment of the development application as detailed below.

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

The subject site proposes a provisional substation location as part of the subject development.

The application was referred to Endeavour Energy for comment pursuant to clause 45 of the SEPP. The response received indicated that the proposal is satisfactory subject to conditions.

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

The application is accompanied with BASIX Certificate 992699M_02 prepared by Designview issued on 23 April 2019 has been submitted.

The BASIX Commitments specified in the BASIX Certificate and nominated on the architectural drawings and will need to be incorporated into the construction and fit-out of the development. A

condition to require the BASIX commitments to be implemented in the construction of the development has been included in the draft conditions of consent.

(g) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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

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

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

The proposal does not exceed the biodiversity offsets scheme threshold for clearing of vegetation. See further comments under HDCEP 2013 regarding tree removal.

(i) Holroyd Local Environmental Plan 2013

The proposed development is defined as a 'residential flat building' under the provisions of Holroyd Local Environmental Plan (LEP) 2013. Residential Flat building is a permissible land use with consent under the R4 High Density zone applying to the land under Holroyd LEP 2013.

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

The proposal involves the following non-compliances with the Holroyd LEP 2013 controls.

The proposal seeks a variation to Clause 4.3 – Height of Buildings that stipulates that the height of building is not to exceed 15m on the subject site.

The proposed building has an overall height of 16.7m (RL 47.75) to the top of the lift core and 15.42m (RL 46.65) to the top of the upper level of residential units (i.e. habitable floor area) associated with the roof top. The proposal breaches the overall height by 1.77m representing a maximum variation of 11.3%. The majority of the height breach is associated with the roof of the building and the top of the lift core.

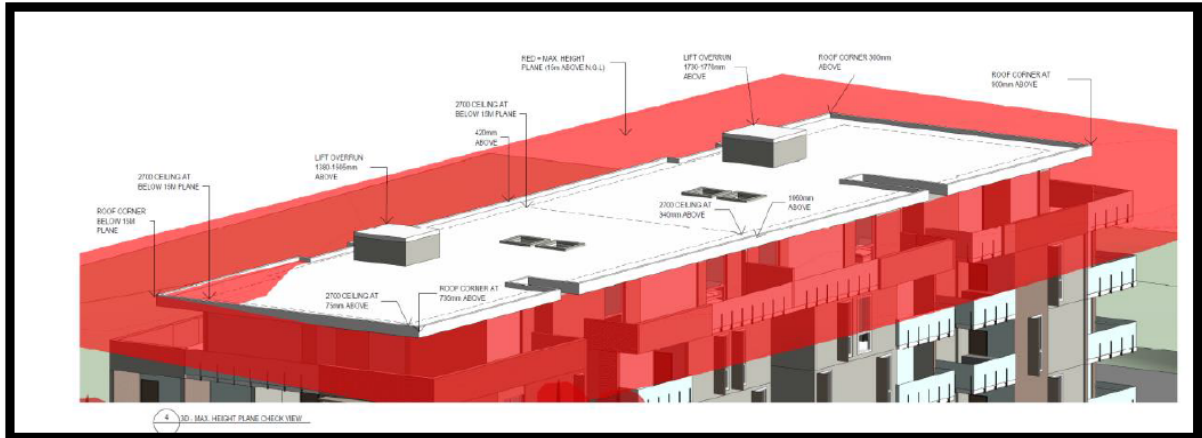


Figure 1: 3D Height Plane



Figure 2 : Section Plan

Clause 4.6 – Variation to Building Height

Clause 4.6 allows the consent authority to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. The consent authority may grant the exception as the Secretary’s concurrence can be assumed where clause 4.6 is adopted as per the Department of Planning Circular PS 18-003, dated 21 February 2018.

The proposal involves a non-compliance with the *Height of Buildings standard*. The proposal has a height of 16.7m (RL47.75) where the maximum height permitted is 15m. This represents a 11.3% departure from the standard.

The applicant submitted a written request to vary the standard pursuant to clause 4.6 of the LEP, which adequately addresses the requirements of subclause 3. Based on various case laws established by the Land and Environment Court of NSW such as *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130* and *Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245* and *Initial Action Pty Ltd v Woollahra Council*, a 3 part assessment framework for a variation request proposed under clause 4.6. The relevant provisions of clause 4.6 are considered in the following table.

4.6 Exceptions to development standards	Comment
(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.	The <i>height of buildings</i> development standard is not expressly excluded from the operation of clause 4.6 and accordingly, consent may be granted to the application despite the variation.

<p>However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.</p>	
<p>(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:</p> <p>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</p>	<p>As stated above, the proposed development contravenes the height of buildings development standard. A written request to vary the standard was provided by the applicant, and this request seeks to justify the contravention.</p> <p>The applicant submits that strict compliance with the 15m height limit is unreasonable and unnecessary for the following reasons:</p> <p>(i) <i>Non-compliance is minor in nature with the majority of the building being compliant with the building height control and with the lift overruns recessed, their impact to the streetscape is negligible as it will be visually unnoticeable when viewed from the street level</i></p> <p>(ii) <i>The variation is primarily as result of appropriately responding to the overland flow constraints of the site. Given the extent of development within the catchment, the extent of overland flow is likely to have been reduced through the provision of OSD within these developments. Notwithstanding this, a conservative engineering approach has been adopted, resulting in the building being raised to cater for overland flows. The resultant development is consistent with the 5 storey development envisioned for the precinct;</i></p> <p>(iii) <i>Due to the minor nature of the variation it will not have any adverse amenity impacts. In this regard it is noted:</i></p> <ul style="list-style-type: none"> - <i>The variation will be visually unnoticeable and will have no adverse impact on the physical bulk, height or scale of the development.</i> - <i>The variation will not lead to a reduction in solar penetration on site or to adjoining properties nor will it lead to sunlight loss or overshadowing.</i> - <i>The proposed variation will not lead to view loss or interrupt views to and from the site.</i> - <i>The proposed variation will not lead to a reduction in privacy afforded to existing residents or future residents of the proposal</i> <p>(iv) <i>The proposal has been designed to ensure that privacy impacts are mitigated and that the proposal will not obstruct existing view corridors;</i></p> <p>(v) <i>The proposed development will permit the site to develop to its full zoning potential whilst complementing the future vision envisioned for the site by providing an attractive mixed use building that provides good address to the street frontage and complying with other key planning controls applying to the proposal;</i></p>

<p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	<p>(vi) <i>The scale of the proposed development will be appropriate and will be visually consistent with the permitted building height with the upper level recessed and designed using a lighter design style to ensure a positive streetscape presentation.</i></p> <p>(vii) <i>Given the height control is based on a modelled building envelope that has regards to ADG setbacks, it is inevitable that 'something has to give' in order to give effect to the provisions in the ARHSEPP relating to bonus FSR. It is not that this is without merit limitation, it is of course, however, those are to be guided by the other provisions in (the SEPP) as well as looking at other general merit matters. The variation to the height control is consistent with the objective of the ARHSEPP;</i></p> <p>(viii) <i>The roof form reflects the emerging rhythm in this high density precinct. The roof form will provide visual interest to the proposal whilst having negligible impact on the amenity of neighbouring properties in terms of overshadowing or privacy.</i></p> <p><u>Planners Comment:</u></p> <p>The objectives of the building height standard are to enable appropriate development density to be achieved and to ensure that the height of the building is compatible with the character of the locality as outlined above. The proposal is compliant (subject to conditions) with the maximum FSR of 1.64 inclusive of the bonus provision under the ARH SEPP.</p> <p>The departure sought is considered to be modest and does not unreasonably impact on adjoining properties. The additional height does not result in the appearance of bulk when viewed from the existing streetscape and would not impinge on the changing streetscape that is anticipated for the immediate area. Given that the proposed development responds to the site and does so without compromising relationships with adjoining development is acceptable and does not unduly compromise other relevant controls, the proposal is considered to be consistent with the objectives of height requirements and development within the R4 zone.</p>
<p>(4) Development consent must not be granted for development that contravenes a development standard unless:</p> <p>(a) the consent authority is satisfied that:</p> <p>(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</p> <p>(ii) the proposed development will be</p>	<p>The Panel can be satisfied that:</p> <ul style="list-style-type: none"> • the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) as detailed above, and • the proposed development is in the public interest

<p>in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and</p>	<p>as it is consistent with the objectives of the height standard and the objectives of the R4 zone as detailed below:</p> <p>Objectives of the height standard are as follows:</p> <p>(a) <i>to minimise the visual impact of development and ensure sufficient solar access and privacy for neighbouring properties,</i></p> <p>(b) <i>to ensure development is consistent with the landform,</i></p> <p>(c) <i>to provide appropriate scales and intensities of development through height controls.</i></p> <p>The proposal satisfies the objectives of the height standard in that it has been located within the site to minimise its visual impact on neighbouring properties. There are no impacts on any neighbouring sites in terms of privacy or overshadowing.</p> <p>The intensity of the development is well below the maximum FSR permitted for the site.</p> <p>Objectives of the R4 zone are as follows:</p> <ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a high density residential environment.</i> • <i>To provide a variety of housing types within a high density residential environment,</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> <p>The proposal satisfies the objectives of the zone in that it provides facilities and services to meet the day to day needs of residents.</p> <p>The Panel can be satisfied that the proposal is in the public interest, as it satisfies the objectives of the standard, and the objectives of the R4 zone.</p>
<p>(b) the concurrence of the Secretary has been obtained.</p>	<p>The concurrence of the Secretary can be assumed in the present circumstances as the consent authority.</p>

Conclusion:

Council is satisfied that the applicant’s written request has adequately addressed the matters required to be demonstrated by clause 4.6 subclause (3). Council is further satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

It is the view of Council Officers that justification provided is satisfactory and having considered the application on its merit, the exception to the maximum building height development standard is considered acceptable in this instance.

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

(j) Draft State Environmental Planning Policy (Environment)

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

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

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

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

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

a) Holroyd Development Control Plan 2013

The provisions of parts A, B & I apply to the proposed development. The DCP non-compliances are detailed in the following table.

Control	Provided	Complies (Yes/No)
Height of Building Maximum building height in storeys shall be provided in accordance with the table below: Permitted Height (storeys) Height (m) storeys 9 1 11 2 12.5 3 15 4 18 5 21 6	5 storeys proposed This is considered acceptable noting the development provides articulation and visual relief to the upper level of the building. The fifth storey of this development is recessed in from the front setback by 3m and it will not be highly visible when viewed from street level thus there will be minimal impact on the character of the street/streetscape. The proposal also preserves the amenity of adjoining residents through achievement of compliance with all relevant solar access, visual privacy, acoustic privacy and amenity controls contained in SEPP 65, the ADG, LEP and DCP. In addition, the proposed articulation and setback is generally consistent with the approved developments in the locality.	No
Max site coverage 30%, or 660.12 ²	41% (902.9 ²) The non-compliance is considered acceptable given that the proposal still achieves full compliance with the provision of building separation, visual privacy, solar access, deep soil planting, driveways, communal open space and OSD system.	No

A comprehensive DCP compliance table is provided at **attachment 5**.

The provisions of any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4 (EP&A Act s4.15(1)(a)(iiia))

There is no planning agreement or draft planning agreement associated with the subject application.

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

The Regulations do not prescribe any relevant matters for consideration.

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

The likely impacts of the proposed development in the locality have been assessed and are considered satisfactory.

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

The subject site is considered suitable for the proposed development, given its location, topography, and dimensions.

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

Advertised (newspaper) Mail Sign Not Required

In accordance with Council's Notification requirements contained within Part E of HDCP 2013, the proposal was publicly notified for a period of 21 days from 22 May 2019 to 12 June 2019. As a result of the notification, 1 public submission was received. The issues raised in the public submissions are addressed in the following table:

Concern	Response
Investigation of contamination and asbestos on the subject site.	Council's Environmental Health Unit have assessed the application and given the historical use of the site for residential purposes, land contamination is not likely. However, if any contaminated material or suspected contamination material is unearthed during the construction process, then actions consistent with the legislative requirements and guidelines document will be undertaken.
Traffic and noise impact	The proposed development complies with the parking controls in accordance with the applicable planning controls and therefore, will not result in any additional on street parking. With regard to the impact on traffic flow, Council notes that a Traffic and Parking Assessment report has been provided as a part of the Application. Council's Environmental Health Unit has assessed the proposed development having regard to the acoustic reports submitted and considers the development to be satisfactory subject to the implementation of acoustic measures recommended within those reports
Tree Removal contributes to environmental impacts.	Council's Landscaping and Tree Management Section has assessed the proposal and standard conditions has been included with the draft conditions of consent including planting of replacement trees.
Asbestos removal	Council has imposed relevant conditions relating to the removal and disposal of asbestos. In this regard, the private certifying authority (PCA) is responsible for ensuring the development is built in accordance with the relevant conditions of consent. Complaints regarding the development failing to meet the

	conditions of consent can be lodged with the PCA or alternatively with Council on 8757 9000 to request the issue to be investigated.
Height Limit/Height plane exceeds allowable.	The proposal breaches the overall height. The majority of the height breach is associated with the roof of the building and the top of the lift core. Clause 4.6 of Holroyd Local Environmental Plan 2013 allows the consent authority to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. It is the view of Council Officers that justification provided is satisfactory and having considered the application on its merit, the exception to the maximum building height development standard is considered acceptable in this instance
Privacy	An assessment of the provided architectural plans outlines visual privacy of the adjoining properties has been maintained through the appropriate setbacks and size of windows proposed.
Shadow Diagram	Shadow diagrams have been submitted demonstrating the shadow impacts of the proposed development on the existing development. An assessment of the provided solar access diagrams has revealed that the surrounding developments will achieve the required solar access as noted under the Statement Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65).
Perspective	The design of the building is well considered, particularly the presentation and the activation of the street fronts. The residential flat building is well designed and meets the requirements of the Apartment Design Guide as well as the Holroyd DCP 2013, including setbacks and building separation.

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

In view of the foregoing analysis it is considered that the development, if carried out subject to the conditions set out in the draft determination, will not be contrary to the public interest.

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

The subject development requires the payment of contributions in accordance with Holroyd Section 94 Development Contributions Plan 2013.

In accordance with the currently indexed rates for the Mays Hill Centre contribution area, the following contributions apply:

- 16 x 1 bedroom dwellings - \$8,451 x 16 = \$135,216.00
- 25 x 2 bedroom dwellings – \$14,292 x 25 = \$,357,300.00
- 5 x 3 bedroom dwellings or more – \$20,000 x 5 = \$100,000.00
- minus credit for the existing 3 bedroom dwellings x 4 – \$80,000.00

Total = \$512,516.00

At the time of this development consent, the current rate of the contribution is **\$512,516.00**. The draft determination at **attachment 1** includes a condition to require payment of contributions prior to the issue of a construction certificate.

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

CONCLUSION

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*. The likely impacts of the development in the locality have been assessed and are considered satisfactory.

The proposal is consistent with the relevant requirements of the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy No. 55 – Remediation of Land, Apartment Design Guide, Holroyd Local Environmental Plan 2013 and the Holroyd Development Control Plan 2013 and is considered to be satisfactory for approval subject to reduction in number of children to 50 (to comply with the outdoor unencumbered space) and the draft conditions. The proposal involves a limited number of DCP non-compliances, which are considered satisfactory on merit as discussed in detail above.

The proposed development is considered satisfactory in terms of its built form and streetscape impact, stormwater management, vehicular access and car parking.

RECOMMENDATION

1. That DA 2019/141/1 for demolition of existing structures, consolidation of four (4) allotments), and construction of a five (5) storey residential flat building under State Environmental Planning Policy (Affordable Rental Housing) 2009 comprising 46 units (including 12 Dual key units) over two (2) levels of basement parking for 57 vehicles and a car wash bay on land at 11-17 Joyner Street, Westmead be approved subject to the conditions provided in the draft determination.
2. Persons who have lodged a submission in respect to the application be notified of the determination of the application.

ATTACHMENTS

1. SEPP ARH compliance table
2. SEPP ADG compliance table
3. HLEP 2013 compliance table
4. HDCP 2013 compliance table
5. Draft Notice of Determination
6. Architectural plans
7. Redacted public submissions