



Hawkesbury City Council

hawkesbury
local
planning
panel
meeting
business
paper

date of meeting: 21 March 2019

location: council chambers

time: 11:30 a.m.

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Item: 002 CP - DA 0558/18 - Lot 21 DP 730868, 231 Pitt Town Bottoms Road, Pitt Town - 7189, 9778, 9777, 95498)

Directorate: City Planning

DEVELOPMENT INFORMATION

File Number: DA0558/18
Property Address: 231 Pitt Town Bottoms Road, Pitt Town, NSW, 2756
Applicant: Geoffrey Bruce Harber
Owner: Mr KA Savell and Mrs RJ Hamilton
Proposal Details: Demolition of Fire Damaged Dwelling House
Estimated Cost: \$35,000.00
Zone: RU2 Rural Landscape under Hawkesbury Local Environmental Plan 2012
Date Received: 17/12/2018

Key Issues:

- ◆ Potential retention of aspects of the building
- ◆ Archival recording
- ◆ Potential archaeological impacts

Recommendation: Approval

Executive Summary

Development Application DA 0558/18 proposes to demolish a fire damaged dwelling house.

The application was notified in accordance with Part A Chapter 3 of the Hawkesbury Development Control Plan 2002 to surrounding properties and one submission was received raising the following issues;

- Potential retention of aspects of the building;
- Potential archaeological impacts to the site;
- Archival recording of the structure to be carried out.

An assessment has been carried out by Council's Heritage Advisor who has found the proposed demolition acceptable in the circumstances and has recommended the retention of the chimney pots, bricks and verandah fret work.

The application is recommended for approval.

Reason for Referral to Local Planning Panel

Development Application DA 0558/18 is referred to the Hawkesbury Local Planning Panel for consideration and determination as the proposal is identified as:

- Sensitive Development under S9.1 Local Planning Panels Direction Schedule 1 Item 4 being the demolition of a heritage item listed under Schedule 5 of Hawkesbury Local Environmental Plan 2012 as I461 – House and slab barns.

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Proposal

Development application DA055/18 proposes the demolition of the existing dwelling on the subject site. The majority of the existing dwelling was destroyed by a house fire which has rendered the remaining building structurally unsound.

Permissibility

The site is zoned RU2 Rural Landscape and in accordance with Clause 2.7 – Demolition of Hawkesbury LEP 2012 all demolition requires development consent.

Key Issues

The key issue of the development application is:

- The site is a heritage item listed under Schedule 5 of Hawkesbury Local Environmental Plan 2012 as I461 – House and slab barns

Recommendation:

It is recommended that Development Application DA0558/18 is approved subject to conditions.

REPORT:

Description of Proposal

The application seeks to demolish an existing heritage listed dwelling which has been severely damaged by fire.

Description of Site and Locality

The site is legally described as Lot 21 in DP 730868 and formally known as 231 Pitt Towns Bottom Road, Pitt Town.

Currently onsite is an existing heritage listed dwelling with significant fire damage, separate garage and storage sheds. The site has vehicular access from Pitt Town Bottoms Road.

The site adjoins agricultural turf farms to either side of the site and to the Hawkesbury River at the rear.

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Image 1: Site Aerial

Notified - submissions received

The application was notified between 9/01/2019 - 6/02/2019 in accordance with Chapter 3 of the Hawkesbury Development Control Plan 2002 (HDCP), Notification of Development Applications.

One submission was received and the issues identified are outlined in the matters for consideration under Section 4.15.

Referrals

Internal Referrals	
Heritage Advisor	<i>"The DA has included archived records and a methodology for salvaging some of its key heritage elements. Hence, the application is acceptable from a heritage perspective. Recommend; copy of the archival photographs be submitted to Council's library."</i>
Parklands Officer	<i>"Approval should be granted for the removal of 1 fire damaged tree as shown in your site plan"</i>
Building Surveyor	No objections raised subject to recommended draft conditions.

Council Policies, Procedures and Codes to which the matter relates

State Environmental Planning Policy No 44—Koala Habitat Protection (SEPP No. 44)
State Environmental Planning Policy No 55—Remediation of Land (SEPP No. 55)
State Environmental Planning Policy (Coastal Management) 2018
Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) (SREP No. 20)
Hawkesbury Local Environmental Plan 2012 (LEP 2012)
Hawkesbury Development Control Plan 2002 (HDCP 2002)
Development of Flood Liable Land Policy 2012

Section 4.15 Matters for Consideration

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

(a) The provisions of

(i) Any environmental planning instrument:

State Environmental Planning Policy No. 55 - Remediation of Land

The provisions of SEPP 55 require Council to consider the potential for a site to be contaminated. The subject site has a history of residential use and as such, it is unlikely to contain any contamination and further investigation is not warranted in this case.

SEPP (Coastal Management) 2018

The aim of this Plan is to promote an integrated and coordinated approach to land use planning in the coastal zone and provide management objectives for each coastal management area.

The site is mapped as Coastal environmental area and Coastal use area for which Division 3 Clause 13 and Division 4 Clause 14 are required to be considered. The relevant clauses of the SEPP and an assessment against those clauses are provided below:

Division 3 Coastal Environment Area

The division of the SEPP relates to land within the coastal environment area and requires a consent authority to consider whether a proposed development is likely to cause an adverse impact to the matters listed in Clause 13 sub-clause (1)(a) to (g), in terms of integrity of surface and groundwater, ecological environment, water quality to marine estates, marine and native vegetation, fauna habitats, existing public open space, Aboriginal cultural heritage and surf zones, and must be satisfied that the matters listed in sub-clause (2)(a) to (c) are achieved.

The application is for demolition only and is unlikely to have any impacts in relation to the matters listed in Clause 13.

Division 4 Coastal use area

The division of the SEPP relates to land within the coastal use area and requires a consent authority to consider whether a proposed development is likely to cause an adverse impact to the matters listed in Clause 14 sub-clause (1)(a)(i) to (v), in terms of safe access to foreshores, loss of views from public places, Aboriginal cultural heritage and built environment heritage, must be satisfied that the matters listed in sub-clause (1)(b)(i) to (iii) are achieved and has taken into account the matters in sub-clause (1)(c).

The application is for demolition only and is unlikely to have any impacts in relation to the matters listed in Clause 14.

The proposed development is considered to satisfy the requirements of the SEPP.

Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No 2—1997)

The aim of this Plan is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context. The Plan includes strategies for the assessment of development in relation to water quality and quantity, scenic quality, aquaculture, recreation and tourism.

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The proposal is for demolition of the existing dwelling only and will not generate any runoff. The proposed works are not contrary to the aims, objectives and recommended strategies of this plan.

Hawkesbury LEP 2012

2.7 Permissibility

Under Hawkesbury LEP 2012, the property is zoned RU2 Rural Landscape. The proposed development is permissible with Council's consent in accordance with Clause 2.7 - Demolition requires development consent.

Under Clause 2.7 the demolition of a building may only be carried out with development consent for which a development application has been lodged.

Other Provisions

5.10 Heritage Conservation

The application pertains to a heritage item identified under Schedule 5 of HLEP2009. Council's Heritage Advisor has considered the proposed demolition application and found it to be acceptable in the circumstances given the dwelling has significant fire damage.

- ii. **Draft Environmental Planning Instrument that is or has been placed on exhibition and details of which have been notified to Council:**

Draft State Environmental Planning Policy (Remediation of Land)

The Explanation of Intended Effect for the above draft SEPP was placed on exhibition from 31 January 2018 to 13 April 2018.

The proposed new SEPP will maintain Category 1 - works that require development consent and Category 2 - works that may be carried out without development consent, however Category 1 is to have new classes of remediation works introduced that require development consent.

The provisions of SEPP 55 to require consent authorities to consider land contamination have been retained within the draft SEPP. The proposed development has been considered under the current SEPP and found to have no potential site contamination that warrants further investigation. Accordingly the proposal satisfies the requirements of the draft SEPP.

Draft State Environmental Planning Policy (Environment)

The Explanation of Intended Effect for the Environment SEPP was placed on exhibition between 31 October 2017 and 31 January 2018.

The intent of the SEPP is to both simplify the planning rules for environmental areas and consolidate several existing SEPPs to allow simplicity in accessing environmental policies in one accessible location. These existing SEPPs include Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No 2—1997) which is applicable to the Hawkesbury. SREP No. 20 will be repealed and replaced with the new Environment SEPP.

SREP No. 20 applies to land within the catchment of the Hawkesbury-Nepean River. The general aim of the plan is to ensure that development and future land uses within the catchment are

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considered in a regional context. The Plan includes strategies for the assessment of development in relation to water quality and quantity, scenic quality, aquaculture, recreation and tourism.

The Draft SEPP does not remove the requirement for a consent authority to consider the need to protect the environment of the Hawkesbury-Nepean river system.

The proposed development has been considered against the provisions of the existing SREP and found to be acceptable. Accordingly the requirements of the Draft SEPP have been satisfied.

iii. Development Control Plan applying to the land:

Hawkesbury DCP 2002:

There are no applicable provisions within the Hawkesbury DCP that are relevant to the application.

iiia. 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:

There are no planning agreements applicable to this application.

iv. Matters prescribed by the Regulations:

In accordance with the matters prescribed by the Regulations the development will be required to comply with the National Construction Code – Building Code of Australia (BCA) and relevant Australian Standards for demolition.

b) The likely impacts of that development, including environmental impacts on both the natural and built environments and the social and economic impacts in the locality:

All relevant issues regarding environmental impacts of the development are discussed elsewhere in this report. The development is considered satisfactory in terms of environmental impacts.

c) Suitability of the site for the development:

The site is considered to be suitable for the proposed development.

d) Any submissions made in accordance with the Act or the Regulations:

In accordance with Section 3.2 of Part A of HDCCP 2002, owners of surrounding properties were given notice of the application. In response, one submission was received.

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The following issues were raised:

Concern	Comment
1. <i>“Potential retention of aspects of the building. The property is identified as a heritage item and while we understand that the property has most unfortunately been destroyed by fire, question is raised as to whether any aspects of the structure can be retained and incorporated / interpreted in any new replacement building, should the owners be considering redevelopment.”</i>	Council’s Heritage Advisor has made comments regarding the retention of certain features of the dwelling including the chimney pots, bricks and verandah fret work. Conditions shall be placed on the consent to ensure these features of the dwelling are carefully demolished and retained.
2. <i>“Potential archaeological impacts to the site. The site also has high potential for significant archaeology, given the known history of the site. Any land clearing works need to be considered in light of an archaeological investigation of the site, particularly around the location of the timber slab barn at the rear of the dwelling.”</i>	The proposal seeks demolition works and the removal of one tree. There are no earthworks proposed as part of this application, however conditions have been included on the consent which address the potential for archaeological findings of significance to be found during demolition works and their treatment and preservation.
3. <i>“Archival recording of the structure to be carried out. If Council grants consent to the demolition of the heritage item, can we request that there is a thorough archival recording of the property undertaken, not just a collection of photographs of the present building, but a researched and documented recording of the site’s history and interpretation through some form of signage or the like at the property.”</i>	A requirement for archival recording of the structure shall be placed on the consent to ensure a record of the building is kept.

e) The Public Interest:

Having regard to the assessment contained in this report, it is considered that approval of the development is in the public interest.

Conclusion

The matters in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979 have been satisfied.

RECOMMENDATION:

1. That Hawkesbury Local Planning Panel, as the consent authority, grant development consent to DA0558/18 at 231 Pitt Town Bottoms Road, Pitt Town subject to the following recommended conditions below; and
2. That those persons whom made submission to this application be advised of the determination.

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General Conditions

1. Approved Demolition

Demolition must be carried out in accordance with work outlined in colour on the following plans and supporting documentation listed below which have been endorsed by Council's approved stamp, except where amended by other conditions of consent:

a) Plans Reference:

Drawing Number/Name	Prepared by	Date
22127i - Survey Sketch	Vince Morgan (Surveyors) Pty Ltd	03.12.2018

No works, other than those approved, are permitted by this consent.

Note: Details of the development shown in the approved plans and documents referenced are altered in the manner indicated by:

- (i) any amendments made by Council on the approved plans or documents;
- (ii) any notes, markings, or stamps on approved plans or documents; and
- (iii) any conditions contained in this consent.

2. Asbestos Removal

If asbestos is encountered during construction or demolition work; measures must be in place in accordance with WorkCover NSW guidelines and the *Occupational Health & Safety Regulation 2001*. Work shall not commence or continue until all the necessary safeguards required by WorkCover NSW are fully in place.

Only contractors who are appropriately licensed for asbestos disposal by WorkCover NSW may carry out the removal and disposal of asbestos from demolition and construction sites.

Prior to commencing demolition of buildings containing asbestos, a commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring 400mm x 300mm shall be erected in a prominent visible position on the site in accordance with Australian Standard AS 1319 - 'Safety Signs for the Occupational Environment'.

The person entitled to act on this consent shall notify adjoining residents in writing five working days prior to the demolition.

Asbestos waste must only be disposed of at a landfill site authorised to receive such waste. All receipts and supporting documentation must be retained in order to verify lawful disposal and are to be made available to Council on request.

3. Excavation - Archaeology

If any object having heritage significance is uncovered during the course of the demolition works:

- a) all work must stop immediately in that area; and
- b) the NSW Office of Environment and Heritage and Council must be advised of the discovery.

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Note: Depending on the significance of the object uncovered, an archaeological assessment and excavation permit under the *Heritage Act 1997* may be required before further work can continue.

4. Heritage Archival Recording

Prior to demolition works onsite a photographic record of the site is to be prepared in accordance with the NSW Heritage Office guidelines titled 'Photographic Recording of Heritage Items using Film or Digital Capture.'

The recording may be in either digital or film-based form or a combination of both.

Two copies of this record shall be lodged with Council.

The form of the recording is to be as follows:

- a) in A4 format, placed in archival plastic sleeves in an appropriate archival folder;
- b) the Development Application number must be noted on the front of the folder and in the report;
- c) include a summary report detailing the project description, date and authorship of the photographic record, method of documentation and limitations of the photographic record;
- d) each negative, slide or digital image is to be cross referenced to a photographic catalogue and photographic base plans; and
- e) include written confirmation, issued with the authority of both the applicant and the photographer that Council is granted a perpetual non-exclusive licence to make use of the copyright in all images supplied, including the right to make copies available to third parties as though they were Council images.

Digital based recordings are to include the report in PDF format and images saved as JPEG, TIFF or PDF files and cross referenced to the digital catalogue sheets and base plans.

Film based recordings are to include 35mm film images submitted as contact sheets with equivalent negatives, a selection of black and white prints 200mm x 250mm and 35mm colour transparencies, all labelled and cross-referenced to the catalogue sheets and base plans.

5. Existing Services

All existing utility services including electricity, telephone, gas, septic system and the like are to be decommissioned in accordance with the recommendations of the relevant authority.

Note: Utility Services for any future development will be required to be provided under separate application.

6. Toilet Facilities

Prior to any works commencing onsite toilet facilities must be available or provided at the work site and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site.

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Each toilet must:

- a) be a standard flushing toilet connected to a public sewer;
- b) be attached to an approved on-site effluent disposal system;
- c) be a temporary chemical closet that is regularly maintained; and
- d) appropriate facilities for the disposal of sanitary items are to be provided within the toilet.

7. Principal Certifying Authority (PCA) Site Sign

A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:

- a) showing the name, address and telephone number of the Principal Certifying Authority for the work;
- b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
- c) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

8. Hoarding Approval Required

Prior to the installation of any hoardings, site fencing or overhead protective structures over or adjoining a public place i.e. a footpath or a public reserve, approval must be obtained from Council. Construction of hoardings, site fencing or overhead protective structures shall be provided in accordance with WorkCover requirements.

9. Safety Fencing

The site is to be secured by a fence, in accordance with NSW WorkCover requirements, to prevent unauthorised access during the period of all works. The fencing shall be locked with an appropriate locking device that cannot be readily opened by any unauthorized persons.

Prior to Any Works Commencing on Site

10. Demolition - General

All demolition works must be carried out in accordance with the following:

- a) all demolition work shall be carried out strictly in accordance with Australian Standard AS 2601 - 'The Demolition of Structures';
- b) demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover 'Demolition License' and WorkCover 'Class 2' (Restricted) Asbestos License and comply with WorkCover's 'Guide to Working with Asbestos';

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- c) site safety/security fencing shall be provided prior to commencement of any work on-site and shall be removed only when all hazards, including site waste, have been removed. The site safety/security fencing shall comply with the following Australian Standards:
 - (i) Demolition Sites - Australian Standard AS 2601 - 'Demolition of structures';
 - (ii) Construction Sites - Australian Standard AS 4687 - 'Temporary fencing and hoardings';
 - (iii) Ongoing Site Safety/Security - Australian Standard AS 1725 - 'Chain-link fabric security fencing and gates';
- d) demolition work shall be carried out only between the hours of 7am to 6pm Mondays to Fridays and 8am to 4pm Saturdays. No work is to be carried out on Sundays or public holidays;
- e) no trees shall be removed from the site unless they are shown for removal on the approved plans, or separately approved by Council;
- f) erosion and sediment control measures shall be installed prior to any demolition works commencing and maintained in accordance with the requirements contained in the Hawkesbury Development Control Plan 2002;
- g) all waste on the site is to be stored, handled and disposed of in such a manner as to not create air pollution (including odour), offensive noise or pollution of land and/or water;
- h) public footways and roadways adjacent to the site must be fully maintained and cleared of obstructions during construction. No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council;
- i) any materials stored on site must be stored away from any drainage path or easement, natural watercourse;
- j) demolition activity shall not cause damage to or adversely affect the structural integrity of adjoining buildings;
- k) waste must be transported to a place which can lawfully accept it. All non-recyclable demolition materials are to be disposed of at an approved waste disposal depot in accordance with legislation;
- l) no material is to be burnt on site;
- m) details as to the method and location of disposal of demolition materials (weight dockets, receipts, etc.) should be kept on site as evidence of approved methods of disposal and recycling; and
- n) the site shall be grassed or otherwise rendered erosion resistant immediately upon completion of demolition.

11. Demolition - Notice

- a) Notice is to be given to Council of the date on which it is proposed to commence demolition. This notice shall:
 - (i) be given not less than two days before the date on which it is proposed to commence demolition work;

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- (ii) provide details of the name, contact details of the demolisher/contractor undertaking the work;
 - (iii) provide the relevant WorkCover license details of the demolisher/contractor; and
 - (iv) details of the demolisher/contractors current Public Liability/Risk Insurance Policy providing for a minimum cover of \$10 million.
- b) Notice is to be given to adjoining property owners of the date on which it is proposed to commence demolition. This notice shall:
 - (i) be given not less than two days before the date on which it is proposed to commence demolition work;
 - (ii) provide details of the name, contact details of the demolisher/contractor undertaking the work; and
 - (iii) provide the telephone number of WorkCover's Asbestos/Demolition Hotline - 1800 672 718.

12. Asbestos Material Handling

Work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work must be undertaken by a person who carries on a business of such removal work in accordance with a licence under Clause 458 of the *Work Health and Safety Regulation 2011*.

In addition to the above, the following shall be satisfied:

- a) the person having the benefit of this consent must provide the Principal Certifying Authority with a copy of a signed contract with such a person before any development or works commence;
- b) any such contract must indicate whether any bonded asbestos material or friable asbestos material will be removed, and if so, must specify the landfill site (that may lawfully receive asbestos) to which the bonded asbestos material or friable asbestos material is to be delivered;
- c) if the contract indicates that bonded asbestos material or friable asbestos material will be removed to a specified landfill site, the person having the benefit of the complying development certificate must give the Principal Certifying Authority a copy of a receipt from the operator of the landfill site stating that all the asbestos material referred to in the contract has been received by the operator.

13. Demolition - Work Plans

The demolition work shall comply with the provisions of Australian Standard AS 2601 - 'The Demolition of Structures'. The work plans required by Australian Standard AS 2601 - 'The Demolition of Structures' shall be accompanied by a written statement from a suitably qualified person that the proposals contained in the work plan comply with the safety requirements of the Standard. The work plans and the statement of compliance shall be submitted to the satisfaction of the Principal Certifying Authority prior to the commencement of works.

14. Garbage Receptacle to be Provided On-site

A garbage receptacle must be provided at the work site before works begin and must be maintained until the works are completed. The garbage receptacle must have a tight fitting lid, be suitable for the reception of food scraps and papers and is to be serviced and emptied on a regular basis at no cost to Council.

15. Erosion and Sediment Control for Minor Development

Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with Landcom's publication 'Managing Urban Stormwater - Soils and Construction (2004)'.

16. Heritage - Archival Recording

Archival photographic recording of the Heritage item is to be prepared and submitted to Council. The recording may be in digital form and be prepared in accordance with the NSW Heritage Office guidelines titled 'How to prepare archival records of heritage items'.

During Demolition and Construction

17. Hours of work

Building and/or demolition works including clearing of land, running of machinery, excavation, and/or earthworks, building works and the delivery of building materials shall be carried out between the following hours:

- a) between 7am and 6pm, Mondays to Fridays inclusive;
- b) between 8am and 4pm, Saturdays;
- c) no work on Sundays and public holidays; and
- d) works may be undertaken outside these hours where:
 - (i) the delivery of vehicles, plant or materials is required outside these hours by the Police or other authorities;
 - (ii) it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm; and
 - (iii) a variation is approved in advance in writing by Council.

18. Site Management During Demolition and Construction

- a) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.
- b) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.
- c) Copies of receipts stating the following must be given to the principal certifying authority:
 - (i) the place to which waste materials were transported;
 - (ii) the name of the contractor transporting the materials; and
 - (iii) the quantity of materials transported off-site and recycled or disposed of.
- d) Any run-off and erosion control measures required must be maintained within their operating capacity until the completion of the works to prevent debris escaping from the site into drainage systems, waterways, adjoining properties and roads.

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- e) During construction:
 - (i) all vehicles entering or leaving the site must have their loads covered;
 - (ii) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads; and
 - (iii) any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to the public.
- f) At the completion of the works, the work site must be left clear of waste and debris.

Note: In the event it is not possible to keep the footpath or road reserve clear during construction works written approval from Council shall be obtained prior to any closing of the road reserve or footpath area. The closure shall take place in accordance with Council's written approval. The area shall be signposted and such signposting be maintained in a way that ensures public safety at all times.

19. Loading and Unloading During Demolition and Construction

The following requirements apply.

- a) All loading and unloading associated with construction activity must be accommodated on site.
- b) If, during excavation, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.
- d) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate approval must be obtained from Council.

20. Implementation of Erosion and Sediment Control Plan

Erosion and sediment control devices are to be installed and maintained until the site is fully stabilised in accordance with the approved Erosion and Sediment Control Plan.

21. Asbestos Handling

If asbestos is encountered during any work, measures must be in place in accordance with WorkCover NSW Guidelines and the *Occupational Health and Safety Regulation 2001*. Work shall not commence or continue until all the necessary safeguards required by WorkCover NSW are fully in place.

Only contractors who are appropriately licensed for asbestos disposal by WorkCover NSW may carry out the removal and disposal of asbestos from demolition and construction sites.

Prior to commencing the removal of any structures containing asbestos, a commercially manufactured sign containing the words "DANGER ASBESTOS REMOVAL IN PROGRESS" measuring 400mm x 300mm shall be erected in a prominent visible position on the site in accordance with Australian Standard AS 1319 - 'Safety Signs for the Occupational Environment'.

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The person entitled to act on this consent shall notify adjoining residents in writing five working days prior to the demolition.

Asbestos waste must only be disposed of at a landfill site authorised to receive such waste. All receipts and supporting documentation must be retained in order to verify lawful disposal and are to be made available to Council on request.

22. Heritage - Archaeological Discovery During Works

Should any Aboriginal relics or European historical relics be unexpectedly discovered on the site during excavation, all excavation or disturbance to the area is to stop immediately and the following agencies are to be informed of the discovery:

- a) Council;
- b) the Heritage Council of NSW in accordance with Section 146 of the *Heritage Act 1977*; and/or
- c) the National Parks and Wildlife Service is to be informed in accordance with Section 91 of the *National Parks and Wildlife Act 1974*.

Prior to Issue of Occupation Certificate

23. Asbestos Clearance Certificate

For building works where asbestos based products have been removed or altered, an asbestos clearance certificate signed by Occupational Hygienist or Environmental Consultant must be submitted to and approved by the Certifying Authority (and a copy forwarded to Council if it is not the Certifying Authority) for the building work prior to the issue of any Occupation Certificate.

The asbestos clearance certificate must certify the following:

- a) the building/land is free of asbestos; or
- b) the building/land has asbestos that is presently deemed safe.

The certificate must also be accompanied by tipping receipts, which detail that all asbestos waste has been disposed of at an approved asbestos waste disposal depot. If asbestos is retained on site the certificate must identify the type, location, use, condition and amount of such material.

Note: Further details of licensed asbestos waste disposal facilities can be obtained from EPA's website.

24. Site Validation Report

A site validation report certifying that all lots are unconditionally suitable for their intended uses, including those to be dedicated to Council, is to be provided to the Principal Certifying Authority prior to the release of an Occupation Certificate.

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Advisory Notes

(i) **Equitable Access**

The applicant shall make themselves aware of the *Discrimination Against People with Disabilities Act (DDA)* and assess their responsibilities and liabilities with regards to the provision of access for all people.

(ii) **Acid Sulfate Soils - Monitoring of Excavation During Works**

All excavations are to be monitored to ensure that acid sulphur soils are not encountered during works. Signs that may indicate the presence of acid sulphur soils include:

- a) change in colour of the soil into grey and green tones;
- b) effervescence;
- c) the release of sulphur smelling gases such as sulphur dioxide or hydrogen sulphide; and
- d) lowering of the soil Ph by at least one unit.

Should any of the above indicators be present excavation work on the site is to stop and Council is to be notified to determine what action is required to be taken before work may commence.

(iii) **Site Contamination Discovered During Demolition or Construction**

Should any new information come to light during demolition or construction works which has the potential to alter previous conclusions about contamination, then the applicant must be immediately notified and works must cease. Works must not recommence on site until the consultation is made with Council.

(iv) **Dial Before You Dig**

Prior to commencement of work, the free national community service 'Dial Before You Dig' shall be contacted on 1100 regarding the location of underground services in order to prevent injury, personal liability and even death. Enquiries should provide the property details and the nearest cross street/road.

(v) **Requirements of 88B Instrument**

The applicant shall make themselves aware of any User Restriction, Easements and Covenants to this property and shall comply with the requirements of any Section 88B Instrument relevant to the property in order to prevent the possibility of legal proceedings against them.

(vi) **Works on Public Land - Public Liability Insurance**

Any person or contractor undertaking works on public land must take out a Public Risk Insurance policy with a minimum cover of \$10 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent.

The policy is to note, and provide protection/full indemnification for Council, as an interested party. A copy of the policy must be submitted to Council prior to commencement of any works. The policy must be valid for the entire period that the works are being undertaken.

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(vii) Utilities and Services

Utilities, services and other infrastructure potentially affected by demolition shall be identified prior to construction to determine requirements for access to, diversion, protection, and/or support. Consultation with the relevant owner and/or provider of services that are likely to be affected by the proposed development shall be undertaken to make suitable arrangements for access to, diversion, protection, and/or support of the affected infrastructure as required. The cost of any such arrangements shall be borne by the developer.

Reasons for Decision

The Panel considers the proposal is acceptable and it is recommended that the proposed development be approved based on the following grounds:

- The proposal is acceptable having regard to the statutory requirements apply to the development.
- The proposed demolition of the heritage item adequately satisfies the objectives and provisions of Clause 5.10 Heritage Conservation in the Hawkesbury Local Environmental Plan 2012 (LEP2012).

ATTACHMENTS:

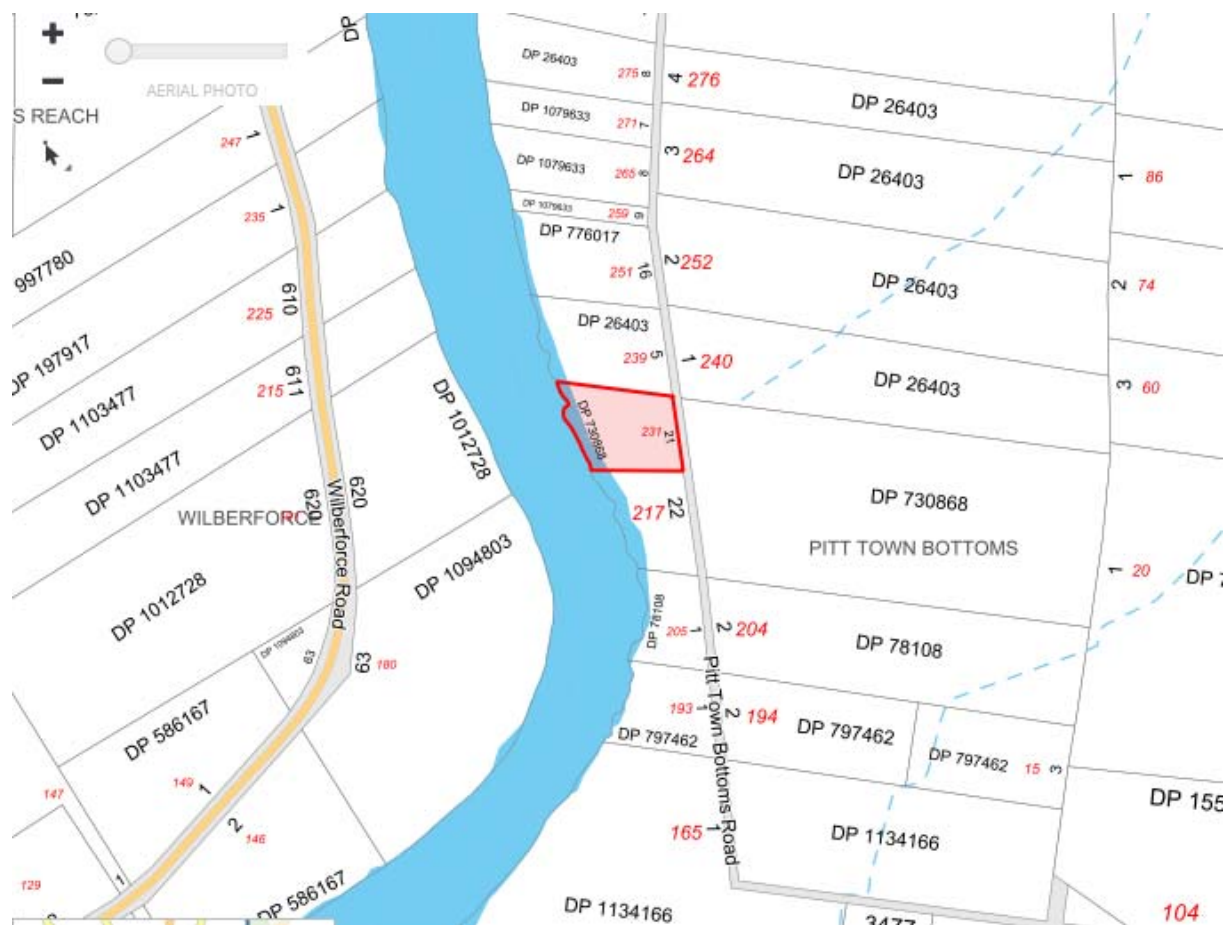
AT - 1 Locality Map

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AT - 1 Locality Map



oooO END OF REPORT Oooo

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Item: 003 CP - DA 0737/17 - Lot 2 DP 556754, 197 Windsor Street, Richmond - 95646, 133677, 95498)-

Directorate: City Planning

DEVELOPMENT INFORMATION

File Number: DA0737/17
Property Address: Lot 2 DP 556754, 197 Windsor Street RICHMOND NSW 2753
Applicant: Cityscape Planning & Projects
Owner: MS Windsor Street Pty Limited
Proposal Details: SEPP 65 (Design Quality of Residential Flat Development) - Mixed Residential Flat Building with Six Dwellings, Two Retail Premises and Associated Car Parking Area for 12 Vehicles
Estimated Cost: \$1,880,000.00
Zone: B2 Local Centre under Hawkesbury Local Environmental Plan 2012
Date Received: 22/12/2017

Key Issues:

- ◆ Site within ANEF Contour 25-30;
- ◆ Bulk and Scale;
- ◆ Privacy and amenity impacts;
- ◆ Safety and security;
- ◆ Unacceptable tree impacts;
- ◆ Insufficient carparking;
- ◆ Waste Management;
- ◆ Access to Shop 3 via the right of footpath; and
- ◆ Owner's consent to right of footpath and Council's rear carpark.

Recommendation: Refusal

Executive Summary

Development Application DA 0737/17 proposes to construct a shop top housing development on the subject site.

The application was notified in accordance with Part A Chapter 3 of the Hawkesbury Development Control Plan 2002 with four submissions received identifying the following issues:

- Access to shop three via side path does not have owner's consent;
- Residential development next to a licences premises;
- Structural impacts to adjoining development;
- Safety and security impacts to existing commercial development from increased use of side pathway;
- Liability for use of side pathway;
- Storage of waste;
- Construction noise; and
- Residential use with commercial use.

The proposed development is within the permissible 12metre building height development standard under Clause 4.3 of Hawkesbury LEP 2012. However the proposed development is not considered to meet the height of building objectives set out in Clause 4.3 in terms of bulk and scale and the local context. The height and bulk of the development, at four (4) storeys, is not considered to be

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compatible with the single and two storey commercial and residential development that is within the locality.

The proposed development does not meet other provisions of Hawkesbury LEP 2012 including Clause 6.6 - Development in areas subject to aircraft noise. The site is within an ANEF contour of 25-30 which is not considered to be acceptable for residential development.

The proposed development has fundamental issues with waste management, car parking, access and safety and security. No loading dock is provided to allow waste bins to be serviced onsite for both the commercial and residential waste bins or to allow service deliveries for the commercial premises. The proposed development will require these services to be carried out externally to the site within the public carpark which is not acceptable.

The proposed development does not provide the required number of parking spaces and access to the carpark is from the rear public carpark. The car parking for the site is not secured by a security gate or roller door and access to the commercial tenancies is through the carpark. This creates privacy and amenity impacts to the future residents of the development.

The proposed development has not demonstrated that the site has legal access to the side path. This path is currently gated at Windsor Street therefore access to the side entrance for shop 3 can only be provided from this footpath via the rear carpark. Owner's consent has also not been provided for vehicular access from the rear carpark by Hawkesbury City Council.

The residential component of the development does not provide a separate street frontage entrance to the lift lobby providing a secure entry for residents and visitors.

The proposed development will also have significant impacts to the neighbouring tree located on the boundary between the two properties. The neighbouring property is a heritage item as identified in Schedule 5 of Hawkesbury LEP 2012.

The proposed development does not meet the 9 quality design principles under SEPP 65 - Design Quality of Residential Apartment Development and does not meet design criteria within the Apartment Design Guide.

The application is therefore recommended for refusal.

Reason for Referral to Local Planning Panel

Development Application DA0737/17 is referred to the Hawkesbury Planning Panel for consideration and determination as:

- The proposal is Sensitive Development under S9.1 Local Planning Direction Schedule 1 Item 4 – Development to which State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development applies.

Proposal

The application seeks to construct a shop top housing development on the subject site comprising of the following:

- Ground floor
 - Extend existing shop 1 to create new floor area;
 - 2 x commercial premises at rear of site;
 - Lift, lift lobby and internal stairs;
 - Pedestrian path and driveway from public carpark;
 - 6 x retail parking spaces and 6 x residential carparking spaces including 1 x accessible space; and

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- Enclosed commercial and residential waste bin room.
- First to Third Floor – 2 x 2 bedroom apartments, lift and internal stairs.

Permissibility

The site is zoned B2 – Local Centres for which Shop top housing is permissible with consent.

Key Issues

The key issues of the development application are:

- Site within ANEF Contour 25-30;
- Bulk and scale;
- Privacy and amenity;
- Safety and security;
- Unacceptable tree impacts;
- Insufficient carparking;
- Access for shop 3 via the right of footpath;
- Owner's consent to right of footpath and Council's rear carpark; and
- Waste management.

Recommendation

It is recommended that development application DA0737/17 be refused.

REPORT:

Description of Proposal

The proposal seeks to construct a four storey shop top housing development comprising of the following:

- Ground floor
 - Extend existing shop 1 to create new floor area;
 - 2 x commercial premises at rear of site;
 - Lift, lift lobby and internal stairs;
 - Pedestrian path and driveway from public carpark;
 - 6 x retail parking spaces and 6 x residential carparking spaces including 1 x accessible space; and
 - Enclosed commercial and residential waste bin room.
- First to Third Floor – 2 x 2 bedroom apartments, lift and internal stairs.

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Figure 1: Front elevation montage (Windsor St)



Figure 2: Rear elevation montage (public carpark)

Description of the Site and Locality

The site is legally described as Lot 2 in DP 556754 and formally known as 197 Windsor Road Richmond. Currently onsite is two commercial tenancies, one of which is currently vacant, and a storage area. Vehicular access is at the rear of the site via the public car park.



Image 1: Aerial location

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Background and/or History

Pre-Lodgement Advisory Panel- PD0010/15

A pre-lodgement meeting was carried out with Council on 23 July 2015 for a mixed use development. The key issues identified with the proposal were:

- Aircraft noise impacts due to the site being located within an Australian Noise exposure Forecast (ANEF) Noise Contour of 25-30 due to the RAAF Base;
- Building height exceeds 12metres;
- Heritage Impact Statement required for adjoining and surrounding heritage items impacts and potential archaeological relics onsite;
- Formal easement for access through Council's public carpark may be required; and
- Arborist report required for assessment of neighbouring tree;

The meeting minutes were provided to the applicant on 29 July 2015.

Current Application History

22 December 2017	Application lodged with Council.
15 January 2018	Referrals sent to internal referral officers and external referral bodies.
17 January 2018	Initial review letter sent requesting: <ul style="list-style-type: none">• Legal access from Council owned public carpark and owners consent required;• Aircraft noise;• Safety and security – crime prevention through environmental design;• Estimated cost of works.
19 January to 2 February 2018	Notification carried out with four submissions received.
31 January to 6 March 2018	Various referral responses received including SEPP 65 Peer Review, Endeavour Energy, NSW Police, Heritage and Engineering.
23 May 2018	Referral comments received from Department of Defence.
17 August 2018	Response from applicant's solicitor to Council's initial review letter.

Submissions

Notified - submissions received

The application was notified between 19/01/2018 - 2/02/2018 in accordance with Chapter 3 of the Hawkesbury Development Control Plan 2002 (HDCP), Notification of Development Applications.

Four submissions have been received and the issues identified are outlined in the matters for consideration under Section 4.15.

Referrals - External

Department of Defence

The Department of Defence has provided comments in regards to the proposed development. These comments are provided as attachment A. Of relevance is the following comments in regards to aircraft noise and public safety zones, which reads as follows:

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“Aircraft Noise & Public Safety Zones

The subject site is located 1.8 kilometres from the extended centreline of the main runway and within the 25-30 Australian Noise Exposure Forecast (ANEF) contours of RAAF Base Richmond. Under Australian Standard 2021:2015 it is unacceptable to develop a house, home unit or flat in a noise contour zone greater than 25.

Defence notes that the Acoustic Report submitted with the DA incorrectly states the proposed development is located between the ANEF 20 and ANEF 25 contours. As such, the report is also incorrect in its assertion that the residential component of the proposed development is conditionally acceptable.

Furthermore, the subject site is situated in the Accident Potential Zone 1 (APZ1) area for RAAF Base Richmond and residential use is not supported in that APZ.

Defence understands that existing dwellings are already located within these ANEF contours and the APZ; however the proposed development will intensify residential land use in an area subject to very high levels of aircraft noise and in an area with a greater risk of aircraft accident. On this basis, Defence does not support the residential component of the proposal.”

Comment: The Department of Defence does not support the proposed development due to the site being within the 25-30 Australian Noise Exposure Forecast (ANEF) contours of RAAF Base Richmond. A full assessment of the proposed development is provided further in this report.

NSW Police

The NSW Police have provided recommended conditions should the application be supported, however a number of concerns were raised by NSW Police that Council has identified as significant issues. These concerns are as follows:

- **Noise** – Concerns are raised that the development is a direct neighbour to an existing hotel which has trading hours of Monday to Saturday 5am – 3am and Sunday 10am to midnight. This late trading venue has potential noise impacts which would potentially disturb the residents of the proposed development;
- **Carpark**- Concerns are raised that the carpark has little to no natural surveillance from the public places into the carpark area and presents opportunities for criminal activity to be carried out without being seen. The carpark will not have a barrier or garage door which will leave it open to the general public.

Comment: The lack of any security measures to the carpark due to the combination of the residential and commercial parking is not supported. Separate parking arrangements between the residential and commercial parking is required to ensure safety and security is provided and to restrict unauthorised access to the residential component of the development.

Endeavour Energy

Endeavour Energy has advised that the applicant is required to submit an application for connection of load where an assessment of the final load will be carried out and the method of supply will be determined. Were the application to be supported suitable conditions of consent would be applied in this regard.

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Referrals - Internal

Urban Design

Council's Urban Design consultants have carried out an assessment of the proposed development in accordance with SEPP 65 quality design principles, a copy of which is provided in Attachment 1. The assessment has raised the following fundamental issues with the proposed development:

- *The concentration of the bulk of the development on the northern portion of the site;*
- *The creation of a new shop (shop 3) which is accessed from the internal car park area;*
- *The lack of landscaping and communal areas;*
- *The selection of materials, in particular, the timber look-alike cladding and the use of clear glazing to the balcony balustrades;*
- *The acoustic impacts resulting in the site's location in close proximity to the RAAF base Richmond;*
- *The thermal comfort of the units and the ability of the building to handle extremely high temperatures in summer which commonly exceed 40°C in Richmond;*
- *The general lack of sustainability measures incorporated into the design of the building;*
- *The lack of consideration of any security measures, especially given the location of the site in proximity to an existing licensed premises and a public car park;*
- *Inadequate provision of parking for the total number of residential units and retail spaces which are proposed on the site;*
- *The architectural detailing of the northern and southern elevations, including the geometry of window and door openings and frames, and other architectural features;*
- *The long term visual appearance of the building.*

The assessment of the application has concluded that the proposed development is not supported in its current form. This is discussed further in this report.

Heritage

The following issues were identified by Council's Heritage Consultant:

- *The proposed four storied building is at the rear of site and has heritage properties on adjacent sides.*
- *The Proposal isolates the site into two areas with the front shopping area not analysed and designed as part of this development proposal.*
- *It is considered due to its positioning next to heritage items that the overall site has a masterplan developed that shows Council and the community the intentions for the overall eventual development. The works could be staged however with the overall planning, functional and architectural framework guiding the current proposal.*
- *The SHI report be updated as part of the resubmission, including an overall assessment of both rear and front proposals. The SHI be submitted for consideration and approval by Council.*

Comment: The application is subject to Clause 5.10 Heritage Conservation under Hawkesbury LEP 2012. The application is not considered to be consistent with the objectives of Clause 5.10 and this is discussed further in this report.

Development Engineer

The following issues were identified by Council's Development Engineer which are discussed as follows:

- **Access** - *Pedestrian entry to the apartments and off street car parking access is proposed through the council car park located at the rear of the development. Council has not given*

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owner's consent for the applicant to access the site via this public carpark and this is arrangement cannot be supported;

Comment: Council are the owners of the multiple lots that make up Woodhills Carpark and the applicant is relying on vehicular access through the carpark to the proposed development's driveway and carpark. The public carpark is not classified as a public road and owner's consent is therefore required.

The applicant has acknowledged that owner's consent is required to be obtained in order for the proposed development to utilise Council's carpark for access. To date Council has not provided owner's consent for the use of the public carpark and this issue remains outstanding.

- **Building Offset** – the proposed building has a zero setback which does not provide adequate pedestrian access along the rear shopfronts. A minimum 1.5m to 2m setback is required or, as a minimum, the building is to be in line with the neighbouring buildings to provide an adequate pathway;

Comment: There is a small portion of the public carpark that has been provided as curb, guttering and a small footpath. Given equitable access is required to the commercial premises and residential lift lobby on the ground floor, the development is required to provide a minimum 1.5m setback to allow for unimpeded equitable access.

- **Stormwater** – The proposed new stormwater kerb inlet pit is too close to the proposed access driveway. This pit must be moved to a suitable location. Stormwater pits are to be 1m from a driveway and boundary and this is to be amended;

Comment: The drainage issue identified above have not been resolved and remain outstanding.

- **Car Parking & Car park configuration** – *12 off-street car parking spaces is proposed which is 9 spaces short of the total required. There are traffic and pedestrian conflicts within the carpark as parking space Retail 06 conflicts with parking space Res 03, the waste room conflicts with the shared zone of the accessible parking space, and the separate pedestrian access from the public carpark does not extend all the way to the commercial tenancies. The proposed driveway ramp is not in accordance with AS2890 Series as it does not provide the required two-way ramp width of 5.8m;*

Comment: The proposal has provided insufficient parking provisions in accordance with Council's DCP requirements and the RMS Traffic Generating Development Guidelines. The proposal is deficient in 5 commercial parking spaces, 2 residential spaces and 2 residential visitor spaces.

The Traffic and Parking Assessment Report by Varga Traffic Planning Pty Ltd dated 19 December 2017 considered the parking deficiency as acceptable, however the report does not provide any substantiated evidence to support the arguments for the deficiency in parking other than the close proximity of the public carpark. The shortfall for the commercial component of the development is considered to be unacceptable as the Council public carpark is not to be substituted for the parking requirements of this or any other future development within the locality.

The shortfall for the residential component of 2 residential spaces and 2 visitor space is also required to be provided, particularly as the time limited car park would require any visitor of the residential development to move their vehicle after a 4 hour time period which is not acceptable.

The traffic and pedestrian conflicts identified by Council's Development Engineer within the carpark is considered to be unacceptable and the driveway ramp does not allow two way vehicles and no waiting bay has been provided to allow vehicles to queue when the driveway is in use.

The configuration of the car park also has unacceptable amenity and security impacts for the future residents of the proposed development. The parking for both the residential and commercial tenancies

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has not been separated. This prohibits the driveway and carpark from being secured with a roller door or gate resulting in the car park access being readily accessible to the public at any given time which is a significant safety risk.

The car park does not have a roof to provide protection from the weather. This does not comply with Part C Section 2.5.1 of Hawkesbury DCP 2002.

- **Waste** - *It is unclear how waste bins will be serviced as there is no loading bay provided onsite within the carpark and kerbside collection is not available for the development as this is not a public road and Council would not provide consent for this to occur bins lined up along a public carpark access road would potentially block the roadway and would create traffic conflicts. Confirmation is required as to how waste management will be facilitated for the site.*

Comment: As identified above the development has not provide any details as to how waste collection is to be facilitated given no loading zones have been provided in the car park and the rear boundary has a zero setback along the car park lane. External collection points for both the residential and commercial tenancies have not been provided and no discernible unencumbered access path has been provided to allow travel of the waste bins to and from the waste room to allow servicing.

Kerbside collection cannot be facilitated as the bins would be required to be serviced from the carpark access road. This would create traffic conflicts within the carpark and result in a large number of bins being located along this rear frontage blocking the commercial tenancies and/or driveway. Council does not support this arrangement and servicing of bins is required to be carried out onsite.

Separate waste bin rooms have not been provided for the residential and commercial components of the development which creates conflicts between the residential and commercial components of the proposed development.

The waste bin room also conflicts with the shared zone for the accessible parking space with no separate path provided through the shared zone to manoeuvre or service the bins.

Building Surveyor

No objections subject to recommended draft conditions.

Council Policies, Procedures and Codes to which the matter relates

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

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

Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) (SREP No. 20)

State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development

Hawkesbury Local Environmental Plan 2012 (LEP 2012)

Hawkesbury Development Control Plan 2002 (HDCP 2002)

Development of Flood Liable Land Policy 2012

Matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979

In determining the application, Council is required to take into consideration the following matters as are relevant to the development that apply to the land to which the development application relates:

(a) The provisions of

(i) Any environmental planning instrument:

State Environmental Planning Policy Basix:

A valid BASIX certificate has been submitted. The certificate demonstrates compliance with the provisions of the SEPP and is consistent with the commitments identified in the application documentation. Were the application to be supported a standard condition would be included as a draft condition of consent requiring compliance with this BASIX certificate.

State Environmental Planning Policy No. 55 - Remediation of Land

The provisions of SEPP 55 require Council to consider the potential for a site to be contaminated. The subject site has a history of commercial use at the front and car parking at the rear. A Stage 1 Preliminary assessment has not been provided to determine whether the site is likely to contain any contamination and further investigation is required to ensure the site is suitable for the intended use as a shop top housing development.

The application has not adequately addressed the requirement of SEPP 55 and is not supported.

Sydney Regional Environmental Plan No. 20—Hawkesbury-Nepean River (No 2—1997)

The aim of this Plan is to protect the environment of the Hawkesbury-Nepean River system by ensuring that the impacts of future land uses are considered in a regional context. The Plan includes strategies for the assessment of development in relation to water quality and quantity, scenic quality, aquaculture, recreation and tourism.

The development has not adequately addressed the stormwater management for the development and therefore cannot demonstrate that the additional stormwater generated by the proposal is generally consistent with the provisions of SREP No. 20 and is not supported.

State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

This Policy aims to improve the design quality of residential flat development. This proposal has been assessed against the following matters relevant to SEPP 65 for consideration:

- The 9 SEPP 65 Design Quality Principles; and
- The NSW Apartment Design Guide (ADG) guidelines.

Design Quality Principles

Part 2 of the Policy introduces 9 design quality principles. These principles provide a guide for achieving good design and the means of evaluating the merits of proposed solutions.

As required by the Environmental Planning and Assessment Regulation, this application is accompanied by a response to the design principles, as prepared by the project architect.

The proposed development has been assessed against the 9 design principles by Council's Urban Design and Heritage consultants as follows:

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Design Quality Principle	Comment
Principle 1: Context & neighbourhood character	
<p>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>Richmond Town Centre is one of the five Macquarie towns established in 1810. The town centre retains a number of distinguishable characteristics of the original plan including the centrally located Richmond Park, grid plan layout of streets and a number of early Colonial public buildings. The town centre also retains a significant number of buildings from the Victorian, Federation and Inter-War periods, with some buildings from the late-20th Century. The predominant scale of buildings in the area is one to two storeys, however, it is acknowledged that the current development controls allow for greater heights and more dense urban development.</p> <p>The four storey height of the proposed development sets a new precedent in the area. While it is acknowledged that a maximum building height of 12m is permissible under the current HLEP 2012 controls, any development on the site needs to sensitively respond to the existing neighbourhood character. The concentration of taller building heights at the rear of the site adjoining the public car park is supported. This approach is considered to be more appropriate given the existing character and heritage significance of the town centre and heritage items in the vicinity of the site. However, given the existing site conditions and context, a more detailed analysis of a number of different options for the redevelopment of the site would be beneficial in terms of arriving at the most appropriate site layout, building heights, bulk, form and scale for the site within its context.</p> <p>The redevelopment of the site should focus on the site as a whole and should consider the scale, massing and appropriate layout and uses of buildings across the entire site. The existing 1-2 storey form and height of buildings along Windsor Street would allow for the construction of a two storey building fronting Windsor Street. This, in turn would allow for a reduced building footprint and a larger internal courtyard separating the two buildings on the site. If this option is considered, it would be beneficial to redevelop the site in unison with the owner of 199 Windsor Street.</p> <p>The proposed works of the front part of the site needs to be re-considered. The extension of the existing ground floor areas and division of the ground floor into three separate shop tenancies reduces street activation of the Windsor Street which would detract from the existing high-street character of the Windsor Street. In addition, a retail/commercial tenancy with its principal access to the internal parking area is considered to be inappropriate as this area is overlooked by all of the bedrooms of the proposed units. The division of the site into three sections with all areas being accessible to the public will reduce the amenity of the development for the residents.</p> <p>The site is visually prominent within the Richmond Town Centre due to the large open spaces provided by Richmond Park to the south and the public car park to the north, the existing low scale of development and the relatively flat land form in the area. The principal elevation of the proposed new mixed use building faces the rear lane and public car park. Consideration should also be given to the southern elevation. Whilst it is generally accepted that the lower</p>

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Design Quality Principle	Comment
	<p>two storeys of the southern elevation will not be visible from Windsor Street, the upper storeys will be visible and should appear as a recessive element.</p> <p>Furthermore, the materiality of the building should relate to the existing materials present in built elements within the townscape.</p> <p>With adequate consideration of the built form, scale, architectural detailing and materiality of the building and the need for a high level of amenity, an acceptable outcome may be achieved for the redevelopment of the site which balances the existing character and heritage significance of the area with the desired future character of the area.</p>
Principle 2: Built form and scale	
<p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>The proposal involves the construction of a four storey mixed use building with a flat roof and overall cubiform appearance. The attempt of creating asymmetry in the northern elevation is supported as it breaks up the façade and creates smaller elements which relate better with the smaller scale of the existing surrounding development.</p> <p>Whilst future developments may introduce larger built forms into the area, the current approach of breaking down the façade is considered to be a better approach in the short to medium term. However, the detailing which achieves this needs fine tuning. The depth of the pergola beams seem to be out of scale in terms of the capacity of such narrow beams to span the length of the balcony. Further consideration should be given to the detailing and structural integrity of these elements, including the provision of a structural engineer's certificate and more information on the materiality of these elements.</p> <p>In addition, the vertical elements on the eastern portion of the northern façade appear as a tacked-on afterthought to the design. It is recommended that further consideration be given to higher quality materials and architectural detailing to better integrate this design element into the façade.</p>
Principle 3: Density	
<p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>Achieving acceptable levels of amenity, communal areas, landscaping and sustainability may necessitate a reduction of the overall density of the development.</p> <p>The balance between the number of residential units and commercial tenancies needs to be reconsidered. Commercial tenancies should be placed only where they have direct access to Windsor Street or the rear lane.</p>
Principle 4: Sustainability	
<p>Good design combines positive environmental, social and economic outcomes.</p> <p>Good sustainable design includes use of natural cross ventilation and</p>	<p>The Statement of Environmental Effects by Cityscape Planning + Projects states that sustainability has been a fundamental objective of the entire design. Furthermore, the Design Verification Statement specifies that the development promotes ecologically sustainable development through the following measures:</p> <ul style="list-style-type: none"> - Benefiting from orientation;

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<p>sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</p>	<ul style="list-style-type: none"> - Achieving cross-flow ventilation; - Active and passive sun control systems; - Working towards ensuring waste minimisation during construction and in terms of the life-span of the building, including in the recycling of materials and waste; - Use of low energy saving devices; - Compliance with BASIX. <p>While it is acknowledged that the residential units have been designed to benefit from the orientation of the site and do achieve adequate cross flow ventilation, some of the other ED measures have not been made clear, including the use of active sun control systems,</p> <p>The BASIX report by Green Star Energy Solutions indicates compliance with the NSW Government's building sustainability requirements, however, there are a number of other considerations which should be addressed:</p> <p>1. Insulation and thermal comfort:</p> <p>The roof appears to be a slender concrete slab. No details have been provided for insulation for the roof, walls or between floors. How will the heat from the roof be dissipated? Provide details of how the building will handle mid-40°C temperatures which are common in Richmond in summer.</p> <p>Are air conditioning units proposed? Consider incorporating ceiling fans into the design of main habitable areas (bedrooms and bathrooms) to reduce reliance on air-conditioning. Air conditioning units should not be placed on balconies. If air-conditioning is proposed, consideration should be given to an appropriate location of air-conditioning units and condensers which do not impact on the amenity of residents or adjoining neighbours in terms of aesthetics and noise.</p> <p>2. Water harvesting and recycling:</p> <p>There does not appear to be any consideration of water harvesting and recycling. Consider options for water collection and re-use of rainwater throughout the building (e.g. toilets, external hoses, etc.)</p> <p>3. Outdoor drying areas:</p> <p>There is no consideration of outdoor drying areas for laundry (other than on balconies). This will reduce the amenity of the development for residents and will also place a greater reliance on the use of clothes dryers which are energy intensive and unnecessary for a large portion of the year in Australia.</p> <p>4. Landscaping:</p> <p>The small landscaped area proposed in the undercover driveway is insufficient for a site this size. There are no deep soil areas. The lack of landscaping reduces the amenity of the development and reduces the performance of the development against the sustainability criteria outlined in this design principle.</p>

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	ESD principles should be incorporated into the design of all new buildings. Given consideration to the size of this site, the climatic conditions of Richmond and the readily available information and technologies relating to sustainable development, the proposal should consider additional sustainability measures.
Principle 5: Landscape	
<p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	<p>The current proposal provides minimal consideration of landscaping. With the exception of the narrow under-cover planter in the driveway off the rear lane, the proposal does not accommodate any landscaping. The lack of landscaping will significantly reduce the amenity of proposed apartments as well as the neighbouring properties.</p> <p>The applicant should give consideration towards providing some landscaping in the car parking area such as trees, shrubs or green walls in order to provide some visual relief as well as shade and permeable surfaces to reduce the heat island effect created by hard paved surfaces.</p> <p>At present, the proposed development is not consistent with the objectives of this design principle.</p> <p>The proposed level of density of both retail and residential units as well as the development of the northern portion of the site in isolation contributes to the issues identified with this design, including the lack of communal space, amenity and landscaping.</p>
Principle 6: Amenity	
<p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>Internal Unit Layout, Dimensions and Shapes</p> <p>The internal design of the units are reasonable in terms of creating access to natural light, cross flow ventilation and orientation of the living areas and bedrooms. However, the internal layout of the rooms could be adjusted in order to improve the amenity of the units in a number of ways:</p> <ol style="list-style-type: none"> 1. The arrangement of the kitchen, living, dining and media areas is a bit awkward, leading to the creation of unnecessary small rooms (i.e. the media room) and the reduction of living space. The partition between the media room and living room could be reconsidered. 2. The location of the kitchen adjacent to the balcony reduces the availability of overhead kitchen storage spaces. Relocating the kitchen to the rear wall of the living/dining/kitchen area would allow for both the living and dining areas to face the balcony and would provide more solid wall areas for kitchen storage. 3. The details and resolution of the wet areas including the

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	<p>bathrooms, en-suites could be improved with better location of items. For example, corner truncated showers may be impractical and the overall layout of the bathrooms may be too cramped.</p> <p>Access to Sunlight and Natural Ventilation</p> <p>All of the units are oriented north-south with balconies to both sides. The majority of main habitable areas such as bedrooms kitchen, living, dining and are located on the southern and northern sides of the building with windows and balconies to the outside. Adequate artificial lighting and ventilation will need to be provided to the bathrooms, ensuites, laundries and any other partitioned areas such as the media rooms.</p> <p>Orientation and Outlook</p> <p>The 21.265m separation between the mixed use building on the northern portion of the site and the commercial building on the southern portion of the site is considered to be adequate to allow for an adequate outlook, access to natural light and breezes to all of the units.</p> <p>With car parks located immediately to the north and south of the building, the use of an opaque glazing to the balconies on both sides may reduce the visual impact and glare and may improve the outlook and amenity of the units. This is also a privacy issue, particularly on the northern side of the building where balconies face the public car park. This is discussed further below in relation to visual and acoustic privacy.</p> <p>Visual and Acoustic Privacy</p> <p>The clear glazed balustrades to the balconies on the north and south sides of the building will reduce the amenity of the building in terms of privacy for the residents as well as the amenity of the neighbourhood in terms of the ongoing day-to-day appearance of the building which could be compromised by the clutter of domestic items and laundry on balconies.</p> <p>To provide increased privacy for residents and the continued satisfactory appearance of the building, an opaque finish to the balcony balustrades is suggested. This could be achieved through the use of frosted glass rather than clear glass which would still enable the provision of natural light.</p> <p>The proposal to extend the commercial building on the southern portion of the site with the creation of a new shop facing the private car park is not considered to be appropriate and will result in negative impacts on the visual and acoustic privacy of all of the units as the bedrooms overlook the internal car park.</p> <p>It is noted that the subject site is located within close proximity to the RAAF Base Richmond and is within the ANEF 25 – 30 contour. In accordance with Clause 6.6 of the HLEP 2012, the consent authority must consider the acceptability of noise sensitive development situated within the vicinity of the RAAF Base Richmond.</p>

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	<p>The site is located adjacent to an existing licensed premises. The proposal should demonstrate how the acoustic amenity of the residents can be protected when located in such close proximity to an existing licensed premises as well as a number of other retail premises.</p> <p>Storage</p> <p>The internal design of the units indicate some allowance for built-in robes to the bedrooms and additional storage in the living areas of some (not all) of the units. The size and dimensions of the rooms would appear to allow for the provision of adequate internal storage. However, further consideration should be provided for additional internal storage in both the kitchen and living areas.</p> <p>The commercial and residential bin room needs to be reconsidered. It appears that the width of the opening to the bin room would not provide sufficient access for the commercial rubbish bins.</p> <p>Communal Space</p> <p>No communal open space has been provided for this building which reduces the amenity of the development for residents.</p> <p>Shelter</p> <p>The 3D photomontage of the northern elevation indicates the presence of an awning over the footpaths in front of the shops. The ground floor plan, roof plan and cross sections do not show this detail. The construction of an awning may be supported, however, further information is required.</p>
Principle 7: Safety	
<p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>As noted above, the current proposal lacks any consideration of security which is of particular importance given consideration to the site's location adjacent to a licensed premises and public car parking area which may result in safety/security issues.</p> <p>The security measures for the retail spaces fronting the public car park should be clarified. The design should incorporate sufficient detail to demonstrate how security for these retail tenancies should be achieved (e.g. glass type, lighting, etc.).</p> <p>Adequate lighting should be provided to the undercover driveway and internal car park. Consider investigating options for lighting in these areas which will not impact on the amenity of the units at night.</p> <p>The existing design provides an open pedestrian and vehicular access from the rear lane. This would enable any member of the public to walk through the site which may raise concerns in relation to safety as well as visual and acoustic privacy of the residents. As noted above, the creation of a new shop fronting the internal car park is not considered to be appropriate for this reason. In addition, consideration should be given to providing secure pedestrian and vehicular access to the site. This, together with the reduction of the footprint of the commercial building on the northern portion of the site would also allow for the creation of viable and usable communal</p>

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	facilities such as communal courtyard and washing lines.
Principle 8: Housing diversity and social interaction	
<p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p>The proposed four storey mixed use building comprises six two bedroom apartments with the same size and layout, therefore being targeted at a fairly narrow socioeconomic demographic. Given the limited availability of apartments in the Richmond area, the development will introduce a greater diversity of housing choice in the area and is therefore considered to be acceptable.</p> <p>The current design does not provide for social interaction between residents through communal facilities or spaces.</p> <p>Consideration should be given towards creating communal spaces that will not adversely impact on the visual and acoustic privacy on the residents of the units or the surrounding properties. The removal of shop 3 and its associated parking may provide an opportunity for some outdoor communal facilities to be incorporated into the design of the development.</p>
Principle 9: Aesthetics	
<p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>Further consideration should be given to geometry of window and door openings in order to make the pattern and proportions of openings more cohesive and to achieve a harmonious relationship between all window openings. In particular, the balcony doors, windows and aluminium framed doors to the ground floor retail spaces are all different widths. In addition, the detailing of the window elements could be fine-tuned so that they are recessed from the facades to provide more articulation between the solids and voids. This is of particular importance on the southern elevation.</p> <p>The geometry of design elements on the south elevation does not respond to the established character of the area, particularly in regards to the timber look-alike cladding on the eastern side of the second floor. It is recommended that the design of this façade be amended with a more simplified approach and articulation be provided by other means and through the use of more appropriate materials.</p> <p>The predominant materials of the town centre include brick or rendered/painted brick for walls and corrugated metal, terracotta tiles or slate for roofs. Further clarification of the choice of materials is required. The detailing shown in the photomontage contained within the schedule of exterior materials and finishes provides the appearance of a concrete look-alike cladding as a predominant wall surface finish with some timber look-alike elements which do not relate to the predominant use of materials in the area and are not supported.</p> <p>The detailing should ensure that the appearance of the building is maintained in the long term. For example, the use of an appropriate capping at the top of external painted walls to assist in the prevention of the streaky appearance that results from the build-up of dirt.</p> <p>Furthermore, the selection of high-quality durable materials such as concrete or rendered brick rather than external wall cladding will assist in the maintenance of the aesthetic appeal of the building in</p>

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	<p>the long term.</p> <p>The proposed design treats the north elevation as the principal elevation and the south elevation as the rear. Due to the scale of the proposed development and the visual prominence of the site along Windsor Street and from Richmond Park, the design of the four-storey component of the building should also address the south elevation. The overall form, architectural detailing and materials utilised on this elevation should be simple and recessive.</p>

The above assessment has found the proposed development to be inconsistent with the design principles in terms of scale and density, sustainability, landscaping, amenity, safety, social interaction and aesthetic appearance.

The bulk and scale of the development has not taken into consideration the surrounding local context, which is 1-2 storey commercial development.

The proposed development is not considered to satisfy the design quality principles and is not supported.

Apartment Design Guidelines (ADG)

The proposed development has been assessed against the design criteria of the ADG. A detailed assessment is provided in the following compliance table:

SEPP 65 ADG		
Design criteria/guidance	Considerations	Consistent
Part 2 Developing the controls		
2E Building Depth		
Use a range of appropriate maximum apartment depths of 12-18m from glass line to glass line.	Up to 18m	Yes
2G & 2H Street, Side & Rear Setbacks		
Street setbacks establish the alignment of buildings along the street frontage. Side and rear setbacks govern the distance of a building from the side and rear boundaries and govern the height of the building.	There are no setbacks established for shop top housing under Council's DCP.	N/A
Part 3 Siting the development		
3B Orientation		
Building types and layouts respond to the streetscape and site while optimising solar access and minimising overshadowing of neighbouring properties in winter.	Adequate orientation has been provided.	Yes
3C Public domain interface		
Transition between private & public domain is achieved without compromising safety and security and amenity of the public domain is retained and enhanced.	The entrance to the residential component of the development is located at the rear of the site from a public carpark. This does not achieve an adequate transition between public and private domains in terms of safety, particularly at night as there is no passive surveillance provided from the street.	No
3D Communal & public open space		
Provide communal open space to enhance amenity and opportunities for landscaping & communal activities.		

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Design criteria/guidance	Considerations	Consistent
<p>Design Criteria</p> <ol style="list-style-type: none"> 1. Provide communal open space with an area equal to 25% of site; 2. Minimum 50% of usable area of communal open space to receive direct sunlight for a minimum of 2 hours between 9 am and 3 pm on 21 June. <p>Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:</p> <ul style="list-style-type: none"> • provide communal spaces elsewhere such as a landscaped roof top terrace or a common room • provide larger balconies or increased private open space for apartments • demonstrate good proximity to public open space and facilities and/or provide contributions to public open space 	<p>Site area: 885.2m² 25% = 221.3m² required. No communal open space provided.</p> <p>The proposal has justified that no communal open space is required as the site is opposite Richmond Park. Richmond park does provide recreation facilities such as a play area, sports oval and public toilets, however the proposed development is not readily accessible to the park. The entrance to the residential component of the development is located at the rear of the public carpark where future residents would have to exit the building at the rear, traverse through the mall and across the road to the park. The park does not provide other facilities, such as BBQs and water and power outlets, and the public toilets are not located within close proximity to the play area.</p> <p>The development has adequate opportunities to provide rooftop communal open space between the existing commercial tenancies fronting Windsor Street and the rear portion of the development and this aspect of the development has not been adequately addressed.</p> <p>Alternatively the development could provide larger balconies or increased private open space. The proposed balconies are at 22m² which is 12m² larger than what is require, however the development is required to provide 221.3m² in communal open space. Therefore the development should provide balconies of 37m² each in order to meet this requirement.</p>	<p>No</p> <p>No</p>
<p>3E Deep Soil Zone</p> <p>Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.</p>		
<p>Design criteria</p> <p>Deep soil zones are to be provided equal to 7% of the site area and with min. dimension of 3m.</p> <p>Design Guidance:</p> <ul style="list-style-type: none"> • 10% of the site as deep soil on sites 650m²-1,500m² • 15% of the site as deep soil on sites greater than 1,500m² <p>Where a proposal does not achieve deep</p>	<p>The proposed development does not provide any deep soil due to the zero setbacks proposed. The ADG does provide provisions that allow for developments to have lesser deep soil where alternative forms of planting are provided, such as on structure plantings. However the proposed development has no landscaping provisions other than a planter box along the driveway entrance located at the rear. This is considered unacceptable in</p>	<p>No</p>

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Design criteria/guidance	Considerations	Consistent						
soil requirements, acceptable stormwater management should be achieved and alternative forms of planting provided such as on structure.	terms of landscape amenity.							
3F Visual Privacy								
<p>Building separation distances to be shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.</p> <p>Design Criteria</p> <p>Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <tr> <th>Building Height</th><th>Habitable rooms & balconies</th><th>Non habitable rooms</th></tr> <tr> <td>Up to 12m(4 storeys)</td><td>6m</td><td>3m</td></tr> </table> <p>Note:</p> <ul style="list-style-type: none"> No building separation is required between blank party walls. 	Building Height	Habitable rooms & balconies	Non habitable rooms	Up to 12m(4 storeys)	6m	3m	<p>The proposed development has zero setbacks at every boundary. There are no buildings located at the rear which would require building separation distances.</p>	N/A
Building Height	Habitable rooms & balconies	Non habitable rooms						
Up to 12m(4 storeys)	6m	3m						
3G Pedestrian Access & entries								
Objective 3G-1: Building entries and pedestrian access connects to and addresses the public domain.								
Design guidance:								
Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge.	The proposal does not have multiple entries for the residential component of the development.	No						
Entry locations relate to the street and subdivision pattern and the existing pedestrian network.	The entry location for the apartments and shop 3 do not relate to the street. There is no pedestrian thoroughfare connecting the rear of the site to Windsor Street. Insufficient setbacks have been provided at the rear to allow accessible and safe access along the rear frontage of the site. The proposed development is required to have a minimum 1.5m setback at the rear to allow for pedestrian access; particularly to the commercial tenancies that front the public carpark; to allow for an adequate waiting area for pedestrians to cross over the driveway and to connect to the partial pedestrian path that is provided along the rear frontage.	No						
Building entries should be clearly identifiable and communal entries should be clearly distinguishable from private entries.	Building entries are not clearly identifiable as the residential and commercial tenancy entry is located at the rear of the site inside the development with no relationship to the primary street address of the property.	No						

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Where street frontage is limited and multiple buildings are located on the site, a primary street address should be provided with clear sight lines and pathways to secondary building entries.	The residential entry is not located at a primary street address and does not have clear sight lines or pathways to any of the entries for the development.	No
Objective 3G-2: Pedestrian Access, entries and pathways are accessible and easy to identify. Design guidance:		
Building access areas including lift lobbies, stairwells and hallways should be clearly visible from the public domain and communal spaces.	The building access including the lift lobby, stairwells, and carpark is not visible from the public domain as the access is provided at the rear from the public carpark. Access to shop 3 is also not visible from the public domain as there is no discernible pedestrian path directly to this shop tenancy from the street. There is no way of knowing that this commercial tenancy is located within the development.	No
The design of ground floors and underground car parks minimise level changes along pathways and entries.	No level change is proposed.	N/A
Steps and ramps should be integrated into the overall building and landscape design.	No steps or ramps are proposed.	N/A
For large developments 'way finding' maps should be provided to assist visitors and residents.	The proposed development has not provided any identification signage or way finding maps to identify the location of shop 3 or the entry lobby of the residential apartments.	No
For large developments electronic access and audio/video intercom should be provided to manage access.	No details are provided as to what level of security access the development will provide.	No
Objective 3G-: Large sites provide pedestrian links for access to streets and connection to destinations Design guidance:		
Pedestrian links through sites facilitate direct connections to open space, main streets, centres and public transport	The site does not provide any pedestrian link between Windsor Street and the rear entry from the public carpark.	No
Pedestrian links should be direct, have clear sight lines, be overlooked by habitable rooms or private open spaces of dwellings, be well lit and contain active uses, where appropriate	The proposed development does not provide direct links to any other pedestrian path as there is no continuous pedestrian path along the rear car park and no thoroughfare through the site to Windsor Street.	No
3H Vehicle Access		
Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.	<p>The vehicular access point is located at the rear of the site from the public carpark. It is located next to the pedestrian access path for both the commercial tenancies located on the other side of the carpark and the residential component of the development.</p> <p>The planter box, which separates the pedestrian path from the driveway, is 800mm</p>	No

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Design criteria/guidance	Considerations	Consistent
	in height and stops at the end of the lift. There is no separate pedestrian path through the carpark for access to the commercial tenancies which creates traffic and pedestrian conflicts.	
3J Parking Provisions		
Car parking: For development in the following locations: <ul style="list-style-type: none"> • on sites that are within 800 metres of a railway station; or • within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre, the minimum parking for residents and visitors to be as per RMS Guide to Traffic Generating Developments, or Council's car parking requirement, whichever is less.	The site is 250m from Richmond Station and therefore the RMS Guide to Traffic Generating Development is applicable. Car parking calculations have been carried out in the DCP compliance table below under Part C.	Refer DCP table.
Bicycle Parking: Provide adequate motorbike, scooter and bicycle parking space (undercover).	No covered bicycle parking provided.	No
Basement Design for parking: <ul style="list-style-type: none"> • Basement car park not to exceed 1m above ground (use stepped/ split level). • Natural ventilation to be provided for basement car parks. Any ventilation grills/ screening device to be integrated into the façade and landscape design. 	Carpark is at grade with no basement car parking proposed.	N/A
Part 4 Designing the building		
4A Solar & daylight access		
Design Criteria Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.	The proposed development has orientated the living rooms and private open space balconies along the northern aspect of the site and therefore achieves the solar access requirements.	Yes
A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid- winter.	No apartment receives no direct sunlight.	Yes
Design should incorporate shading and glare control, particularly for warmer months.	Shade for balconies provided by canter levered roof of upper floor.	Yes
4B Natural Ventilation		
All habitable rooms are naturally ventilated.	All habitable rooms have openings to provide natural ventilation.	Yes
Design layout of single aspect apartments to maximises natural ventilation:		
Design criteria 1. At least 60% of apartments are naturally cross ventilated in the first	100% cross ventilation provided.	Yes

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Design criteria/guidance	Considerations	Consistent												
<p>nine storeys of the building.</p> <p>2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p>	17.87m max depth.	Yes												
4C Ceiling Heights														
<p>Ceiling height achieves sufficient natural ventilation and daylight access. The following is required as a minimum:</p> <table border="1"> <tr><th colspan="2">Min ceiling height for apartment & mixed use buildings</th></tr> <tr><td>Habitable rooms</td><td>2.7m (3.1m floor to floor)</td></tr> <tr><td>Non Habitable</td><td>2.4m</td></tr> <tr><td>2 storey apts</td><td>2.7m for main living area , 2.4m for 2nd floor</td></tr> <tr><td>Attic spaces</td><td>1.8m at edge of room</td></tr> <tr><td>Mixed used zone</td><td>3.3m for ground & 1st floor to promote future flexibility of use.</td></tr> </table>	Min ceiling height for apartment & mixed use buildings		Habitable rooms	2.7m (3.1m floor to floor)	Non Habitable	2.4m	2 storey apts	2.7m for main living area , 2.4m for 2 nd floor	Attic spaces	1.8m at edge of room	Mixed used zone	3.3m for ground & 1 st floor to promote future flexibility of use.	<p>2.7m floor to ceiling</p> <p>2.7m</p> <p>N/A</p> <p>N/A</p> <p>2.7m floor to ceiling (3m floor to floor) The commercial component of the development on the ground floor has not provided a floor to ceiling height in accordance with the ADG, however the ceiling heights are acceptable in this instance as this is consistent with the ceiling heights of the existing commercial premises.</p>	<p>Yes</p> <p>No - acceptable</p>
Min ceiling height for apartment & mixed use buildings														
Habitable rooms	2.7m (3.1m floor to floor)													
Non Habitable	2.4m													
2 storey apts	2.7m for main living area , 2.4m for 2 nd floor													
Attic spaces	1.8m at edge of room													
Mixed used zone	3.3m for ground & 1 st floor to promote future flexibility of use.													
4D Apartment size and layout														
<p>Apartments are required to have the following minimum internal areas with one bathroom:</p> <ul style="list-style-type: none"> 2 bedroom = 70m²; <p><u>Note:</u></p> <p>➤ Additional bathrooms increase the minimum internal area by 5m².</p> <p>Each apartment has an en-suite therefore required area: 75m²</p>	103m ²	Yes												
<p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>	Provided.	Yes												
<p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height. In open plan layouts – habitable room (where the living, dining and kitchen are combined) be maximum depth of 8m from a window.</p>	Open plan apartments therefore 8m requirement: 6.6m	Yes												
<p>Master bedrooms - minimum area of 10m² & other bedrooms 9m² (excluding wardrobe space).</p>	<p>Master bedroom: 14.64m²</p> <p>Other bedroom: 11.13m²</p>	<p>Yes</p> <p>Yes</p>												

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Design criteria/guidance	Considerations	Consistent						
Bedroom - minimum dimension of 3m (excluding wardrobe space)	3.1m	Yes						
Living rooms or combined living/dining rooms have a minimum width of: • 4m for 2 and 3 bedroom apartments.	4.15m	Yes						
The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	6.95m	Yes						
4E Private Open Space and balconies								
<p>Apartments must provide appropriately sized private open space and balconies to enhance residential amenity.</p> <p>Design criteria</p> <p>1. All apartments are required to have primary balconies as follows:</p> <table border="1"> <tr> <th>Dwelling type</th><th>Minimum area</th><th>Min.depth</th></tr> <tr> <td>2 bedroom</td><td>10m²</td><td>2m</td></tr> </table>	Dwelling type	Minimum area	Min.depth	2 bedroom	10m ²	2m	All apartments are provided with a 22m ² primary balcony facing the public carpark with an additional balcony off the second bedroom.	Yes
Dwelling type	Minimum area	Min.depth						
2 bedroom	10m ²	2m						
2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	Not applicable. No ground floor apartments proposed.	N/A						
Primary private open space and balconies are appropriately located to enhance liveability for residents.	Private open space and balconies provided on the northern aspect to benefit from solar access.	Yes						
Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.	Comments made by Council's Urban Design Consultants have identified design and material element issues that require further consideration of the balcony integration.	No						
4F Common circulation and spaces								
<p>Design criteria</p> <p>1. The maximum number of apartments off a circulation core on a single level is 8.</p>	6 apartments only.	Yes						
<p>Design Guide:</p> <p>Daylight and natural ventilation should be provided to all common circulation space above ground. Windows should be provided at the end wall of corridor, adjacent to the stair or lift core.</p>	Lift core is positioned in the middle of the development with no access to windows or natural ventilation.	No						
4G Storage								
Adequate, well designed storage is to be provided for each apartment.	No storage areas have been provided in the carpark therefore all storage requirements must be provided within the apartments.							
<p>Design criteria</p> <p>1. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is to be provided:</p>	No details have been provided on the plans as to the amount of storage areas in m ³ has	No – can be conditioned.						

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Design criteria/guidance		Considerations	Consistent										
<table><tr><th>Dwelling type</th><th>Storage size volume</th></tr><tr><td>Studio</td><td>4m³</td></tr><tr><td>1 bedroom apt</td><td>6m³</td></tr><tr><td>2 bedroom apt</td><td>8m³</td></tr><tr><td>3 + bedroom apt</td><td>10m³</td></tr></table>	Dwelling type	Storage size volume	Studio	4m ³	1 bedroom apt	6m ³	2 bedroom apt	8m ³	3 + bedroom apt	10m ³		been provided for each apartment and a storage schedule has not been provided. Were the application to be approved a condition of consent could adequately address the requirement for storage.	
Dwelling type	Storage size volume												
Studio	4m ³												
1 bedroom apt	6m ³												
2 bedroom apt	8m ³												
3 + bedroom apt	10m ³												
At least 50% of the required storage is to be located within the apartment. Additional storage is conveniently located, accessible and nominated for individual apartments (show on the plan).													
4H Acoustic privacy													
<p>Noise transfer is minimised through the siting of buildings and building layout.</p> <p>Noise impacts are mitigated within apartments through layout and acoustic treatments.</p> <p>In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.</p> <p>Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.</p>		<p>The site is within the 25-30 Australian Noise Exposure Forecast (ANEF) contours of RAAF Base Richmond.</p> <p>A Traffic Noise and Aircraft Noise Assessment by Rodney Stevens Acoustics dated 16 November 2017 has been provided which addresses the acoustic impacts of the site within the 25-30 contours.</p> <p>The report makes recommendations as to the types of acoustic treatments that will be required for the development.</p> <p>The report has stated that to comply with interior design goals all external windows and doors to the internal spaces would need to be closed. This would negate the requirement under 4B of the ADG that requires natural ventilation.</p> <p>The proposed development also has potential acoustic impacts due to the main private open space balconies fronting the public carpark and the rear bedroom windows and balconies facing the development's car park and commercial premises.</p> <p>The location for the proposed development is not supported due to the site being within the 25-30 Australian Noise Exposure Forecast (ANEF) contours of RAAF Base Richmond and positioning of balconies and windows towards high noise areas.</p>	No										
4K Apartment mix													
A range of apartment types with different number of bedrooms (1 bed, 2 bed, 3 bed etc) should be provided.		<p>6 x 2 bedroom apartments.</p> <p>The proposal has not provided an adequate mix of apartment types.</p>	No										
4L Ground floor apartments: Not applicable													

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Design criteria/guidance	Considerations	Consistent
4M Facades		
Building facades to provide visual interest and respect the character of the local area.	The building façade has been identified as not being consistent with the local character and requires further consideration.	No
Building functions are expressed by the façade and entries are clearly defined.	The building entry for the residential component of the development is not easily defined as the entry is down a pedestrian path. There is no obvious residential lobby to access the lifts directly from the street.	No
4N Roof design		
Roof treatments are integrated into the building design and positively respond to the street.	No details have been provided as to the roof treatment.	No
Opportunities to use roof space for residential accommodation and open space are maximised.	No communal open space has been proposed for the development. There is ample opportunity to provide rooftop communal open space.	No
Roof design incorporates sustainability features.	No details have been provided as to what sustainable features have been included in the development particularly as the roof slab does not indicate any insulation.	No
4O Landscape design		
4O-1 Objective: Landscape design is viable and sustainable		
Design guidance: Landscape design should be environmentally sustainable and can enhance environmental performance by incorporating: <ul style="list-style-type: none"> • diverse and appropriate planting • bio-filtration gardens • appropriately planted shading trees • areas for residents to plant vegetables and herbs • composting • green roofs or walls 	The proposed planter box is underneath a covered area which is not sustainable. The proposal does not provide any usable landscaped areas.	No
Ongoing maintenance plans should be prepared	Not provided.	No
Microclimate is enhanced by: <ul style="list-style-type: none"> • appropriately scaled trees near the eastern and western elevations for shade • a balance of evergreen and deciduous trees to provide shading in summer and sunlight access in winter • shade structures such as pergolas for balconies and courtyards 	There are no trees proposed either at ground level or on structure to enhance the microclimate of the locality.	No

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Design criteria/guidance	Considerations	Consistent
Tree and shrub selection considers size at maturity and the potential for roots to compete	No trees proposed for the development.	No
Objective 4O-2: Landscape design contributes to the streetscape and amenity.		
The minimal landscaping provided is not considered to contribute to the streetscape or provide any useful amenity to the development.		
4P Planting on structures		
Appropriate soil profiles are provided.	No planting on structures have been provided other than the planter box along the pedestrian path which has provided soil profiles.	Yes
4Q Universal design		
Universal design features are included in apartment design to promote flexible housing for all community members. A variety of apartments with adaptable designs are to be provided.	Apartment 101 has been nominated as the adaptable apartment for the development.	Yes
4R Adaptive reuse: N/A		
4S Mixed use: Shop top housing requires commercial/retail at ground level to be permissible.		
4S-1 Objective: Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.		
Design guidance: Mixed use development should be concentrated around public transport and centres	The proposed development is within 250m of Richmond Train Station.	Yes
Mixed use developments positively contribute to the public domain.	The existing commercial tenancies face Windsor Street with the new tenancies facing the rear carpark.	Yes
4S-2 Objective: Residential levels of the building are integrated within the development.		
Design guidance: Residential entries are separated from the commercial entries and directly accessible from the street	The proposed residential lobby is off a rear carpark which is not directly accessible from Windsor Street.	No
Commercial service areas are separated from residential components	The service areas have not been separated.	No
Residential car parking and communal facilities are separated or secured	The carparking has not been separated and is not secured.	No
Security at entries and safe pedestrian routes are provided.	Safe pedestrian routes have not been provided within the carpark for residents	No
Concealment opportunities are avoided.	The carpark and pedestrian access have ample concealment opportunities.	No
Landscape communal open space should be provided at podium or roof levels.	No landscaped communal open space has been provided.	No
4T Awnings and signage		
Awnings are well located and complement and integrate with the building design.	The application has proposed an awning to the rear of the development which is over Council land. Owners consent is required for the awning which has not been given.	No

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Design criteria/guidance	Considerations	Consistent
4U Energy efficiency		
Development incorporates passive environmental design measures – solar design, natural ventilation etc.	Development incorporates Energy efficient measures in accordance with Basix requirements for the residential component of the development.	Yes
4V Water management and conservation		
Potable water use is minimised. Urban stormwater is treated on site before being discharged to receiving waters. Floor management systems are integrated into site design	Adequate stormwater management provided subject to outlet relocation which has not been resolved.	No
4W Waste Management		
Objective 4W-1: Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.		
Design Guidance:		
Adequately sized storage areas for rubbish bins should be located discreetly away from the development or in the basement car park.	Waste room located in the carpark which has shared commercial and residential waste bins that do not appear to have adequate room for bin manoeuvring.	No
Waste and recycling storage area should be well ventilated.	Details of bin room have not been provided.	No
Circulation design allows bins to be easily manoeuvred between storage and collection points.	Inadequate circulation design has been proposed. The waste bin room is not connected to a loading zone for servicing of bins and there is no collection point provided at the rear of the site to facilitate kerbside pickup. There is no separate path for the bins provided to any collection point and the shared zone for the accessible parking space conflicts with the entrance to the bin room.	No
Temporary storage should be provided for large bulk items such as mattresses.	No bulky waste room has been provided.	No
A waste management plan should be prepared.	Waste management plan provided.	Yes
Objective 4W-2: Domestic waste is minimised by providing safe and convenient source separation and recycling.		
Design Guidance:		
All dwellings should have a waste and recycling cupboard or temporary storage area of sufficient size to hold two days worth of waste and recycling.	Storage cupboards within the apartments can facilitate waste and recycling storage.	Yes
Communal waste and recycling rooms are in convenient and accessible locations related to each vertical core.	The waste bin room is not conveniently located near the lift lobby. Access to the bin room is out of the development and through the carpark which does not have a separate access path provided. Residents will have to negotiate through the carpark to access the waste room which has potential traffic conflicts.	No
For mixed use developments, residential	Separate waste bin rooms have not been	No

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Design criteria/guidance	Considerations	Consistent
waste and recycling storage areas and access should be separate and secure from other uses.	provided for the residential and commercial components of the development. This creates conflicts between the commercial and residential developments.	
Alternative waste disposal such as composting should be proposed.	No alternative waste disposal has been proposed.	No
4X Building maintenance		
Building design detail provides protection from weathering. Systems and access enable ease of maintenance. Material selection reduces ongoing maintenance costs.	Further details are required to determine the appropriateness of the building materials to be used for the development.	No

It is clearly demonstrated above that the proposed development does not meet the design criteria of the ADG in terms of deep soil and communal open space nor does it satisfy a significant number of objectives or design guidance set out in the ADG. This results in a proposed development that has detrimental impacts for any future resident in terms of amenity and liveability.

Accordingly the proposed development in its current form cannot be supported as significant amendments are required in order for the development to be acceptable in terms of the ADG.

Hawkesbury LEP 2012

Under Hawkesbury LEP 2012, the property is zoned B2 Local Centre, and the proposed development is permissible with Council's consent.

The following is a summary of the development standards under HLEP 2012 applicable to the development.

Clause 2.2 - Zoning

The site is zoned '*B2 Local Centre*' under the provisions of the LEP 2012. The proposed development for shop top housing is permitted in this zoning with consent.

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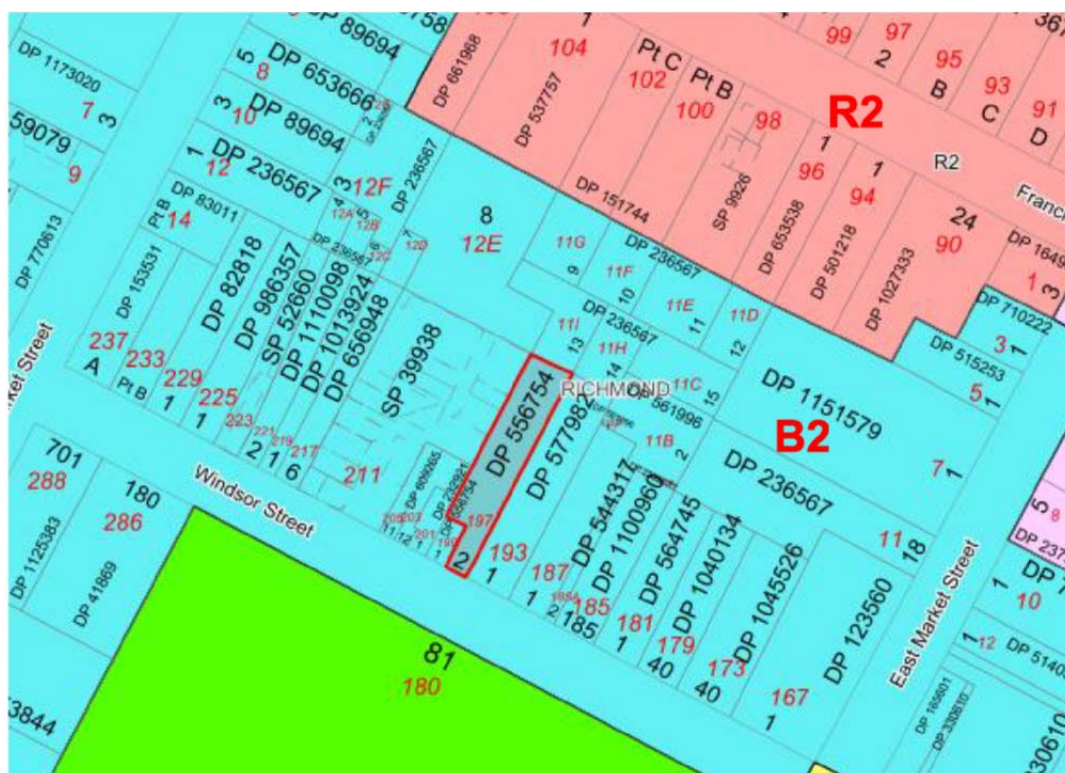


Image 2: Zone Map with zones highlighted in red

Clause 2.3 – Zone Objectives

The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. The objectives for the B2 Local Centre zone are as follows:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To promote the development and expansion of business activities to meet the optimum employment and social needs of Hawkesbury.

The development for shop top housing, in principle, satisfies the above objectives. The proposed development will provide three additional commercial/retail premises that will serve the needs of the people who live in, work in and visit the local area, will encourage employment opportunities with the increase of commercial/retail tenancies in an accessible location, being 250m from Richmond Station, and expands business activities to meet employment and social need of the locality.

However the proposed development, when assessed against the height of building objectives set out under Clause 4.3 and other provisions of LEP 2012 which are discussed below, the development is not considered satisfactory and is not supported.

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Clause 4.3 - Height of Buildings

Hawkesbury LEP 2012	Proposal	Compliance
4.3 Height		
12m	Building: 12m Lift overrun: 12.6m	Yes No

Building height is defined in the planning instrument as meaning the vertical distance between ground level (existing) at any point to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

Clause 4.3(1) provides the following objectives that are required to be taken into consideration:-

- (a) to protect privacy and the use of private open space in new development and on adjoining land,*
- (b) to ensure that the bulk of development is not excessive and relates well to the local context,*
- (c) to nominate heights that will provide a transition in built form and land use intensity,*
- (d) to ensure an appropriate height transition between new buildings and heritage items.*

Clause 4.3(2) of LEP 2012 states that 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. In this instance, the Height of Buildings Map identifies a maximum height of 12m for any building on the subject site. The proposed development has a building height of 12m for the building (RL31.8) and 12.6m (RL32.5) for the lift overrun. The applicant has submitted a request to vary the LEP height control. Consideration of this request is provided under clause 4.6 (Exceptions to Development Standards) further in this report.

Whilst the building is fully compliant with the building height requirement of 12m, with the exception of the lift overrun, the proposed development is not considered to meet objectives (a), (b) and (d) of the height of buildings development standard. These objectives are considered below:

- (a) to protect privacy and the use of private open space in new development and on adjoining land,*

The proposed development has not adequately addressed privacy to the residential component of the development as follows:

- The commercial tenancies identified as shops 2 and 3 on the plans have floor to ceiling windows proposed facing towards the balconies and bedroom windows of the residential component of the development;
- The ground floor plans do not show any street access to shops 1, 2 and 3. The only access to these shops is through the rear carpark which has potential visual and acoustic privacy impacts to the balconies and bedroom windows of the residential component of the development;
- The carpark does not have secured access due to the combination of the commercial and residential parking. This has potential privacy and safety impacts, particularly from the neighbouring hotel, as anyone can access this area at any time of the day or night;
- The dwellings have their primary private open space (balconies) facing the public carpark which services the commercial shops, restaurants and hotel/pubs within this locality. The use of the public carpark has potential visual and acoustic privacy impacts to these balconies and has potential impacts on the usability of these balconies as private open space.

- (b) to ensure that the bulk of development is not excessive and relates well to the local context,*

The proposed development is not considered to be of a bulk that relates well to the local context.

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The site is located within a commercial strip along Windsor Street that backs onto a public carpark. Access to this public carpark is from West Market Street and East Market Street. This public carpark provides one way access through the public carpark and is not defined as a road or laneway but acts as an access lane to the rear of the commercial premises that front Windsor Street.

The commercial development within this B2 Local Centre zone is a maximum 2 storeys fronting Windsor Street with minimal pedestrian activation at the rear. There are only a small number of commercial tenancies that face the public carpark including Park Mall, which provides a thoroughfare from Windsor Street to the car park, and some commercial premises located at the West Market Street entrance. The residential dwellings located on the other side of the public carpark within the R2 Low Density Residential zone are single and two storey dwellings with the exception of 98 Francis Street being a three storey walk up flat building.

Image 3 below demonstrates the relationship of the commercial premises fronting Windsor Street to the rear service lane, the traffic movements for the public carpark and the residential dwellings located on the other side of the B2 Local Centre zone.



Image 3: Site location (in red), public carpark and residential dwellings

It can be seen from Image 3 that a number of various uses and activities are carried out at the rear of the commercial premises, however the majority of these areas are used for off-street parking and do not have public access.

The proposed development is seeking to introduce a 4 storey development that has dwellings fronting the public carpark and will be situated between Park Mall to its right and R G McGees Hotel to its left.

The building height of Park Mall is single storey with a roof ridge RL of 23.56. R G McGees Hotel is 2 storeys and has, at the rear elevation, a roof ridge RL of 25.21. The proposed development will have a roof RL of 31.8. This is a height difference of 8.24m to Park Mall and 6.59m to the Hotel.

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R G McGees Hotel is a heritage item listed under Schedule 5 of Hawkesbury LEP 2012 and has an overall height of approximately 10.5m based on the survey information submitted. Given the heritage listing of the Hotel, it is unlikely that its height will increase to the maximum 12m height limit.

As demonstrated above the local context of this area is single to two storey low density commercial development with no residential development within the B2 Local Centres Zone. The residential development on the opposite side of the public carpark in the R2 Low Density Residential zone is between 1 to 2 storeys with a maximum 3 storeys on one site only.

The proposed development, at 12m and 4 storeys, is considered excessive in terms of scale. The proposed height of the building is an average of 7.4m higher than the two adjoining buildings and one storey higher than the residential development opposite the public carpark.

The proposed development is not considered being of a bulk and scale that is consistent with the local context in terms of height.

(d) to ensure an appropriate height transition between new buildings and heritage items.

The site is surrounded by items of heritage significant listed under Schedule 5 of Hawkesbury LEP 2012 and directly adjoins two heritage items on either side of the site, namely 193 Windsor Street (R G McGees Hotel) and 201-205 Windsor Street.



201-205 Windsor Street



193 Windsor Street

As previously discussed 193 Windsor Street, or R G McGees Hotel, has a building height difference of 6.59m at the rear elevation.

The Hotel has a roof ridge RL of 30.33 at the front and 201-205 Windsor Road has a roof ridge RL of 27.75 and parapet of 28.01. This is a height difference of 1.47m from the roof ridge of the hotel and 4.05m from 201-205 Windsor Street.

It is acknowledged that the proposed development has located the 4 storey commercial and residential component of the development at the rear northern elevation in an attempt to reduce the bulk and scale impact of the development on the two adjoining heritage items. However the height transition between the new building and the heritage items is considered significant, particularly to the rear elevation which has a height transition of 6.59m. The 1.47m height difference between R G McGees Hotel and 4.05m height difference between 201-201 Windsor Street at the Windsor Street frontage is also considered inappropriate and the height of the building is not supported.

1. Clause 4.6 - Exceptions to development standards

Clause 4.6 of LEP 2012 allows exceptions to development standards. Consent must not be granted for development that contravenes a development standard unless the consent authority has

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considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard.

The consent authority must be satisfied that the applicant's written request has satisfied the above criteria and that the proposed development will be in the public interest as it is consistent with the zone objectives as well as the objectives of the particular development standard. In addition, consent cannot be granted unless the concurrence of the Director-General has been obtained. These matters are discussed below.

a) Written request provided by the applicant.

The applicant provided a written request seeking to justify the variation to the development standard with the lodged application.

b) Whether compliance with the development standard would be unreasonable or unnecessary in the circumstances of the case – Clause 4.6(3)(a)

Preston CJ, in *Wehbe v Pittwater Council* [2007] NSWLEC 827, stated that “the rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

The Clause 4.6 variation has provided two separate arguments regarding the above. The first argument the Clause 4.6 variation has put forward is **how** is strict compliance unreasonable or unnecessary and the second argument put forward is **would** strict compliance be unreasonable or unnecessary. These are addressed as follows:

How is strict compliance unreasonable or unnecessary?

The first argument has provided an assessment of the objectives of the development standard and has argued that it is unreasonable or unnecessary to require strict compliance with the development standard in this particular case as the proposed development achieves the objectives of the development standard despite the non-compliance.

The decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, indicates that merely showing that the proposed development achieves the objectives of the development standard is insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under Clause 4.6.

As previously discussed in an earlier section of this report, the proposed development is not considered to be consistent with the objectives set out in Clause 4.3, however consideration against the arguments provided by the Clause 4.6 are provided below.

“(a) to protect privacy and the use of private open space in new development and on adjoining land,

The non-compliance relates only to the lift overrun and as such this element of the development has no potential to adversely impact upon the privacy of private open spaces. Analysis in previous sections of this report demonstrates that the broader development causes no adverse privacy impacts.”

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Comment: The variation to the building height is 600mm over the permissible 12m for the lift overrun. The lift overrun is a services structure which is setback approximately 12m from the front façade and approximately 7m from the rear of the building. Whilst this variation is to an aspect of the building that is providing ancillary plant and does not have privacy impacts, the proposed development has been considered against the above objective previously in this report and found to have privacy impacts to the future residents of the proposed development, which is inconsistent with the above objective.

“(b) to ensure that the bulk of development is not excessive and relates well to the local context,

The non-compliance relates only to the lift overrun and as such this element of the development has limited potential to cause an excessive bulk or scale impact. The lift overrun only has a maximum dimension of 2.5m, so its limited scale and location centrally on the roof will ensure that it has very limited view from the street or public domain areas.”

Comment: The proposed development has been considered against the above objective previously in this report and found to be inconsistent. Whilst the lift overrun may only be 2.5m in dimension and have an additional height of 600mm, the overall height and bulk of the proposed development is excessive in terms of the surrounding single and two storey commercial development and does not relate to the local context.

“(c) to nominate heights that will provide a transition in built form and land use intensity,

The broader township has a 12 m height limit. Therefore, the lift overrun, by itself, causes no discernible disruption to appropriate transitions between height and land use intensity across the Richmond Township.”

Comment: The B2 Local Centre zone has a 12m height limit with the neighbouring R2 Low Density Residential having a 10m height limit. Whilst the 600mm variation may not cause any discernible disruption, the overall height of the proposed development is not consistent with the immediate local context.

“(d) to ensure an appropriate height transition between new buildings and heritage items.

A heritage impact accompanies the development application and demonstrates that the development causes no adverse impact upon the values of adjacent heritage items.”

Comment: The above justification does not adequately address whether the development is consistent with objective (d). As previously discussed the proposed building will have a building height transition of 6.59m from the adjoining heritage item known as R G McGees Hotel along the rear elevation. The front elevation has a transition of 1.47m to the hotel and 4.05m to the heritage items on the other side of the proposed development.

As previously assessed the proposed development has not provided an appropriate height transition to the neighbouring heritage items and is therefore not consistent with the above objective.

Would strict compliance be unreasonable or unnecessary?

The Clause 4.6 variation as provided the following for consideration:

“Strict compliance with the development standard would demand that an alternate development proposal be advanced that reduces the overall building height inclusive of any lift overrun.

However, the vast majority of the proposed built form achieves the relevant development standard. Further, the non-compliance with the maximum building height standard is relatively minor (i.e. 5%) and relates to a very small building element that will have limited visual presence in the streetscape given that a casual observer of the development would not be able to perceive the noncompliance.

In the context of these factors, it is considered that strict compliance with the development standard is both unreasonable and unnecessary in the circumstances of the case”.

It is acknowledged that the variation is minor in nature, however this is not the test. The above justifications do not adequately demonstrate strict compliance is unreasonable or unnecessary.

Furthermore, merely stating strict compliance with the building height standard ‘*would demand that an alternative development proposal be advanced that reduces the overall building height inclusive of the any lift overrun*’ without providing any clarification as to what impact the compliance would have on the proposed development is not justification for breaching the development standard.

c) Sufficient environmental grounds to justifying contravening the development standard – Clause 4.6(3)(b).

The decision in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* demonstrates that the requirement in Clause 4.6(3)(b) of the LEP to justify there are sufficient environmental planning grounds for the variation, requires identification of grounds particular to the circumstances of the proposed development, and not simply grounds that apply to any similar development on the site or in the vicinity.

The Clause 4.6 variation has provided the following arguments:

“The development proposal as submitted allows for a more limited development footprint, as it allows the mass of the built form to extend vertically on the site.

An outcome of this design approach is that the major mass or built volume of the development is provided at the rear of the site, where it is less legible and therefore has a more limited visual presence in the streetscape.

The accompanying heritage reports recognises that this restricted building footprint helps to provide a generous setback to the important Windsor St streetscape and therefore reduces the visual presence of the development.

Accordingly, if a complying development were to be provided then it would be required to extend further south over the site and towards the Windsor St streetscape, thereby causing a suboptimal design outcome in terms of heritage conservation.

Such an arrangement would also cause apartments to be provided with a southern aspect, which results in no solar access and therefore reduced sustainability and amenity outcomes for the development.

Finally, notwithstanding the subject developments non-compliance with the relevant numerical development standards, the development will still meet all the relevant underlying objectives of those standards

In this context, there is considered to represent sufficient environmental and planning grounds to justify a contravention of the development standard.”

From the above arguments it is unclear as to how compliance with the development standard would impact the overall development. The massing of the development towards the rear of the site does not necessarily result in a better outcome for the site particularly as an assessment of the appropriateness of a two storey development along Windsor Street has been carried out by Council's Urban Design and Heritage Consultants and found that this would be acceptable in terms of heritage conservation.

The lack of development towards the front of the site in itself has caused unacceptable impacts in terms of visual and acoustic privacy to the windows and balconies of the apartments and amenity

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impacts the open air car park. Were the development to extend towards the front of the site these impacts would potentially be resolved.

It is also unclear as to how the southern elevation would be impacted by the lowering of the building and whether additional apartments would be required to compensate for this lowering as no evidence in plan form has been provided to substantiate this argument.

Finally the argument that there are sufficient environmental planning grounds to vary the development standard as the proposed development, despite the numerical non-compliance to the development standard, still meets all the relevant objectives of the standard is not supported. It has been demonstrated previously that the overall development is considered to be inconsistent with the objectives of the building height development standard.

d) Consistent with the zone objectives and objectives of the development standard – Clause 4.6(4)(a)(ii).

Clause 4.6(4) establishes two preconditions that must be satisfied before a consent authority can grant consent for development that contravenes a development standard. These preconditions are explained in *Al Maha Pty Ltd v Huajun Investments Pty Ltd* [2018] NSWCA 245 at paragraph 179 “*The first precondition in cl 4.6(4)(a) is that the consent authority is satisfied of the two matters in subparagraphs (i) and (ii). The second precondition in s 4.6(4)(b) is that the concurrence of the Secretary of the Department of Planning and Environment has been obtained*”.

The first precondition is explained at paragraph 14 in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 where “*The first precondition, in cl 4.6(4)(a), is that the consent authority,, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii).*” These two opinions of satisfaction are:

1. That the written request has “*adequately addressed the matters required to be demonstrated by cl 4.6(3)*” (at [15]) and;
2. That “*....the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out*” (at [26]).

The zone objectives have already been identified in an earlier section of this report where it was found that the proposed development is consistent with the zone objectives. However the proposed development has been assessed against the height of buildings objectives under Clause 4.3 and found to be inconsistent with objectives (a), (b) and (d).

In accordance with the findings in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, at paragraph 27 where it is stated “*If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)*” Council is not satisfied that the proposed development is in the public interest as it is inconsistent with the objectives of the development standard.

e) Concurrence of the Director General.

Circular PS 08-003 issued on 9 May 2008 informed Council that it may assume the Director-General's concurrence for exceptions to development standards. As the Clause 4.6 variation is not supported, Council is not willing to assume concurrence from the Director General.

Clause 4.6 Conclusion

Whilst a written request has been made and justification has been put forward to vary the maximum building height development standard under Clause 4.3(2) of Hawkesbury LEP 2012 standard, the request has not demonstrated that compliance with the standard is unreasonable or

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unnecessary, that there are sufficient environmental grounds to justify contravening the development standard and that it is in the public interest.

The variation to the maximum building height requirement is therefore not supported.

Clause 5.10 Heritage Conservation

The site is not identified as a heritage item but is within the vicinity of a number of heritage items identified under Schedule 5 of HLEP2009.



Image 4: Surrounding heritage properties

Clause 5.10(5) requires a heritage assessment to be carried out on proposed development within the vicinity of a heritage item.

Council's Heritage Advisor has assessed the proposed development and the submitted Statement of Heritage Impact (SHI) found the proposal to be unacceptable in terms of built form, architectural detailing, material selection and internal site isolation.

It is considered that the proposal will split the site in two effectively isolating the shop frontages along Windsor Street from the development at the rear. No analysis has been carried out for the shops located along the Windsor Street frontage and it is recommended that the overall site be subject to a masterplan developed by the applicant demonstrating the overall development intention of the site with the Statement of Heritage Impact updated to reflect the masterplan.

The proposed development is not supported due to unacceptable impacts to the surrounding heritage items.

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Clause 6.1 Acid Sulfate soil controls

Class 5 – low impact. The proposal is unlikely to lower the water table or expose acid sulfate soils as no significant excavation is proposed on the site.

Clause 6.6 Development in areas subject to aircraft noise

The proposed development for shop top housing is permissible in the B2 Local Centre zone.

Clause 6.6 applies to development in areas subject to aircraft noise. The Noise Exposure Forecast Contour Map for the RAAF Base Richmond identifies the land as being situated within an ANEF Contour of 25-30 as shown in Map 3 below.

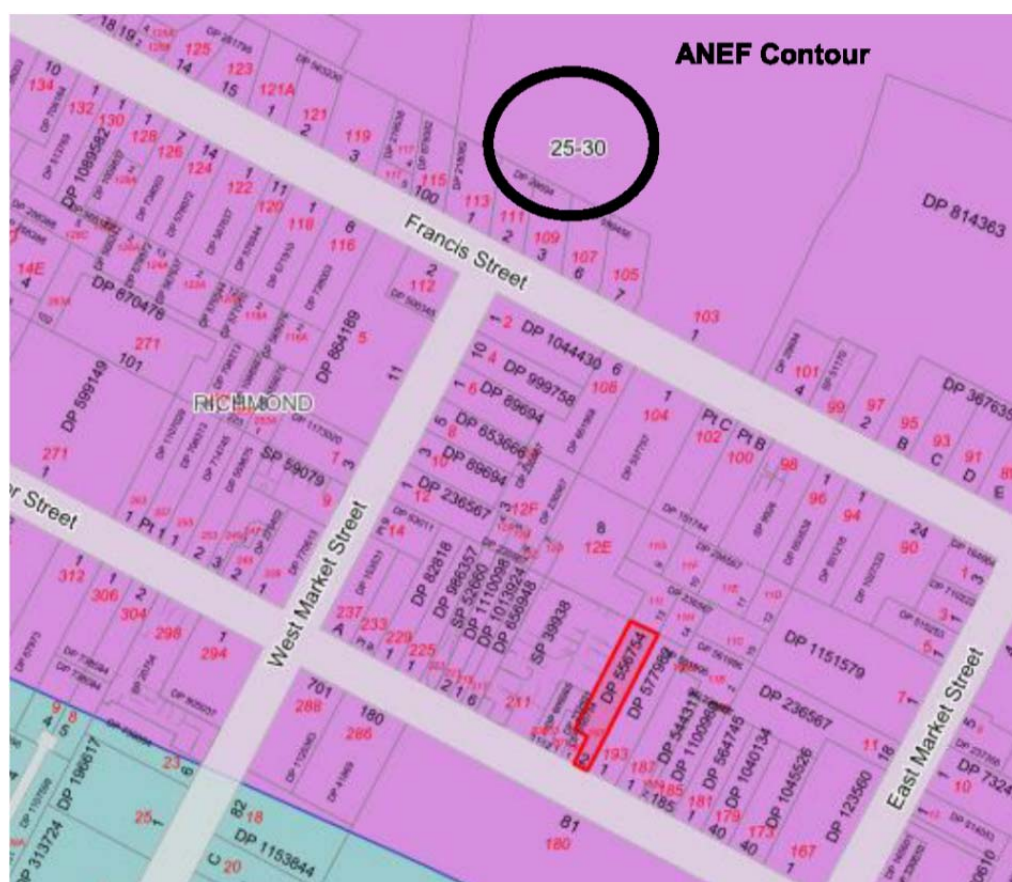


Image 5: ANEF Contour with subject site highlighted in red

Table 2.1 of AS2021-2000 classifies dwellings as 'unacceptable' development on land within an ANEF Contour of 25 and above.

The limiting of residential development in aircraft noise affected areas has been previously tested in the Land and Environment Court. In *Edwards v Hawkesbury City Council* [2004] NSWLEC 647 Hussey C upheld Council's decision to refuse increasing housing densities on a residential zoned property affected by the 30-35 ANRF Contour, as, at paragraphs 34 and 48 '...I do not consider this application merits consent, principally because it is an unacceptable form of development in this existing noise environment', and '...the application of this approach confirms the site should be considered relative to its situation within the current 30-35 ANEF noise contour, which renders it unacceptable for home units or multiunit development as proposed and as no special case was made for exclusion, or that this density of multi unit dwelling is necessary as allowed by AS 2120, I consider this application fails'.

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Accordingly it was determined that significant weight should be given to Australian Standard 2021—2000 when identifying what constitutes acceptable development on land affected by aircraft noise.

However Table 2.1 of AS2021-2000 does make the following provisions:

"4. This standard does not recommend development in unacceptable areas. However, where the relevant planning authority determines that any development may be necessary within existing built-up areas designated as unacceptable, it is recommended that such development should achieve the required ANR determined according to Clause 3.2. For residences, schools, etc., the effect of aircraft noise on outdoor areas associated with the buildings should be considered."

In accordance with the above provision the applicant has provided an acoustic report which carried out an assessment of the acoustic impacts from traffic and air craft noise. Based on the findings of the report the development can only comply with the acceptable noise level where all the windows to the development are kept closed and mechanical ventilation is provided.

The reliance on mechanical ventilation is inconsistent with the requirements under the Apartment Design Guide which requires all habitable rooms are to be naturally ventilated. It is not considered acceptable to rely solely on artificial ventilation for residential development.

The reliance on artificial ventilation is also addressed in *Edwards v Hawkesbury City Council [2004] NSWLEC 647*, where Hussey C found, at paragraphs 40 and 41, that:

"40 it appears to me that the random operation of military aircraft, over the night time period without curfew, would necessitate extensive use of air-conditioning and significantly restrict opportunities for practical access to natural ventilation.

41 Under these circumstances, I consider this likely to result in unreasonable interference to be normal activities of the household and accordingly is noncompliant with the DCP noise control and also energy conservation initiatives."

Given the above, it is considered that the proposed development has not adequately provided justification as to why Council should consider increasing housing densities within an aircraft noise affected area, particularly where the land has been zoned and developed primarily for commercial uses and relies on artificial ventilation. This reliance on artificial ventilation to mitigate noise impacts results in poor amenity outcomes for any future residents of the proposed development.

The proposal is considered to be contrary to the objectives of Clause 6.6 of the LEP 2012 and is not supported.

- (ii) **Any proposed instrument** - (Draft SEPP, Draft LEP or 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)

There are no relevant Draft Environmental Planning Instruments for the subject site.

- (i) **Any development control plan**

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Hawkesbury DCP 2002:

A full assessment of the proposal under DCP 2002 is illustrated in the following compliance table. The Non-compliances identified in the table are assessed below.

DCP 2002		
DCP Control	Proposed	Complies
Part A: Introduction		
3.2 Notification		
3.2.1 Residential accommodation		
Shop top housing Letters to adjoining occupiers/owners: required	The proposal was notified from 19 January 2018 to 2 February 2018.	Yes
Site Sign: Not required	A site sign was placed on the site.	Yes
Notice in Local Newspaper: Not required	No advertising required. A total of four submissions were received and the matters raised in these submissions are discussed in the Community Consultation Section of this report.	N/A
Part C: General Guidelines		
1.2 Landscaping Requirements		
A landscape concept plan is required for most developments in the Hawkesbury. The landscape plan is to be prepared by a suitably qualified person, and must incorporate the requirements within Section 1.2.	A Landscape plan was submitted with the application in accordance with Section 1.2.	Yes
2.0 Car Parking and Access		
2.5 Rules		
2.5.1 Residential		
Residential development: 2 covered spaces per large dwelling (GFA more than 85m ²). Each apartment is 103m ² and therefore requires 2 car parking spaces under HDCP 2002, however parking calculations are to be in accordance with RMS Traffic Generating Development Guidelines which require the following parking ratios:		
Medium density RFB: 1 space per unit + 1 space per 5 x 2 bedroom unit Required (6 apartments x 1 space= 6) + (6 apartments / 5) = 7.2 spaces = 8	Provided 6 uncovered spaces	No
Visitor Spaces 1 space per 5 units (visitor parking). Required 6 apartments / 5 = 1.2 spaces = 2	Provided 0 spaces	No
2.5.2 Commercial Parking		

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DCP 2002		
DCP Control	Proposed	Complies
B2 Local Centre zoning Commercial Premises and Shops: 1 space per 30m ² Required 314.7m ² / 30 = 10.49 spaces =11	Provided 6 uncovered spaces	No
Total Required: 21	12 uncovered spaces (shortfall of 9 spaces)	No
The car parking provisions for the site are uncovered and therefore do not meet the DCP requirement that car parking spaces are to be covered. There are only 2 spaces that appear to have fully undercover parking due to the canter-levered roof from the apartments above. The lack of covered parking provides poor amenity to the future residents of the development and retail parking spaces as there is no weather protection.		No
2.7 Access and Mobility		
Acceptable design solutions for accessible parking are:		
<ul style="list-style-type: none"> it should be located as close as practicable to and be linked to an entrance of the <u>building</u>, or to a wheelchair accessible lift by a continuous accessible path of travel; 	The accessible parking space is located next to the waste room and is not located in close proximity to the lift. There is no separate pedestrian path which facilitates equitable access from the parking space to the lift.	No
<ul style="list-style-type: none"> a firm surface and a fall not exceeding 1 in 40 in any direction; 	Fall does not exceed 1:40	Yes
<ul style="list-style-type: none"> a minimum length of 5.5 metres, a minimum width of 3.8 metres and a minimum height of 2.5 metres; 	Accessible parking space to be in accordance with AS 2890 Series. The shared zone for the accessible parking space has a bollard which may conflict with the usability of the shared space.	No
<ul style="list-style-type: none"> clearly visible sign incorporating the international symbol of access for disabled people; 	Can be conditioned to comply.	Can be conditioned.
<ul style="list-style-type: none"> non-slip or textured paint used for line markings. 	Can be conditioned to comply.	Can be conditioned.
4.0 Soil Erosion and Sediment Control		
A plan for soil erosion and sediment control was submitted with the application. Appropriate conditions can be applied to manage sediment and erosion for the site.		
6.0 Energy Efficiency		
6.3 Submission Requirements		
Basix Certificate Required dated within 3 months of DA lodgement.	Provided. Energy and efficiency provisions for the commercial premises have not been provided.	Yes. No
8.0 Management of Construction and Demolition Waste		
Waste management plan in accordance with 8.7 shall be submitted with any application.	A construction waste management plan has been provided with the application. Appropriate conditions can be applied	Yes

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DCP 2002		
DCP Control	Proposed	Complies
	for construction and demolition waste management.	
9.0 Preservation of Trees and Vegetation		
Consent is required for tree removal in accordance with 9.3.1.		
<p>No existing trees are on site proposed for removal, however the proposed development is in close proximity to a neighbouring tree, which is located on the neighbouring site boundary, that is listed as a local heritage item under Schedule 5 of LEP2012.</p> <p>The arborist report has indicated that the tree, identified as T1, has a SRZ of 2.8m and TPZ of 7.8m. The arborist report has indicated that an encroachment of >10% will occur, however the proposed development has not adequately demonstrated, in plan form, what the total percentage of encroachment the proposal will have to the neighbouring tree. It would appear that the proposed development will have a 50% encroachment into the SRZ and TPZ of T1. In accordance with AS4970(2009 Section 3, 3.3.3 <i>Major Encroachment</i> it must be demonstrated that the tree would remain viable where the proposed encroachment is greater than 10% of the Tree Protection Zone (TPZ) or inside the Structural Root Zone (SRZ).</p> <p>The arborist report has not clearly demonstrated that the tree will remain viable as it has not carried out an accurate assessment of the amount of encroachment the proposed development will have nor has it assessed what likely pruning the tree will be subjected to given the proposed development has a zero boundary setback and is 12m in height. The arborist report has not clearly demonstrated that tree 1 can be viably retained.</p>		
10.0 Heritage Conservation		
10.5.8 Development in the vicinity of a heritage item or conservation area		
The subject site is within close proximity to a number of heritage items listed under Schedule 5 of the Hawkesbury LEP 2002. The proposal has been assessed by Council's Heritage Advisor whose comments have been provided elsewhere in this report. The proposed development is not considered to be in keeping with the local heritage context and is not supported.		
Part D Specific Development		
1.0 Residential Development		
1.6 Landscaped Areas		
<p>(a) All forms of residential development are to contain pervious soft landscaped areas to a total of 30% of the total site area. This may be calculated by adding together soft landscaped areas of private and common open space.</p> <p>Development proposals, where required, are to indicate the proportion of the total site area that is:</p> <ul style="list-style-type: none"> <input type="checkbox"/> total "soft" landscaped area; <input type="checkbox"/> total ground level private open space; and <input type="checkbox"/> total common open space. 	<p>Required: Site area: 885.2m² 30% = 265.56m²</p> <p>Provided: 0m² soft landscaped area including POS.</p>	No

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DCP 2002		
DCP Control	Proposed	Complies
1.8 Common Use Open Space		
(a) For development proposals than contain five or more dwellings common use open space is required. Concession may be given where it is demonstrated that sufficient useable private open space for each dwelling has been provided.	The proposed development does not propose any communal space. The apartments have been provided POS in the form of balconies. In order for these balconies to be considered as replacements for COS they will need to be significantly increased and be able to facilitate outdoor entertaining with the appropriate means to do so such as power and water points, covered terrace area and BBQ area.	No
1.9 Vehicular Access and Car Parking		
(a) Driveways next to any side or rear boundary must have a landscape strip of at least 1 metre to separate them.	Not provided along the side boundary due to zero setback of adjoining site.	N/A
(d) For development that contains more than 2 units driveways are to have a minimum driveway width of 6m from the layback/kerb line to 6m inside the property.	3.6m driveway.	No
(h) On site manoeuvring areas shall be provided to allow entry and exit to the site in a forward direction.	Vehicle manoeuvring conflicts exist between parking spaces.	No
(i) On site manoeuvring areas shall be provided to allow entry and exit to and from all car spaces including garage, carports, uncovered spaces and visitor spaces by a single turning movement.	No – vehicles will require multiple turning movements to exit in a forward manner.	No
(l) On site manoeuvring shall be based on the Ausroads Standard 5.0m design vehicle. Templates for this standard are provided in the appendices. When using the templates a minimum of 150mm shall be provided between any fixed object and the extremities of the swept paths.	Site manoeuvring swept paths not provided.	No
(m) All on site car spaces shall comply with the minimum dimensions set out in Part C Chapter 2 (Car Parking and Access).	Car parking dimensions have been provided in accordance with AS.	N/A
1.11 Visual Privacy		

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DCP 2002		
DCP Control	Proposed	Complies
The layout of buildings should avoid first floor or elevated windows facing directly onto the windows, balconies, or overlooking the yards of adjoining dwellings unless effective screening is provided.	The car park and commercial tenancy windows directly face the balconies and bedroom windows of the apartments resulting in privacy impacts.	No
1.12 Acoustic Privacy: Refer to previous comments regarding acoustic impacts		
1.13 External Noise and Vibration		
(a) A noise and vibration assessment must be undertaken by a suitably qualified noise consultant for any proposed residential development other than a single dwelling house located within 100 metres of the railway line or within Australian Noise Exposure Forecast (ANEF) 25 or greater.	An acoustic report was submitted with the application.	Yes
(b) Proposals must comply with the current Environment Protection Authority criteria and the current relevant Australian Standards for noise and vibration and quality assurance and incorporate appropriate mitigation measures.	Mitigation measures were recommended that are not supported due to poor amenity outcomes for future residents.	No
1.14 Safety and Security		
(a) Each dwelling is to be provided with direct and convenient pedestrian access to a private or public road.	Apartments have lift and stair access to ground floor.	Yes
(c) Elements to be incorporated in site and building design, such as those shown in Figure D1.21 include: <input type="checkbox"/> doorway/entry safety and surveillance to and from the footpath; <input type="checkbox"/> illumination of public spaces including all pedestrian paths, shared areas, parking areas and building entries to the relevant Australian Standard; <input type="checkbox"/> visibility to the street from the front of the development; <input type="checkbox"/> restricted access to the rear of the site.	The proposed development has not provided security surveillance to the front entry of the apartments. There are no security features preventing access to the onsite carpark. No lighting details are provided for the entry path to the resident lift lobby, rear commercial premises, onsite carpark and waste bin room. There are opportunities for concealment on the site in the car park area. The commercial and residential shared parking and waste bin room pose safety and security risks.	No
1.15 Utility and Site Services		
(a) Where reticulated water is not available, a minimum storage of	No applicable.	N/A

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DCP 2002		
DCP Control	Proposed	Complies
100000 litres must be provided. A minimum of 10,000 litres must be available at all times for fire-fighting.		
1.16 Cables		
(a) The design, location and construction of utility services must satisfactorily meet the requirements of both the relevant servicing authority and Council.	Comments for Endeavour Energy have been received and commented on previously.	Yes
1.17 Recycling, Garbage and Mail Collection Areas		
(a) Collection areas must be integrated into the overall site and building design, such as the example shown in Figure D1.22.	No garbage and recycling collection areas have been provided and no kerbside collection is available. Mail collection areas have not been provided.	No

iiia. 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:

There are no planning agreements or draft planning agreements applicable to the application.

iv. Matters prescribed by the Regulations:

In accordance with the matters prescribed by the Regulations, were the application to be recommended for approval, the development would be required to comply with the National Construction Code – Building Code of Australia (BCA) and relevant Australian Standards for demolition.

(a) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

All relevant issues regarding environmental impacts of the development are discussed elsewhere in this report.

The development is not considered satisfactory in terms of environmental impacts.

(b) The suitability of the site for the development

The site is not considered to be suitable for the proposed development given the significant issues identified within this report.

(c) Any submissions made in accordance with this Act or the regulations

In accordance with Section 3.2 of Part A of HDCP 2002, owners of surrounding properties were given notice of the application. In response, four submissions were received.

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The following issues were raised:

1. Concern	2. Comment
<p>1. Side access path. The following concerns have been raised in regards to the side access path:</p> <ul style="list-style-type: none"> • Shop 3 has only ever been used for storage and access to this new shop is from the right of footpath at the side for which the owner of 201 Windsor Street, which is burdened by the right of footpath, has indicated that consent for the use of this footpath has not been given. • With the increase in pedestrian traffic, shop deliveries for the commercial premises at 199 Windsor Street will be impacted and cause potential safety and security issues. • Waste services are carried out this location and concerns are raised that the increase in pedestrians would impact the waste service. <p>3. The access path has never been used as a thoroughfare and this will add additional liability costs to the owner and tenants.</p>	<p>4. Given the site at 201 Windsor Street is burdened by a right of footpath, the terms of this footpath must be provided. If this footpath is purely to provide access from Windsor Street to the rear public carpark only, then other uses ancillary to this access must be legally explored, including whether waste bin servicing can be carried out within this location for other tenancies.</p> <p>5.</p> <p>6. The application has not provided any documentary evidence that the site has lawful access to the right of footpath along the neighbouring site and can use this to provide entry access to shop 3. This documentary evidence is required before any access can be utilised.</p> <p>7.</p> <p>8. In terms of deliveries to the commercial tenancy at 199 Windsor Street, safety and security of the premises and its deliveries is a responsibility of the shop owner.</p> <p>9.</p> <p>10. The issue of the footpath not being used as a thoroughfare would require the terms of the right of footpath to be clarified.</p>
<p>2. Residential development next to a licenced premise. Concerns are raised that having a residential development next to a licensed premises may cause noise impacts and complaints</p>	<p>11. It is acknowledged that the residential component of the proposed development located next to the licensed premises has potential conflicts in terms of noise and safety impacts.</p> <p>12.</p> <p>13. A licensed premises has operation hours that go beyond midnight, particularly over weekends, and patrons entering and exiting the premises after 10pm will have potential acoustic impacts to the proposed development.</p> <p>14.</p> <p>15. Whilst the application has included an acoustic report to address noise impacts, the public carpark at the rear of the subject site would be utilised by some of the patrons of the hotel. Access to vehicles within the public carpark by these patrons would be occurring beyond 10pm at night, dependant on the hours of operation the neighbouring hotel has during the week and on weekends. This has potential acoustic impacts to the residential apartments of the proposed development that the application has not adequately addressed.</p>

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1. Concern	2. Comment
3. Building works and structural impacts. Concerns are raised that the proposed development will have structural impacts to the neighbouring premises. The proposal has zero setbacks and may cause cracking and damage to the neighbouring premises walls. Concern is raised that the shared roof over 199 and 197 Windsor Street will be compromised. Noise impacts during and after construction have also been raised.	16. For any development that would have potential structural impacts, a condition of consent would require geotechnical design, certification and monitoring for the excavation and/or construction works that would be required for the development together with pre and post construction dilapidation reports. 17. 18. Conditions relating to construction noise and acoustic treatments would also be imposed to protect the amenity of surrounding development.
4. Impacts on value of property. Concerns are raised that the residential development will impact upon the value of the neighbouring premises. 19.	20. The applicant has a right under the Environmental & Planning Assessment Act, 1979 to the orderly and economic use and development of the land and possible variation in surrounding property values does not constitute reasonable grounds for refusal of a development application.

The public interest

Having regard to the assessment contained in this report, it is considered that approval of the development is not in the public interest.

Development Contributions

Section 7.12 Fixed development consent levies (Hawkesbury Section 94A Contributions Plan 2015)

The following development contributions apply to this development - \$18,800.00. Were the application to be supported a condition of consent would be required to be imposed in this regard.

Conclusion

The matters required to be consider in relation to Section 4.15 of the Environmental Planning and Assessment Act 1979 have been carried out.

As demonstrated in this report the proposed development is not considered to be consistent with the objectives of Clause 4.3 of Hawkesbury LEP 2012. The building height is out of character to the locality being single and two storey commercial and residential developments.

The proposal does not meet the nine quality design principles under SEPP 65 or the design criteria under the Apartment Design Guide.

The site has fundamental issues in terms of carparking, waste management, safety and security, amenity, access and tree impacts.

The proposed development is therefore not supported.

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RECOMMENDATION:

1. That the Hawkesbury Local Planning Panel refuse development consent to development application DA0737/17 at 197 Windsor Street RICHMOND NSW 2753 for the Demolition and Construction of a Shop Top Residential Flat Building with Six Dwellings, Two Retail Premises and Associated Car Parking Area for 12 Vehicles for the reasons listed below; and
2. That those whom made submissions to this application be advised of the determination.

Reason for Refusal

1. State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development

The proposed development is inconsistent with the Design Quality Principles of State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development.

Particulars

- a) The proposed development is not consistent with SEPP 65 Design Principle 1: Context and neighbourhood character and Design Principle 2: Bulk and Scale. The existing immediate context comprises existing commercial and residential buildings of one and two storeys in height with the site adjoining two heritage items. The proposed development, at four storeys, is incompatible with this context.
- b) The proposed development is inconsistent with Design Quality Principle 3: Density, as a result of the proposed development not providing any amenity to future residents. The density of the development is required to be reduced to allow for the provision of communal open space, landscaping and sustainability measures.
- c) The proposed development is inconsistent with Design Quality Principle 5 Landscape, as:
 - i. The proposal does not provide any deep soil or landscaped areas for the future residents to utilise;
 - ii. The minimal strip of landscaping along the driveway of the proposal is inadequate and is not viable as it is unlikely to be maintained given its location and lack of maintenance details;
 - iii. The lack of onsite landscaping does not contribute the landscape character of the locality and does not provide an acceptable level of amenity for the future residents of the development.
- d) The proposed development is not consistent with SEPP 65 Design Principle 6: Amenity as:
 - i. The arrangement of the kitchen, living, dining and media areas is a bit awkward, leading to the creation of unnecessary small rooms (i.e. the media room) and the reduction of living space. The partition between the media room and living room could be reconsidered;
 - ii. The location of the kitchen adjacent to the balcony reduces the availability of overhead kitchen storage spaces. Relocating the kitchen to the rear wall of the living/dining/kitchen area would allow for both the living and dining areas

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to face the balcony and would provide more solid wall areas for kitchen storage;

- iii. The details and resolution of the wet areas including the bathrooms, en-suites could be improved with better location of items;
 - iv. The clear glazed balustrades to the balconies on the north and south sides of the building will reduce the amenity of the building in terms of privacy for the residents as well as the amenity of the neighbourhood in terms of the ongoing day-to-day appearance of the building which could be compromised by the clutter of domestic items and laundry on balconies;
 - v. The proposal to extend the commercial building on the southern portion of the site with the creation of a new shop facing the private car park is not considered to be appropriate and will result in negative impacts on the visual and acoustic privacy of all of the units as the bedrooms overlook the internal car park;
 - vi. The commercial premises and car parking area is accessible at any time of the day or night and has no roof covering creating acoustic impacts to the bedroom windows of the apartments;
 - vii. The proposed development does not provide any communal open space or landscaping which significantly reduces the amenity for future residents;
 - viii. The site is located adjacent to existing licensed premises. The proposal has not demonstrated how the acoustic amenity of the residents will be protected when located in such close proximity to an existing licensed premises as well as a number of other retail premises;
 - ix. The common circulation area does not provide any windows to provide any natural light or ventilation.
- e) The proposed development is inconsistent with Design Quality Principle 7 Safety, as:
- i. The carpark for the development does not segregate the residential and commercial car parking. This creates safety risks for the future residents of the development as the mixed parking arrangement requires the carpark for the development to be accessible to the public at any given time of the day or night. The carpark does not have a security barrier or roller door and the lack of security or restriction to the carpark is unacceptable in terms of safety;
 - ii. The carpark creates concealment opportunities as it is accessible to the public and not visible from the street. No information of lighting within the carpark is provided and were lighting to be provided this would have a detrimental amenity impact to the bedroom windows facing the carpark;
 - iii. The entrance to the residential lift lobby is located inside the development and not on the street. This restricts passive surveillance for residents entering the building. The planter box opposite the entry door of the building has a recessed area which is not visible from the street creating concealment opportunities.
- f) The proposed development is inconsistent with Design Quality Principle 8 Housing Diversity and Social Interaction as the design does not provide for social interaction between residents through communal facilities or spaces.

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- g) The proposed development is inconsistent with Design Quality Principle 9 Aesthetics as:
- i. The geometry of design elements on the south elevation does not respond to the established character of the area, particularly in regards to the timber look-alike cladding on the eastern side of the second floor;
 - ii. The detailing shown in the photomontage contained within the schedule of exterior materials and finishes provides the appearance of a concrete look-alike cladding as a predominant wall surface finish with some timber look-alike elements which do not relate to the predominant use of materials in the area and are not supported;
 - iii. The proposed design treats the north elevation as the principal elevation and the south elevation as the rear. Due to the scale of the proposed development and the visual prominence of the site along Windsor Street and from Richmond Park, the design of the building should also address the south elevation. The overall form, architectural detailing and materials utilised on this elevation should be simple and recessive;
 - iv. The building entry for the residential component of the development is not easily defined as the entry is down a pedestrian path. There is no obvious residential lobby to access the lifts directly from the street which is inconsistent with Part 4M 'Façades' of the ADG.

2. Communal Open Space and Landscaping

The development application does not provide any communal open space areas which does not comply with the objectives or requirements for communal open space in the ADG and has provided no landscaped areas onsite in accordance with Hawkesbury DCP 2002 which has unacceptable amenity outcomes for future residents.

Particulars

- a) Objective 3D-1 in Part 3D 'Communal and Public Open Space' of the ADG requires '*An adequate area of communal open space*' to be provided to enhance residential amenity. Part 3D-1 provides the following relevant design criteria:

"Design criteria

1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)
 2. Developments achieve a minimum of 50% direct sunlight to the principal useable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid winter).
- a) The development does not provide any communal open space to allow for both passive and active recreation opportunities;
 - b) The lack of communal open space does not provide for any amenity for future residents in terms of recreation space;
 - c) Objective 4S-2 in Part 4S 'Mixed use' requires '*Landscape communal open space should be provided at podium or roof levels*'. The proposal does not provide any on structure or podium landscaping in the form of rooftop communal space;

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- d) The proposal does not provide any soft landscaping and the planter box provided along the driveway does not make any landscape contribution to the streetscape. There is no proposed landscaping along the rear frontage, including street trees, or anywhere else on the site and this provides poor amenity for future residents;
- e) The apartment balconies do not have any on structure landscaping which results in poor amenity outcomes for future residents of the site;
- f) Section 1.6 of Chapter 1 Part D of DCP 2002 requires all residential development is to be provided with 30% soft landscaping. The subject site has an area of 885.2m² and therefore requires 265.56m² of soft landscaping. The proposed development has not provided any soft landscaping. This does not comply with the landscape requirements.

3. Deep Soil

The development application does not provide deep soil area. This does not comply with the objectives or requirements for deep soil in the ADG and has an unacceptable amenity outcome for future residents.

Particulars

- a) Objective 3E-1 in Part 3 'Deep Soil Zones' of the ADG provides the following design criteria and relevant design guidance:

"Design Criteria

- 1. *Deep soil zones are to meet the following minimum requirements:*

<i>Site Area</i>	<i>Minimum Dimensions</i>	<i>Deep soil zone (% of site area)</i>
<i>Less than 650m²</i>	<i>-</i>	<i>7%</i>
<i>650m² - 1,500m²</i>	<i>3m</i>	
<i>Greater than 1,500m²</i>	<i>6m</i>	
<i>Greater than 1,500m² with significant existing tree cover</i>	<i>6m</i>	

Design Guidance

On some sites it may be possible to provide greater larger deep soil zones, depending on the site area and context:

- 10% of the site as deep soil on sites with an area of 650m²-1,500m²
- 15% of the site as deep soil on sites greater than 1,500m²

- a) The site area of the property is 885.2m² which requires 61.964m² of deep soil. No deep soil provisions have been provided for the development. The ADG makes provisions for sites that cannot provide deep soil by requiring alternative forms of plantings to be provided such as on structure plantings, however the proposed development has no on structure plantings proposed for any of the apartments.

4. Pedestrian Access and entries

The proposed pedestrian paths and entries are unacceptable and inconsistent with Part 3G of the ADG.

Particulars:

- a) Objective 3G-1 in Part 3G 'Pedestrian access and entries' requires that '*Building entries and pedestrian access connects to and addresses the public domain*'. Part 3D-1 provides the following relevant design guidance:

"Design guidance

Multiple entries (including communal building entries and individual ground floor entries) should be provided to activate the street edge

Entry locations relate to the street and subdivision pattern and the existing pedestrian network

Building entries should be clearly identifiable and communal entries should be clearly distinguishable from private entries

Where street frontage is limited and multiple buildings are located on the site, a primary street address should be provided with clear sight lines and pathways to secondary building entries

Where street frontage is limited and multiple buildings are located on the site, a primary street address should be provided with clear sight lines and pathways to secondary building entries"

- b) The entry location for the apartments and shop 3 do not relate to the street. There is no pedestrian thoroughfare connecting the rear of the site to Windsor Street. Insufficient setbacks have been provided at the rear to allow accessible and safe access along the rear frontage of the site. The proposed development is required to have a minimum 1.5m setback at the rear to allow for pedestrian access, particularly to the commercial tenancies that front the public carpark, to allow for an adequate waiting area for pedestrians to cross over the driveway and to connect to the partial pedestrian path that is provided along the rear frontage.
- c) Building entries are not clearly identifiable as the residential and commercial tenancy entry is located at the rear of the site inside the development with no relationship to the primary street address of the property.
- d) The residential entry is not located at a primary street address and does not have clear sight lines or pathways to any of the entries for the development.
- e) Objective 3G-2 in Part 3G 'Pedestrian access and entries' requires that '*Access, entries and pathways are accessible and easy to identify*' and provides the following design guidance:

"Design guidance

Building access areas including lift lobbies, stairwells and hallways should be clearly visible from the public domain and communal spaces

The design of ground floors and underground car parks minimise level changes along pathways and entries

Steps and ramps should be integrated into the overall building and landscape design

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For large developments 'way finding' maps should be provided to assist visitors and residents

For large developments electronic access and audio/video intercom should be provided to manage access"

- a) The building access including the lift lobby, stairwells, and carpark is not visible from the public domain as access is provided at the rear from the public carpark. The entry to the apartments' lift lobby is inside the development and is not visible from the street. Access to shop 3 is also not visible from the public domain as there is no discernible pedestrian path directly to this shop tenancy from the street. There is no way of knowing that this commercial tenancy is located within the development;
- b) The proposed development has not provided any identification signage or way finding maps to identify the location of shop 3 or the entry lobby of the residential apartments;
- c) The proposed development has not provided any details as to what level of security access the development will be provided. The carpark is open to the public and the waste bin room is shared by the commercial tenancies therefore it is unclear as to how security access will be managed for the site;
- d) Objective 3G-3 in Part 3G 'Pedestrian access and entries' requires that '*Large sites provide pedestrian links for access to streets and connection to destinations*' and provides the following design guidance:

"Design guidance

Pedestrian links through sites facilitate direct connections to open space, main streets, centres and public transport.

Pedestrian links should be direct, have clear sight lines, be overlooked by habitable rooms or private open spaces of dwellings, be well lit and contain active uses, where appropriate"

- a) The site does not provide any pedestrian link between Windsor Street, which is a main street in Richmond, and the rear entry from the public carpark. The lack of pedestrian linkage does not allow for the future residents to have direct connection to the main street or public open space at Richmond Park opposite the site;
- b) The proposed development does not provide direct links to any other pedestrian path as there is no continuous pedestrian path along the rear car park and no thoroughfare through the site to Windsor Street.

5. Car Park Configuration and Traffic Conflicts

The configuration of the car park creates significant traffic conflicts and has unacceptable amenity and security impacts for the future residents of the proposed development.

Particulars

- a) Objective 3H-1 of Part 3H 'Vehicle access' requires 'Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes'. Objective 4S-2 of Part 4S 'Mixed use' requires 'Security at entries and safe pedestrian routes are provided.'

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- b) The vehicular access point is located at the rear of the site from the public carpark. It is located next to the pedestrian access path for both the internal commercial tenancies located on the other side of the carpark and the residential lift lobby entrance. This creates safety conflicts between vehicles and pedestrians as the planter box, which separates the pedestrian path from the driveway, is 800mm in height and terminates at the end of the building inside the development opening out into the carpark. There is no separate pedestrian path through the carpark for access to the commercial tenancies which creates traffic and pedestrian conflicts;
- c) The driveway into the development is not clearly separated from the pedestrian path;
- d) Objective 4S-2 of Part 4S 'Mixed use' requires 'Residential car parking and communal facilities are separated or secured'.
- e) The commercial tenancies and residential parking spaces have not been separated to provide adequate security and no security gate has been provide to restrict assess from the general public from the residential parking;
- f) Parking space Retail 06 conflicts with parking space Res 03;
- g) The waste room conflicts with the shared zone of the accessible parking space;
- h) The proposed driveway ramp is not in accordance with AS2890 Series as it does not provide the required two-way ramp width of 5.8m;
- i) The accessible parking space has not been provided in accordance with AS2890 Series as the shared zone has a bollard;
- j) Part 2.5.1 of Hawkesbury DCP 2002 requires parking spaces to be covered. The car park is uncovered and does not provide any protection from the weather which results in poor amenity;
- k) The driveway has not been provided with a security roller door or gate to restrict public access, particularly during the hours of 10pm to 7am.

6. Insufficient Car Parking

The proposal has provided insufficient parking provisions in accordance with Part 2 Car Parking and Access of Hawkesbury DCP 2002 and the RMS Traffic Generating Development Guidelines in accordance with Part 3J of the ADG.

Particulars

- a) The RMS Traffic Generating Development Guidelines requires for medium density residential flat buildings 1 space per unit plus 1 space per 5 x 2 bedroom apartments and 1 visitor space per 5 dwellings. The proposal requires 8 residential spaces and 2 visitor spaces totalling 9 spaces and the application has provided 6 parking spaces. This is a shortfall of 1 residential space and 2 residential visitor spaces;
- b) The commercial parking requirements are prescribed by Part 2.5.1 of DCP 2002 and the proposal requires 11 parking spaces. The application has provided 6 parking spaces for the commercial component of the development which is a shortfall of 5 commercial parking spaces.

7. Unit Mix

The development application should be refused because the proposed development does not provide an adequate mix of units.

Particulars

- a) Objective 4K-1 in Part 4K 'Apartment Mix' of the ADG provides the following relevant objective and design guidance:
"A range of apartment types and sizes is provided to cater for difference household types now and into the future."

Design Guidance

A variety of apartment types is provided."

- b) The development proposes 6 x 2 bedroom apartments. The development does not propose any 1 or 3 bedroom apartments.

8. Waste Management

The proposed waste arrangements are unacceptable and inconsistent with Part 4W Waste Management of the ADG.

Particulars:

- a) Objective 4W-1 and 4W-2 in Part 4W 'Waste Management' of the ADG provides the following relevant design guidance:

"Design guidance

Adequately sized storage areas for rubbish bins should be located discreetly away from the front of the development or in the basement car park

Waste and recycling storage areas should be well ventilated

Circulation design allows bins to be easily manoeuvred between storage and collection points

Temporary storage should be provided for large bulk items such as mattresses
A waste management plan should be prepared

All dwellings should have a waste and recycling cupboard or temporary storage area of sufficient size to hold two days worth of waste and recycling

Communal waste and recycling rooms are in convenient and accessible locations related to each vertical core

For mixed use developments, residential waste and recycling storage areas and access should be separate and secure from other uses

Alternative waste disposal methods such as composting should be provided"

- b) The waste bin room located in the carpark does not appear to have adequate room for bin manoeuvring as the room contains both commercial and residential waste bins at different sizes;
- c) Separate waste bin rooms have not been provided for the residential and commercial components of the development. This creates conflicts between the commercial and residential developments;

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- d) Inadequate circulation design has been proposed for the waste bin room. The waste bin room is not connected to a loading zone for servicing of bins and there is no collection point provided at the rear of the site to facilitate kerbside pickup. There is no separate path for the bins provided to any collection point and the shared zone for the accessible parking space conflicts with the entrance to the bin room;
- e) There is no bulky waste room provided for large bulky goods to be stored prior to collection;
- f) The waste bin room is not conveniently located near the lift lobby. Access to the bin room is out of the development and through the carpark which does not have a separate access path provided. Residents will have to negotiate through the carpark to access the waste room which has potential traffic conflicts.

9. **Building Height**

The proposed development is excessive in height and does not meet the objectives for building heights in Clause 4.3 of Hawkesbury LEP 2012.

Particulars

- (a) Clause 4.3 of Hawkesbury LEP 2012 states:
 - (a) to protect privacy and the use of private open space in new development and on adjoining land,*
 - (b) to ensure that the bulk of development is not excessive and relates well to the local context,*
 - (c) to nominate heights that will provide a transition in built form and land use intensity,*
 - (d) to ensure an appropriate height transition between new buildings and heritage items.*
- (b) The proposed development is inconsistent with the objectives of the building height development standard. The proposed development's height:
 - i. is considered to be excessive due to the low density single and two storey nature of the surrounding development;
 - ii. does not relate well to the local context as it is 4 storeys in height;
 - iii. does not provide a transition in built form to the single and two storey adjoining properties; and
 - iv. does not provide an appropriate height transition with the adjoining heritage items which are single and two storey.
- (c) The proposed building height results in a built form that is not compatible with the existing character of the area and in that regard the proposed development is inconsistent with the objectives of clause 4.3 of Hawkesbury LEP 2012

10. **Acoustic Impacts**

The application has not adequately justified why an increase of residential densities within an aircraft noise affected area in accordance with Clause 6.6 of Hawkesbury LEP 2012 should be permitted.

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Particulars

- (a) The site is located within an ANEF Contour of 25-30 and Table 2.1 of AS2021-2000 classifies dwellings as 'unacceptable' development on land within an ANEF Contour of 25 and above. Table 2.1 makes the following provisions:

"4. This standard does not recommend development in unacceptable areas. However, where the relevant planning authority determines that any development may be necessary within existing built-up areas designated as unacceptable, it is recommended that such development should achieve the required ANR determined according to Clause 3.2. For residences, schools, etc., the effect of aircraft noise on outdoor areas associated with the buildings should be considered."

- (b) The application's acoustic report has concluded that development can comply with the required acceptable noise level only if all windows and openings are kept closed. This would require the development to rely solely on mechanical ventilation to provide artificial ventilation to the apartments. This is inconsistent with the design criteria and guidance of Part 4B 'Natural Ventilation' of the ADG which requires 60% of the apartments to be naturally ventilated.

11. Stormwater Impacts

The proposed stormwater management is not consistent with Council's Driveway Specifications.

Particulars

- (a) Section 1 'Positioning of Access (Prohibited Locations)' of Council's Driveway Specifications requires:
- *Driveway/layback crossings to be one metre clear of the side boundary*
 - *Driveway/layback crossings to be one metre clear of all Drainage Structures such as Kerb L intels.*
- (b) The proposed driveway development has located the kerb inlet pit within 1m of the driveway which is specified as a prohibited location.

12. Woodhills Carpark Owners Consent

The proposed development has not obtained owners consent from Hawkesbury City Council to rely on the Woodhills Car Park at 12 West Market Street and 11 East Market Street to provide vehicular access to the proposal's carpark.

Particulars:

- (a) The development relies on the Woodhills Car Park at 12 West Market Street and 11 East Market Street for vehicular access. Woodhills Car Park is made up of a number of allotments that are owned by Hawkesbury City Council. The car park is not categorised as a public road and the applicant has not sought the consent of Council for the use of the Woodhills Car Park to access the subject property.

13. Unacceptable Tree Impacts on a Heritage Item

The application has failed to demonstrate that the proposed development will not have an adverse impact to the tree located on the neighbouring heritage item in accordance with AS 4970 (2009).

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Particulars

- (a) The neighbouring site is listed as a local heritage item under Schedule 5 of LEP2012 and the tree is within the curtilage of the heritage item.
- (b) The submitted Arboricultural Impact Assessment by Redgum Horticultural dated 20 December 2017 Ref. No. 3701 has not clearly demonstrated that the tree identified as T1 *Cedrus deodara* (Himalayan Cedar) located on the eastern boundary will remain viable as it has not carried out an accurate assessment of the amount of encroachment the proposed development will have nor has it assessed the likely pruning the tree will be subjected to given the proposed development has a zero boundary setback and is 12m in height;
- (c) The submitted Arboricultural Impact Assessment has identified that T1 will be subject to major encroachment. The Arboricultural Impact Assessment, however, has failed to identify or calculate the percent of encroachments into the Structural Root Zone (SRZ) and Tree Protection Zone (TPZ) of T1. It would appear that the proposed development will potentially have a 50% encroachment into the SRZ and TPZ of T1 and an assessment of this encroachment has not been provided. The Arboricultural Impact Assessment has failed to clearly demonstrate that T1 will remain viable in accordance with AS 4970(2009) Section 3, 3.3.3 *Major Encroachment*.

14. Unacceptable Heritage Impacts

The proposed development will have unacceptable impacts to the surrounding heritage items.

Particulars

- (a) The proposed development has been assessed as being unacceptable in terms of built form, architectural detailing, material selection and internal site isolation. The separation between the front commercial tenancies and the proposed development effectively isolates the site into two distinctly separate buildings with no connectivity;
- (b) A master plan is required to be developed demonstrating the overall development intention of the site that incorporates a sympathetic built form and heritage conservation strategies for the surrounding heritage items.

15. Insufficient Information

Insufficient information has been provided to enable a proper assessment of the development application.

Particulars:

- (a) A Stage 1 Preliminary Contamination Report has not been provided to determine if the site is subject to potential contamination;
- (b) Shop 3 has proposed an opening onto the Right of Footpath along the side boundary. It is unclear as to the purpose of this opening as access to the shop is provided through the carpark at the rear. Access from Windsor Street from the Right of Footpath is restricted by a gate.
- (c) The application has not demonstrated that the site has legal access to the Right of Footpath located along the western boundary.

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Reasons for Decision

The Panel considered the proposal as unacceptable and it is recommended that the proposed development be refused on the following grounds:

1. The proposed development is inconsistent with the objectives and provisions of the Hawkesbury Local Environmental Plan 2012 (LEP 2012);
2. The proposed development has not satisfied the consent authority that the variation to the Height of Buildings under Clause 4.3 of the Hawkesbury Local Environmental Plan 2012 (LEP 2012) made under Clause 4.6 of the Hawkesbury Local Environmental Plan 2012 (LEP 2012) is in the public interest as it has not satisfied the requirements under C4.6(a)(ii).

ATTACHMENTS:

AT - 1 SEPP 65 Assessment (*distributed under separate cover*)

AT - 2 Clause 4.6 Objection (*distributed under separate cover*)

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