

JOINT REGIONAL PLANNING PANEL (Sydney West)

JRPP No	2015SYW038
DA Number	DA-62/2015
Local Government Area	Liverpool City Council
Proposed Development	Demolition of existing car parking and removal of trees within carpark; relocation of Telstra communications tower; construction of ground floor retail car parking and residential shop top housing (26 x 1 bedroom, 107 x 2 bedrooms and 12 x 3 bedrooms); two floors of basement residential car parking and associated works.
Street Address	90 Cartwright Avenue Miller
Applicant/Owner	Applicant – Mintus Pty Ltd Owner – JEA Holdings (Aust) Pty Ltd
Number of Submissions	3
Regional Development Criteria (Schedule 4A of the Act)	The proposal has a capital investment value of over \$20 million, the Joint Regional Planning Panel is therefore the determining authority.
List of All Relevant s79C(1)(a) Matters	• <i>List all of the relevant environmental planning instruments: s79C(1)(a)(i)</i> • State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development. • State Environmental Planning Policy No.55 – Remediation of Land. • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004. • Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment. • Liverpool Local Environmental Plan 2008. • <i>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: s79C(1)(a)(ii)</i> • Draft Miller Town Centre Master Plan • <i>List any relevant development control plan: s79C(1)(a)(iii)</i> • Liverpool Development Control Plan 2008. - Part 1 – General Controls for all Development. - Part 6 – Development in Business Zones. • <i>List any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F: s79C(1)(a)(iv)</i>

	- No planning agreement relates to the site or proposed development. - List any coastal zone management plan: s79C(1)(a)(v) - The subject site is not within any coastal zone management plan. - List any relevant regulations: s79C(1)(a)(iv) eg. Regs 92, 93, 94, 94A, 288 - Consideration of the provisions of the Building Code of Australia and National Construction Code (NCC)
List all documents submitted with this report for the panel's consideration	- Final Conditions of consent - Final Architectural Plans - Clause 4.6 Variation - Design review panel report - Design excellence panel report - Covenant applying to the site - Legal advice provided to Council - Submissions lodged with the DA - Court judgment - Draft Miller Master Plan - Statement of Environmental Effects - SEPP 65 Design Verification Statement - Arborist Report prepared by Redgum Horticultural - BASIX Report prepared by ESD Synergy - Section J Report Prepared by ESD Synergy - Acoustic Report prepared by Acoustic Logic - BASIX Certificate Building A - BASIX Certificate Building B - Access/Compliance Report Prepared by PSE Access Consulting
Recommendation	Approval
Report by	George Nehme
Report date	April 2016

1. EXECUTIVE SUMMARY

1.1 Reasons for the report

Sydney West Joint Regional Planning Panel is the determining authority as the Capital Investment Value of the development is over \$20 million, pursuant to Schedule 4A of the Environmental Planning and Assessment Act 1979.

1.2 The proposal

Demolition of existing car parking and removal of trees within carpark; relocation of Telstra communications tower; construction of ground floor retail car parking and residential shop top housing (26 x 1 bedroom, 107 x 2 bedrooms and 12 x 3 bedrooms), two floors of basement residential car parking and associated works.

1.3 The site

The subject site is known as part Lot 4 DP 219028, Lot 2 DP 219028, Lot 2 DP 545358, 90 Cartwright Avenue, Miller and is located at the intersection of Cartwright Avenue and Woodward Crescent.

1.4 The issues

The main issues are identified as follows:

- **Existence and legality of a covenant over subject site:**

The subject allotment is burdened by a Covenant (attached). The subject covenant burdens the subject site and benefits DP 219028, which is the location of the Green Valley Hotel, the adjoining southern property as shown in figure 1 below.

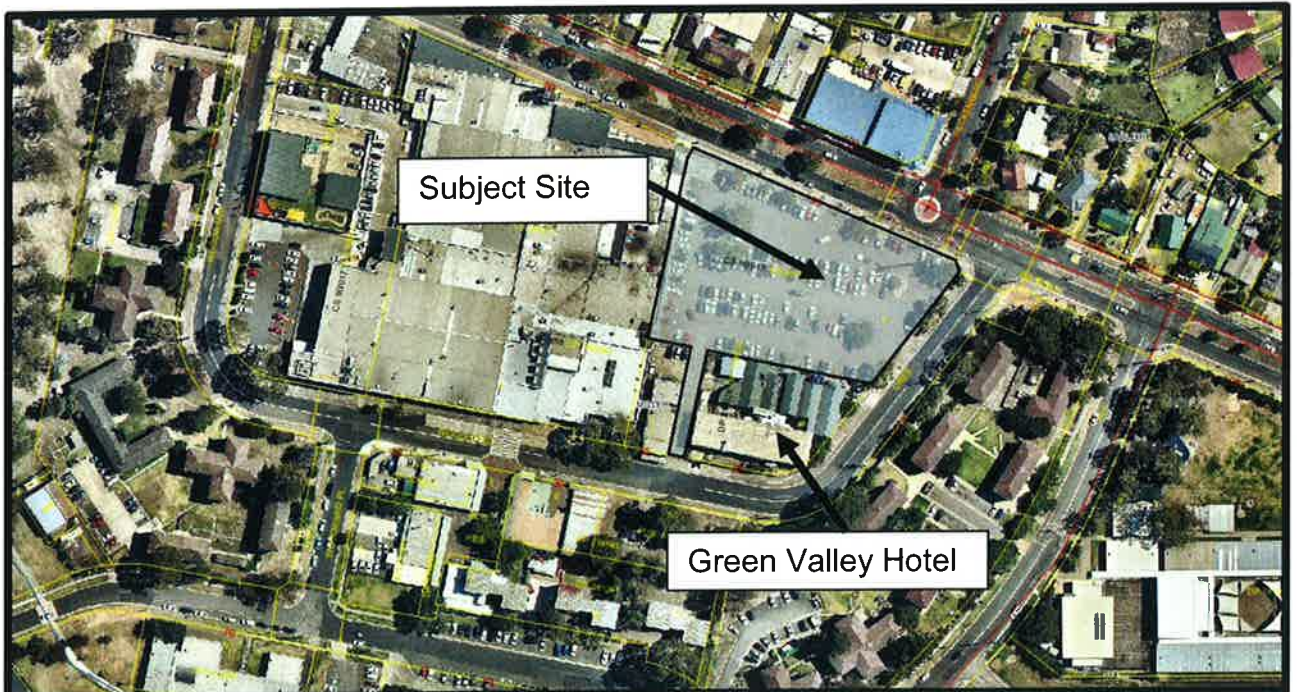


Figure 1: Site in relation to Green Valley Hotel

Prior to 1964, Lots 4 and 5 had formed part of the same parcel of land owned by Green Valley Shopping Centre Pty Ltd (Green Valley). In 1964, the land was subdivided into 5 lots by registration of a deposited plan. Prior to subdivision, on October 1963, Green Valley transferred Lot 5 to a new registered proprietor. The memorandum of transfer contained a covenant benefiting Lot 5 and burdening Lot 4 (the covenant). The Covenant purported to limit the use of all of the surface area of Lot 4 to car parking for the use of owners of Lot 1 to 5 and their respective tenants, lessees, servants, invitees and customers.

The Covenant was recorded on the certificate of title of Lot 5 issued upon subdivision in 1964. However, the Covenant was not, and has never been recorded on the certificate of title for Lot 4. All transactions relating to the creation of the purported Covenant occurred prior to either Jea Holdings (current owner of Lot 4) or Awar Pty Ltd (current owner of Lot 5) becoming the proprietors of either Lot 4 or Lot 5.

On 10 January 2012, the Registrar-General of New South Wales served a notice on Jea Holdings pursuant to the *Real Property Act 1900* (1900), s 12A, advising Jea

Holdings that he was proposing to record a covenant on the Folio Identifier of Lot 4 unless restrained by Court order from doing so.

On 3 February 2012, Jea Holdings commenced proceedings seeking an order that the Registrar-General be restrained from recording the Covenant on title to Lot 4.

The primary judge, Windeyer AJ, held that Jea Holdings held its interest as registered proprietor of Lot 4 free of any easement or restrictive covenant purportedly created by the memorandum of transfer dated 10 October 1963.

The Registrar-General appealed to the Court of Appeal. The principal issues on the appeal were:

- (1) Whether the memorandum of transfer dated 10 October 1963 was capable of giving rise to an easement;
- (2) If yes, whether the absence of a recording of the easement on the folio of the servient tenement was an "omitted easement" within the meaning of the *Real property Act*, s 42 (1)(a1)?

The essential questions on the appeal that were to be answered are as follows;

- (1) Whether MT J493622 was capable of giving rise to an easement;
- (2) Whether the easement (if any) created by MT J493622 was validly created in circumstances where it did not conform to the requirements of the *Real Property Act 1900* (NSW), s 46;
- (3) Whether the absence of a recording of the easement created by MT J493622 on the folio of the servient tenement was an 'omitted easement' within the meaning of the *Real Property Act*, s 42 (1) (a1).

The primary judge answered "yes" to question (1) but "no" to each of the remaining questions. Therefore it was determined that MT J493622 gives rise to an easement.

The terms of the covenant are set out in paragraph 22 of the Judgement (attached). In essence the terms of the covenant require the owner of Lot 4 not to do, commit, or suffer any act, matter or thing which might obstruct or prevent the exclusive use of Lot 4 for the parking of motor vehicles by the owners of Lot 5 in Deposited Plan 219028 (as well as their tenants, lessees, servants, invitees, customers and patrons).

However the terms of the covenant specifically permit the owner of Lot 4 to erect over or under Lot 4 "*such building or buildings at a height of not less than 12 feet, which shall not obstruct or prevent the use of Lot 4 for the parking of motor vehicles or the ingress or egress of motor vehicles from the parking area*".

More specifically paragraphs 152 and 153 of the judgment stipulate the following:

"152. The limitation on use of lot 4 by the owner of that lot, while capable of extending from time to time to much or even all of the surface area of the parking lot, was a shared right, with the registered owner, to the use of the lot for car parking. Further, it expressly subsisted with the rights of the owner to use any part of the stratum at a height greater than 12 feet above the surface of the land and to use the underground area to such depth as might be valuable to it. So much is apparent from the terms of par (a) of the covenant set out at [22] above.

153. Disregarding the car parking rights, the rights reserved to the owner of lot 4 (the transferor) would by necessary implication include such use of the surface of lot 4 as would be necessary to erect a building above it, and to obtain egress to the land below it. It is not

uncommon for buildings to be erected above ground level, so as to permit parking beneath them. It is also to be expected that not insignificant inroads would be made on the number of parking spaces available if such a building were erected over (or under) lot 4. That would not be inconsistent with the terms of the covenant, which must accommodate reasonable use by the owner of the servient tenement in accordance with its reserved rights. Further, the fact that the use of land by the transferee and its customers and patrons was to be exercised "together with" the transferor and the respective tenants and lessees, invitees and customers of the owners of lots 1-4, was entirely inconsistent with the kind of exclusivity which would prevent the interest being classified as an easement."

Council has also received a written submission from the owners of Lot 5 stipulating that the development application should not be considered or accepted and should be rejected due to the existing Court proceedings and ruling.

Based on the above submission and the existence of the court ruling determining that the covenant gives rise to an easement and should be registered on the title of Lot 4, restricting the use of the car park, Council sought legal advice to answer the following questions;

- a) Is the construction of the development inconsistent with the terms of the covenant, particularly in terms of the construction of the retail tenancies and associated structures on the surface of Lot 4?
- b) Does the existence of the covenant and the restrictions imposed by the covenant make the development application invalid and need to be rejected?

Comment: The advice provided which is attached stipulated the following;

The development subject of DA-62/2015 proposes the following on the ground floor or surface of lot 4:

- 162 car parking spaces.
- 2 retail tenancies.
- A foyer, outdoor deck and garden area
- Fire stairs and exit points.
- 3 Lifts
- Various Columns and structural elements supporting the building that is proposed to be constructed above ground level.

Having regard to the judgment of the NSW Court of Appeal in the Jea Holdings case it would seem that the structural columns, fire stairs and lifts are unlikely to be considered to be contrary to the terms of the easement that burdens Lot 4 because those elements would be necessary in order to accommodate the right of the owner of Lot 4 to erect a building that is 12 feet above the surface of the land.

However, the retail tenancies, garden and foyer area as proposed on the surface of Lot 4 near the northern boundary are unlikely to be considered to be consistent with the terms of the easement because the provision of those elements is not necessary to facilitate the provision of a building over the surface of Lot 4.

In our view, the fact that part of the development may be contrary to or inconsistent with the easement that burdens Lot 4 does not of itself prohibit the granting of consent to the development application. In that regard, the following matters should be noted:

1. *That granting of consent to a development application does not affect the proprietary rights of a third party such as the owners of Lot 5 (see Rothwell Boys Pty Ltd v Coffs Harbour City Council (2012) 186 LGERA 366). If the carrying out*

of a development in accordance with the terms of development consent involves an interference with any such proprietary rights then, at the point at which an unlawful interference with those rights is threatened, imminent or occurring, the affected party can approach the Supreme Court.

2. *An easement can be extinguished either by agreement of the parties benefited by the easement or pursuant to the statutory regime provided for by Section 89 of the Conveyancing Act 1919. Accordingly, if a development consent cannot be implemented without an amendment to or extinguishment of an easement an application could be made by the owner of land burdened by the easement to the Supreme Court of NSW under section 89 of the Conveyancing Act 1919 for the easement to be modified or extinguished*

The fact that the development as proposed may be currently incapable of being lawfully carried out due to the existence of the easement for car parking that burdens Lot 4 does not prohibit the granting of consent to the application. Further, it would not be necessary to include a condition on the grant of development consent to prohibit the consent from operating unless or until the easement has been extinguished. The matter of extinguishment or modification of the easement is a private proprietary matter that would need to be dealt with by the owners of the land burdened (Lot 4) and the land benefited (Lot 5).

Based on the above advice provided to Council, it is the position of Council that development consent can be granted, despite the existence of the covenant.

Given the advice provided to Council that the existence of the court ruling and covenant does not prohibit the issuing of development consent, it is considered relevant in this instance to look at the merits of the development in terms of the provision of parking.

It is acknowledged that the proposed development will effectively reduce the at-grade parking on Lot 4 from 189 spaces to 162 spaces, thus resulting in a net reduction of 27 spaces. However, as part of the proposed development the applicant has made the provision of 90 retail/staff car parking spaces within the first basement level despite the development only generating the need for 22 additional retail spaces. Therefore the applicant has proposed an additional 68 retail car spaces despite the fact that the additional spaces are not located at-grade as necessitated by the easement.

Therefore the number of retail parking spaces provided on Lot 4 will increase from the existing capability of 189 retail spaces to 230 retail spaces (excluding the 22 spaces required for the development). This is considered a positive outcome, given the existing parking constraints within the surrounding locality. Further, it is noted that the requirement for staff to utilise the basement parking, will result in additional at grade parking availability, as opposed to the current situation whereby staff use the at-grade parking. It is noted that approximately 85 staff are employed at the shopping centre.

Moreover as the application is for "Shop top housing", it is considered necessary that the proposal occupies a portion of the ground floor in order to comply with the definition of the proposed development. Shop top housing is defined by the LLEP 2008 as;

"means one or more dwellings located above ground floor retail premises or business premises"

Therefore it is considered pertinent to provide ground floor retail to comply with the definition. It is noted that this form of development (or similar) is not permitted on the site without the provision of at-grade commercial uses due to the zone which applies to the site.

More specifically the provision of the ground floor retail tenancies will enable the application to demonstrate compliance with clause 7.16(4) 'Ground floor development in Zones B1, B2 and B4" of the LLEP 2008 which states;

(4) *Development consent must not be granted for development for the purposes of a building on land to which this clause applies unless the consent authority is satisfied that the ground floor of the building:*

- (a) *will not be used for the purposes of residential accommodation, and*
- (b) *will have at least one entrance and at least one other door or window on the front of the building facing a street other than a service lane.*

The provision of the ground floor retail tenancies will demonstrate compliance with clause 7.16(4) above.

- **Inconsistency with future Miller Master Plan:**

Council has prepared a draft Master Plan for the Miller Town Centre (attached), prepared by AECOM. The primary purpose of the draft master plan is to provide a framework for guiding future opportunities for the Miller Town Centre.

As part of the draft master plan a thoroughfare was envisaged along the western boundary of the subject development site, through from the southern end of Woodward Crescent up to Cartwright Avenue as shown in the figure 2 below. The intention of the proposed thoroughfare is to provide a clear pedestrian link that connects Cartwright Avenue, Miller Shopping Centre and Woodward Crescent. However no thoroughfare was proposed as part of the development application.

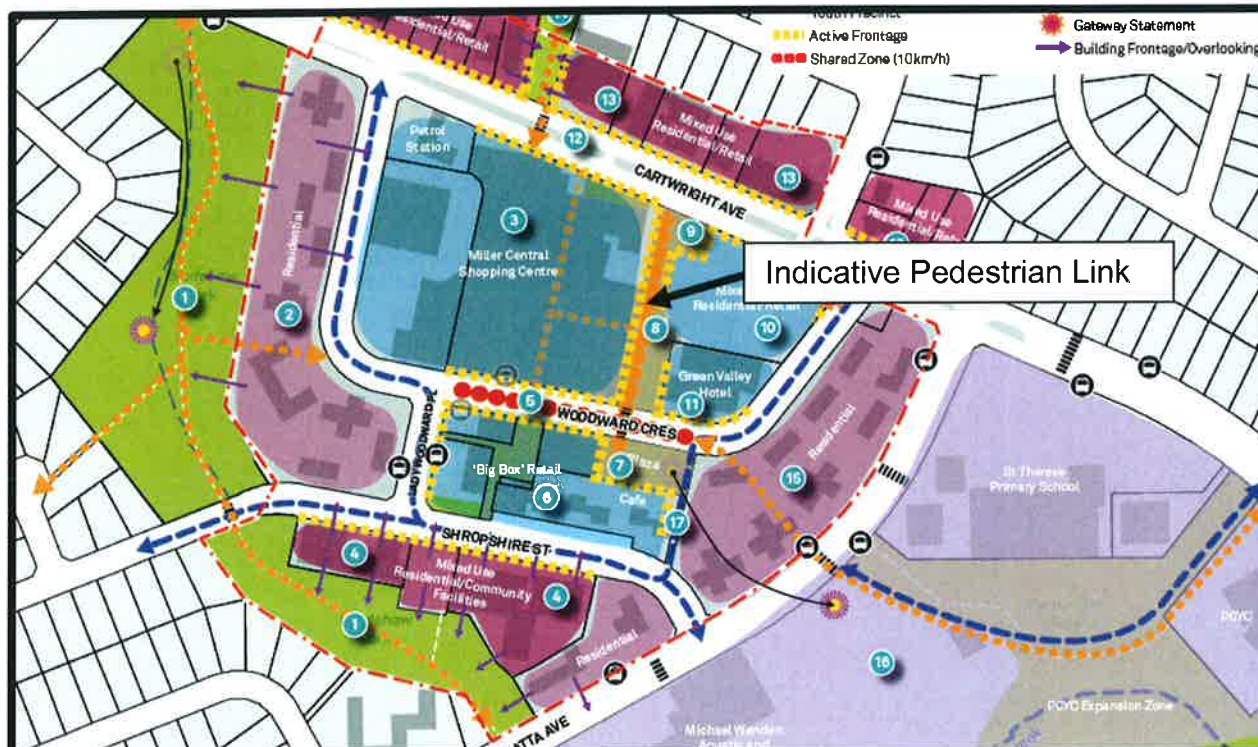


Figure 2: Extract from the draft Miller Town Centre Master Plan

The applicant's response regarding the absence of the western pedestrian link is that the link is only a concept strategy in a draft document. The provision of the western pedestrian link would also be contrary to the development application's ability to retain and maintain as

much at grade parking as possible, particularly with the existence of the covenant on the property.

Council has reviewed the applicant's position as to the reasoning that the pedestrian link was not provided and has concurred with the applicant's findings. It was considered pertinent in this instance that the maintenance of at-grade parking to maintain consistency to as much of an extent as possible with the provisions of the terms of the covenant stipulated above.

Notwithstanding Council's position above it was considered pertinent in this instance to enable the provision of the pedestrian link through to Cartwright Avenue from Woodward Crescent. As a result, discussions with the applicant have enabled Council to support an amendment to the draft master plan to relocate the proposed pedestrian link along the western boundary to the western adjoining site containing the Miller Shopping Centre. It was found that the provision of the pedestrian link through the existing shopping centre site will provide a suitable alternative as it will still enable a pedestrian link that connects Cartwright Avenue, Miller Shopping Centre and Woodward Crescent. The provision of the link will also provide the least resistance as the Miller Shopping Centre site is currently under the one ownership. This solution will avoid complications with the proposed pedestrian link in terms of split ownership and the need for compulsory acquisition due to Lot 1 DP 545358 containing an existing pawn shop, which would form the end part of the pedestrian link as originally proposed. The Miller Shopping Centre site is also not burdened by an easement/covenant that requires the maintenance of at-grade parking.

Traffic Deficiencies during construction

The existing at grade car parking on the subject site is able to cater for 189 vehicles. As a consequence of the construction, the availability of off-street parking will be temporarily impacted and present a knock on effect on the car parking availability of the surrounding streets.

Having regard to the above it was considered pertinent in this instance for the applicant to provide suitable temporary vehicular accommodation to offset the impacts generated by the temporary loss of parking on-site.

An analysis of the current parking situation within the surrounding locality, concluded that the most appropriate location for the provision of the temporary parking is the part of the reserve surrounding Michael Wenden Aquatic and Recreation Centre as indicated in the figure below;



Figure 3: Area of temporary parking in relation to development site.

The parcel of land is formally known as 62 Cabramatta Avenue Miller (Lot 101, DP 111802). The proposed temporary parking will be utilised primarily for staff parking which will limit the wear and tear of the reserve. An indicative car parking layout plan submitted with a draft Construction Management Plan (CTMP) indicated that temporary parking area within Michael Wenden Reserve is able to cater for approximately 163 car parking spaces as shown in figure 4 below.

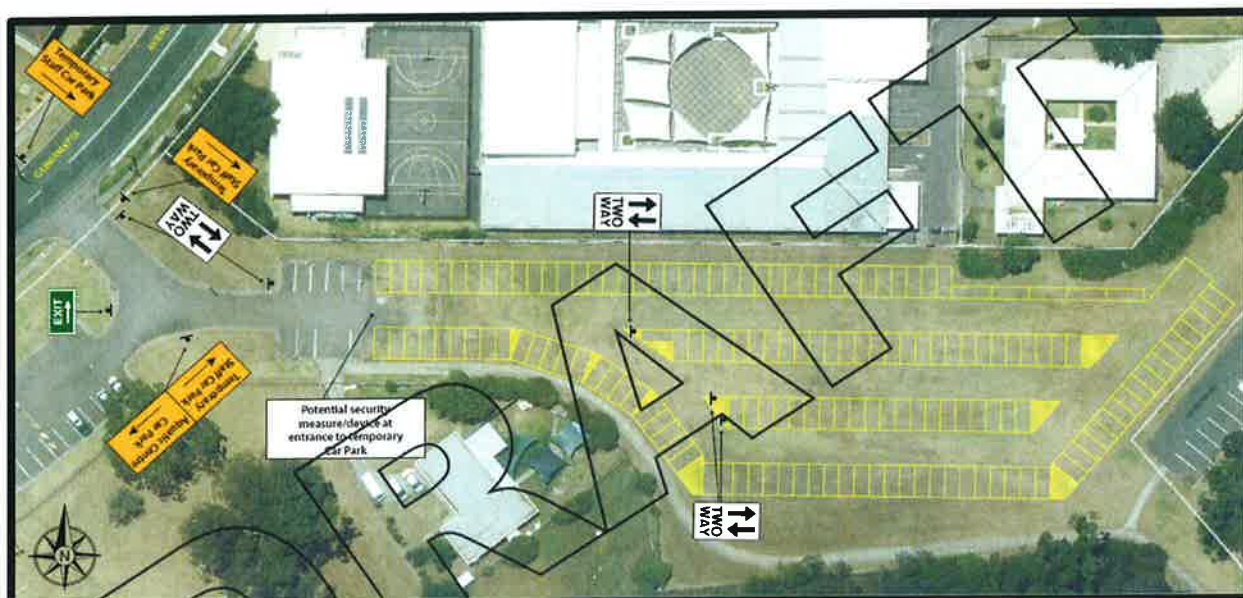


Figure 4: Indicative Number of spaces within Michael Wenden Reserve

Council's position is that the provision of temporary parking within Michael Wenden Reserve is the most appropriate location given the surrounding locality traffic constraints. Given the above, Council considers it pertinent to impose conditions on the final consent requiring a final CTMP be prepared and lodged with Council prior to the issue of a CC and is to include but not limited the following;

1. *Details on how the Public notification of temporary closure of the shopping centre car park will be undertaken.*
2. *Details of the display of appropriate directional signage to the temporary car park at the reserve off 62 Cabramatta Avenue, Miller.*
3. *Details relating to management strategies to ensure that staff will park in the temporary car park.*
4. *Further detail on how temporary flood lighting will be provided in the temporary car park.*
5. *Evidence of a formal agreement signed with Council for the use of the reserve as a temporary car park is to be provided.*
6. *Details on how the reinstatement of the reserve to its original condition at the end of use will be undertaken.*
7. *Details on how the process of consultation with all stakeholders will be undertaken to resolve any issues arising from the temporary closure of the shopping centre car park as reasonably expected.*

Additional conditions will be imposed requiring supplementary information to be submitted with the final CTMP inclusive of the following;

8. *Submission and implementation of an approved traffic control plan (TCP prepared by an RMS accredited person) in compliance with RMS's Traffic Control At Work Sites Manual Guidelines, A.S. 1742.3 and Work Cover regulations is required.*
9. *A detailed Pedestrian control and management plan to be included in the Traffic Control Plan*
10. *Details on how the adjacent property owners and occupants will be notified in writing at least 5 days prior any works being carried out to the satisfaction of Councils Manager of the Traffic Department.*

Due to the fact the applicant will be utilising a Council asset for the temporary parking during the construction period, Council will require the applicant enter into a deed of agreement with Council when utilising the reserve for parking. The condition of consent will read as follows;

- a) *The applicant is to enter into a deed of agreement with Council for the utilisation of the portion of Michael Wenden Reserve for the purpose of temporary parking during construction of the approved development.*

It is Council's position that utilisation of Michael Wenden Reserve on a temporary basis for parking will cater for the temporary loss of parking created during the construction period.

It is acknowledged that the removal of the available parking during construction on Lot 4, will create concerns with respect to the existing covenant applying to the site. Given the impost on the existing parking arrangement is temporary in this instance, it is considered appropriate in this instance to rely on clause 1.9A of the LLEP 2008, Suspension of Covenants, agreements and instruments to support the proposal

Clause 1.9A of the LLEP states the following;

- (1) *For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that development does not apply to the extent necessary to serve that purpose.*

It is considered that the use of clause 1.9A will in this instance enable the temporary suspension of the applicable terms of the covenant to enable the carrying out of development on the subject allotment that would have otherwise been restricted if the terms of the covenant were enforced. It is considered reasonable to rely on clause 19.A in this instance

as it will only be for a temporary period until such time as the at-grade parking is made available.

1.5 Exhibition of the proposal

The development application was on public exhibition from 24 February 2015 to 10 March 2015 in accordance with Liverpool Development Control Plan 2008 (LDCP 2008). During the exhibition period two submissions were received. Outside the exhibition period Council also received a further submission. The concerns raised in the submissions are detailed further in this report.

1.6 Conclusion

The application has been assessed pursuant to the provisions of the Environmental Planning and Assessment Act (EP&AA) 1979. Based on the assessment of the application and the consideration of the written requests to vary development standards, it is recommended that the application be approved subject to the recommended conditions of consent.

2. SITE DESCRIPTION AND LOCALITY

2.1 The site

The subject site is identified as part Lot 4 DP 219028, Lot 2 DP 219028, Lot 2 DP 545358, 90 Cartwright Avenue, Miller. An aerial photograph of the subject site is provided below.



Figure 5: Aerial photograph of the site

The site is an irregular shaped allotment with a total site area of 2.59ha. The subject allotment has multiple frontages including a 275m northern boundary frontage to Cartwright Avenue, a 154.265m western boundary frontage to Woodward Crescent, a 111.915m southern boundary frontage also to Woodward Crescent and a 51.6m eastern boundary frontage also to Woodward Crescent. The subject site is zoned B2 Local Centre. The proposed development is isolated to the eastern portion of the subject site as indicated in the aerial photograph above.

2.2 The locality

The surrounding locality is predominately characterised by a mixture of low-scale neighbourhood commercial development and low to medium density residential development. Directly south of the subject allotment are two commercial premises including the Green Valley Hotel and a Pawn Shop. To the north of the subject site across Cartwright Avenue is an existing part two part three storey shop-top housing development that contains a ground floor medical centre, chemist and a mixed business with residential units above. Located also north of the subject site across Cartwright Avenue is a fire station. Located directly east of the subject site across Woodward Crescent is a medium to high density development comprising of attached and detached townhouses along with 3 storey walk up residential flat buildings. Located directly west of the subject site is the existing Miller Central shopping centre, which contains a range of retail/commercial premises inclusive of an Aldi and Woolworth's supermarket, a grocery store and post office etc. The Miller Shopping Centre also contains a Council library. The existing locality is shown in the figure 6 below;



Figure 6: Locality Map

2.3 Site affectations

There are no identifiable site constraints on the development site.

3. BACKGROUND

3.1 Issues Identified in Initial Assessment

Council sought further information and clarification regarding the following items on 17 April 2015

1) Parking non-compliance with the LDCP 2008

The original application was lodged with a significant non-compliance to the applicable parking rates required for the development. The proposed development required 211 residential car spaces and 36 visitor spaces. The original application proposed only 151 residential car spaces and 35 visitor spaces, representing a non-compliance of 60 residential spaces and 1 visitor space. Council advised the applicant that Council will not support any

non-compliance with parking, particularly having regard to significant parking deficiencies already existing within the area.

The applicant responded by providing a justification on 12 May 2015 for the shortfall stipulating the following;

It is acknowledged that a departure from LDCP 2008 – Part 1 Section 20 is sought, which is a specific design response to reflect firstly the location of the site within the heart of the Miller Local Centre, and to response to the anticipated actual parking demand on the site. The amended proposal provides the following increased parking provisions:

- *Resident Visitor Spaces – 35 Spaces Provided*
- *Resident Spaces –*
 - i. *1 Bedroom Units {26 In Total - 1 Space Per Unit {26 Spaces}*
 - ii. *2 Bedroom Units {107 Units } – 1.1 Space Per Unit provided {1.5 spaces required, 42.8 spaces deficient }*
 - iii. *3 Bedroom Units {12 Units} – 2 Spaces per Unit {24 Spaces, 18 of which are in tandem Form}*

Whilst not directly applicable, the controls in the Liverpool City Centre Parking rates are more relevant given the context of the site and noting that the development is not a traditional residential flat building in an R4 zone that is removed from local facilities and services (and hence a higher overall demand for parking). The lower rates in the City Centre DCP are considered most appropriate in the subject case for the following reasons:

- *The subject site is located on the same site as a large shopping centre hub, meaning that residents can walk to local facilities and services and negates the need for additional vehicle trips;*
- *The subject site is well serviced by public transport routes and major arterial corridors;*
- *Bike routes and paths are available and the site accommodates numerous motorbike and bicycle parking*
- *The RMS Guide to Traffic Generating Developments nominated a parking rate of 0.6 spaces per dwelling for a 1 bedroom unit, 0.9 spaces for a 2 bedroom unit, and 1.4 spaces per dwelling with a 3 bedroom unit- which the proposal exceeds.*

The applicant has ensured, through maintaining at grade parking and further providing 40 retail staff parking spaces in B1, being an increase of 29 spaces relative to the original scheme that the aggregate pre development parking availability is the same as the post development availability. It is reinforced that the parking accumulation surveys and other information contained within the Traffic Report prepared by Varga Traffic Planning indicate that the existing centre is utilising much less on site parking as compared to the availability of parking on the site. In addition to the above please see the information provided in the Traffic Report prepared by Varga Traffic Planning which concludes that the extent of onsite parking is sufficient to accommodate the needs of residents as well as meeting the needs of the existing shopping centre.

Council on 9 June 2015 responded to the applicant and advised that Council does not support the justification provided by the applicant for the following reasons;

- 1) *Even though the proposed development is not a traditional development that is found in a B2 Local centre zone and is a proposal that would be more contextually appropriate in*

the city centre Council cannot support the argument that the city centre controls would be more appropriately applicable due to the following;

- a) The frequency and accessibility to public transport in a city centre such as Liverpool are considered more prevalent when compared to the context of a local centre such as Miller. Having regard to this it would be considered inappropriate in this instance to apply or accept a non-compliance of this extent when the ability to cater for a residential car space shortfall would be more achievable in the city centre than the local centre of Miller.*
- b) There are no site restrictions that prevent the proposal from providing a compliant parking rate in accordance with the DCP.*

The applicant was once again requested to provide a compliant parking scheme. Subsequent to the above correspondence the applicant submitted amended plans to Council with a compliant parking scheme. To achieve the compliant parking scheme the applicant expanded the half basement level on basement 2 to a whole basement level. As a consequence of the expanded basement 2 the proposed parking was increased from 151 residential spaces to 211 residential spaces and from 35 visitor spaces to 36 visitor spaces, thus representing a compliant parking arrangement for the residential portion of the development.

As a consequence of the expanded basement the proposal was also able to cater for 90 retail/staff parking spaces. The additional retail parking spaces also enabled the development to cater for the loss of at-grade parking that is generated by the proposal.

2) Inconsistency with future Miller Master Plan

As discussed previously in this report, Council raised concerns that the development proposal is inconsistent with the draft Miller Town Centre Master Plan, specifically in relation to the proposed western pedestrian link. After consultation with the applicant and discussions with Council's Strategic Planning Department it was concluded that the provision of the western pedestrian link along the western boundary of the development site is not a viable or feasible option. As such Council supported the applicant's position as to why the pedestrian link was not provided. Council is currently in the process of amending the draft Master Plan to cater for a similar pedestrian link on the adjoining western site being the Miller Shopping Centre.

3) Traffic Deficiencies during construction

As discussed previously in this report, Council raised concern about the temporary impost on parking during construction. As advised above Council and the applicant resolved to utilise temporary parking within Michael Wenden Reserve.

4) Recommended design changes by the Design Review Panel

In the initial correspondence forwarded to the applicant, it was requested that they implement the recommended design changes put forth by the Design Review Panel from its meeting held with the applicant on 26 February 2015. The Design Review Panel comments are discussed in detail later in this report.

5) Concerns raised by the JRPP

The matters for consideration raised by the JRPP as a result of a briefing session on 11 March 2015 were also forwarded to the applicant. These are discussed in detail later in this report.

3.2 Design Review Panel Briefing/Design Excellence Panel

The subject application was considered by the Design Review Panel (DRP) on 26 February 2015 (see attached DRP minutes). The main outcomes from consideration by the DRP are summarised below:

This report should be read in conjunction with the May 2014 report by a previous panel which recommended various amendments to a detailed development concept for mixed use redevelopment of the subject site.

The Panel acknowledges that the current development proposal remains substantially the same as the original development concept which was reviewed in May 2014, and that current plans have responded positively to the majority of recommendations in the preceding report. In summary, amendment of the original concept has involved substantial reconfiguration of residential Block A together with changes to street level retail and access to parking areas, together with numerous minor changes.

The Panel's review of the current development application has identified several further-amendments which would enhance design quality of this proposal, and would achieve the most-effective catalyst for redevelopment of the surrounding precinct:

- *Primarily, by the refinement of facades in order to complement landmark status of the proposed development, as well as providing substantial justification in terms of urban design quality for non-compliant building heights which are proposed; and*
- *Secondly, by adjustment of carpark exit paths in order to minimise conflicts with pedestrians along Cartwright Avenue and, consequently, to maximise commercial potential of the proposed shopfronts; and*
- *Thirdly, by providing a variety of effective pedestrian pathways between the residential podium and Cartwright Avenue or the shopping centre.*

Amended plans should be reviewed by the Panel chair in order to confirm that recommendations in this report have been implemented appropriately.

Comment: In consideration of the DRP comments from the meeting on 26 February 2015, the applicant amended the proposed design in accordance with the recommendations. The amended plans took into account the recommendations of the DRP and implemented all necessary recommendations.

As a consequence of the amended plans, it was considered pertinent to present the latest plans to the panel for their final comment. Unfortunately during the time of the submission of amended plans the Design Review Panel was replaced by a new panel known as the Liverpool Design Excellence Panel (DEP).

Therefore the final plans were presented to the DEP on 22 October 2015. The DEP minutes are attached to this report. The findings of the DEP are summarised below;

- *The proposal must replace the public car parking and add additional car parking for residential development as per a positive covenant on the site*
- *The Panel :*
 - *queried the use of the podium as the entrance space and commented that the way finding was confusing.*
 - *accepted the applicant's proposal for the above and the main entrance at grade but considered that it needed to be more generous and more memorable .*
 - *suggested a more rational organisation of the pedestrian access on the podium and stipulated that it should be:*
 - *organised into a clear main and secondary street system.*

- *have a clear difference between the park and plaza.*
 - *supported the corner resolution , planning and architecture.*
 - *supported a clear through site link where it is currently located in the shopping centre.*
 - *supported the massing and additional height at the corner even though it is a small non- compliance .*
- *The Panel noted that any future development will need to comply with ADG setbacks. This is relevant to the western boundary.*
 - *The applicant stated that the section at the shopping centre to the west of the current DA site is to be re-developed in the future as Stage 2 of the overall development proposal.*

Having regard to the comments of the DEP on 22 October 2015, it is considered that the development proposal presents a suitable design for the locality and is a design that exhibits design excellence.

3.3 JRPP Briefing

A briefing meeting was held on 11 March 2015. The main outcomes of the briefing meeting with the JRPP are summarised below:

- 1) Site isolation in terms of pawn shop, offers to be made and design solution to be explored;

In response to the concerns raised by the JRPP in terms of site isolation of the pawn shop the applicant has provided the following response

- *The Pawn Shop would, should it chose to redevelop, be best amalgamated with the Shopping Centre Lot at a later stage. Given the easements and location of the access handle of the subject lot, any amalgamation of the Pawn Shop into the subject development would lead to an uncharacteristic building Typology, narrow in form as given the limited width even when amalgamated, the resulting design would not be in keeping with the controls nor character of the DCP or LLEP. Amalgamation with the Shopping Centre would allow for a built form consistent with the LDCP and LLEP and Miller Master Plan {Draft}*

Comment: Council has reviewed the comments provided by the applicant in response to the concerns raised by the JRPP and concurs with the applicant's findings. Amalgamating the pawn shop site with the proposed development site will result in an undesirable design outcome and will result in a design outcome that is inconsistent with the controls of the LDCP and LLEP. It is a suitable alternative that the site containing the pawn shop be consolidated with the existing shopping centre site to the west as part of a future proposal in order to provide for more orderly development.

- 2) Limiting Potential of the redevelopment of the shopping centre.

In response to the concerns raised by the JRPP in terms of the subject development limiting the potential of redevelopment of the adjoining shopping centre, the applicants provided the following response;

- *The lot to the West {Shopping Centre} is approximately 12500m² and is sufficient in its own right both in lot size and frontage to redevelop in its own right should it wish to do so in the future. Development of the subject lot in no way affects or restricts that lots development potential*

Comment: Council has reviewed the comments provided by the applicant and has concurred with their comments. It is considered that the lots containing the Miller Shopping Centre are of a sufficient size to cater for future development in their own right.

Amended Documentation and Design

- No additional documentation was provided in response to the JRPP concerns raised.

4. DETAILS OF THE PROPOSAL

Development consent is sought for:

- Demolition of existing car parking and removal of trees within car park; relocation of Telstra communications tower;
- Construction of a part 7 and 9 storey shop top housing development. The proposal will comprise ground floor commercial space and 145 residential units above within 2 residential blocks (block A and block B) over a podium level communal open space area and a total of 500 car parking spaces at grade and within two levels of basement.
- Block A located on the north eastern corner of the site is 9 storeys.
- Block B located on the north western corner of the site is 7 storeys.
- The apartment mix is:
 - 26x1 bedroom units
 - 107x2 bedroom units
 - 12x3 bedroom units

The commercial floor area is divided into two separate tenancies. Tenancy 1 is located at the ground level of block A and equates to 153sqm. Tenancy 2 is located at the ground level of block B and equates to 273.9sqm. The total commercial floor area equates to 426.9sqm

4.1 History

- 1) The development application was lodged on 28 January 2015.
- 2) The development application was on public exhibition from 24 February 2015 to 10 March 2015 in accordance with Liverpool Development Control Plan 2008 (LDGP 2008). During the exhibition period two submissions were received. The concerns raised in the submissions are detailed further in this report.
- 3) The application was presented to the DRP on 26 February 2015
- 4) The application was briefed to the JRPP on 11 March 2015.
- 5) Request for additional information was forwarded to the applicant on 17 April 2015 outlining concerns raised by planning (i.e. significant parking shortfall), development engineering, landscaping, strategic planning, the design review panel and the JRPP.
- 6) The applicant submitted amended plans in response to the concerns raised on 12 May 2015.
- 7) After an assessment of the amended plans Council provided written correspondence to the applicant on 9 June 2015 advising that the proposed development is still not supported as there is a significant shortfall in parking.
- 8) The amended proposal was presented to the Design Excellence Panel on 22 October 2015
- 9) A meeting was held with the applicant on 17 November 2015 to discuss Council's concerns that the proposed development provides a significant shortfall of parking and concerns that the proposal will create parking concerns on the surrounding streets during construction.

- 10) The applicant provided amended plans on 20 November 2015, demonstrating compliance with the applicable parking requirements.
- 11) On 16 February 2016 the applicants provided Council with a draft Construction Traffic Management Plan that outlined the provision of temporary parking during the construction period of the application.

5. STATUTORY CONSIDERATIONS

5.1 Relevant matters for consideration

The following Environmental Planning Instruments, Development Control Plans and Codes or Policies are relevant to this application:

Environmental Planning Instruments (EPI's)

- State Environmental Planning Policy No.65 – Design Quality of Residential Flat Development.
- State Environmental Planning Policy No.55 – Remediation of Land.
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment;
- Liverpool Local Environmental Plan 2008;
- Liverpool Development Control Plan 2008.

Draft Environmental Planning Instruments

- No applicable draft planning instruments apply to the site

Development Control Plans

- *Liverpool Development Control Plan 2008*
 - Part 1 – Controls to all development
 - Part 6 – Development in Business Areas

Contributions Plans

- Liverpool Contributions Plan 2009

5.2 Zoning

The subject site is zoned B2 Local Centre pursuant to LLEP 2008 as depicted in figure 7 below;

Responding to context involves identifying the desirable elements of a locations current character, or in the case of precinct undergoing a transition, the desired future character as stated in planning and design policies. New buildings will thereby contribute to the quality and identify of the area.		the locality. It is considered the subject development is consistent with the desired future character of the area.
PRINCIPLE 2: SCALE Good design provides an appropriate scale in terms of the bulk and height that suits the scale of the street and the surrounding buildings. Establishing an appropriate scale requires a considered response to the scale of existing development. In precinct undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desire future character of the area.	Yes.	Proposed development is considered to be of an appropriate bulk and scale. The development proposes a compliant FSR, while proposing a height that is key to its strategic location within the Miller Town Centre. It is a scale of development that is consistent with the intended desired future character of the site
PRINCIPLE 3: BUILT FORM Good design achieves an appropriate built form for a site and the buildings purpose, in terms of building alignments, proportions, building type and the manipulation of building elements. 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.	Yes.	Proposed built form is considered worthy of support in this instance. The proposal has been designed with a unique built form that encapsulates the key site location. It presents well to all frontages and is of a unique design with significant articulation that presents well having regard to the site attributes and restrictions.
PRINCIPLE 4: DENSITY Good design has a density appropriate for the site and its context, in terms of floor space yields (or number of units or residents). Appropriate densities are sustainable and consistent with the existing density of the area or in precinct undergoing a transition, are consistent with the stated desired future density. Sustainable densities	Yes.	The proposed density in this instance is considered acceptable. The FSR proposed is well under the maximum permissible.

respond to the regional context, availability of infrastructure, public transport, community facilities and environmental quality.		
PRINCIPLE 5: RESOURCE, ENERGY AND WATER EFFICIENCY Good design makes efficient use of natural resources, energy and water throughout its full life cycle including construction. Sustainability is integral to the design process. Aspects include demolition of existing structures, recycling of materials, selection of appropriate and sustainable materials, adaptability and reuse of buildings, layouts and built form, passive solar design principles, efficient appliances and mechanical services, soil zones for vegetation and reuse of water.	Yes.	The proposed development is consisted with the BASIX requirements applicable and with the BASIX certificates provided. The proposed development has maximised solar access and natural ventilation, based on the design.
PRINCIPLE 6: LANDSCAPE Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in greater aesthetic quality and amenity for both occupants and the adjoining public domain. Landscape design builds on the existing site's natural and cultural features in responsible and creative ways. It enhances the development's natural environmental performance by co-coordinating water and soil management, solar access, micro-climate, tree canopy and habitat values. It contributes to the positive image and contextual fit of development through respect for streetscape and neighbourhood character, or desired future character. Landscape design should optimise usability, privacy and social opportunity, equitable access and respect	Yes	The majority of the landscaping provisions are accommodated at the podium level of the development. The proposed landscape design incorporates a communal open space area, functioning as a public open space area for the community to use for outdoor dining and barbecue activities. Garden areas to link ground floor levels within the site and to generate a sense of space for residents and visitors within the property. It is considered the landscape design proposed is appropriate given the context of the site and its constraints. It is considered the proposed landscape design encourages usability and creates permeability for the residents and visitors to the development.

for neighbours' amenity, and provide for practical establishment and long term management.		
PRINCIPLE 7: AMENITY Good design provides amenity through the physical, spatial and environmental quality of a development. Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.	Yes.	The proposed development is considered satisfactory in terms of amenity. The design of the development inclusive of room sizes and location extenuates the developments ability to achieve necessary solar access and, natural ventilation.
PRINCIPLE 8: SAFETY AND SECURITY Good design optimises safety and security, both internal to the development and for the public domain. This is achieved by maximising overlooking of public and communal spaces while maintaining internal privacy, avoiding dark and non-visible areas, maximising activity on streets, providing clear, safe access points, providing quality public spaces that cater for desired recreational uses, providing lighting appropriate to the location and desired activities, and clear definition between public and private spaces.	Yes.	The proposal has been designed to take into account the safety and security both externally and internally of the development. The design is considered to appropriately incorporate the CPTED principles namely Surveillance, access/egress control, territorial reinforcement and space management.
PRINCIPLE 9: SOCIAL DIMENSIONS AND HOUSING AFFORDABILITY Good design responds to the social context and needs of the local community in terms of lifestyles, affordability, and access to social facilities. New developments should optimise the provision of housing to suit the social mix and needs in the neighbourhood or, in the case of precincts undergoing transition, provide for the desired future community.	Yes.	Development proposes an appropriate apartment mix to cater for a range of markets.

PRINCIPLE 10: AESTHETICS Quality aesthetics require the appropriate composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the development. Aesthetics should respond to the environment and context, particularly to desirable elements of the existing streetscape or, in precincts undergoing transition, contribute to the desired future character of the area.	Yes.	The proposed development is considered to be aesthetically pleasing. The proposed development has incorporated an appropriate diversity of building elements, textures, materials and colours to enable a suitable design outcome. The proposed development has effectively responded to its surrounding context in terms of streetscape appearance and the desired future character of the area.
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Further to the above design quality principles, Clause 30(2) of SEPP 65 also requires residential flat development to be designed in accordance with the Department of Planning's publication entitled Residential Flat Design Code (RFDC). The following table outlines compliance with the RFDC, where numerical requirements ('controls') are specified.

Development Standard	Required	Proposed	Compliance
Building Depth	Max 10m – 18m	<u>Block A</u> Level 2 = North West to North East depth = 30m Level 3-6 = North West to North East depth = 30m Level 7 = North West to North East depth = 30m Level 8 = North West to North East depth = 30m <u>Block B</u> Level 2 = North West to North East depth = 40m Level 3-6 = North West to North East depth = 40m Level 7 = North West to North East depth = 40m	Partial Compliance The increased building depths on all residential unit levels on block A are predominately isolated to the northern portion of the tower. The remaining portions of the tower to the south propose a compliant building depth when measured at the shortest axis. Notwithstanding the increased building depth, the proposal demonstrates satisfactory compliance with solar access and ventilation.
Building Separation	Between Block A and Block B	Between Block A and Block B	

Development Standard		Required	Proposed	Compliance
		Up to four storeys/12m, required 12m	Level 2 = 20m At narrowest point	Complies
		Between five to eight storeys/up to 25m required 18m	Level 3-6 = 18m at its narrowest point Level 7 = Portion of level 7 falls within the 25m height limit building separation = 18m	Complies Partial non-compliance and is isolated to the northern section at the centre of the site between block A and B. The proposed non-compliance is considered worthy of support in this instance as it is isolated to a minor portion of the site and still achieves adequate solar access and cross-ventilation. The encroachment on the building separation is isolated to bedroom windows and balconies thus allowing sufficient achievement of privacy.
		Nine storeys and above/over 25m	Level 7 = Portion of level 7 falls within the building height over 25m = 18m	Partial non-compliance and is isolated to the northern section at the centre of the site between block A and B. The proposed non-compliance is considered worthy of support in this instance as it is isolated to a minor portion of the site and still achieves adequate solar access and cross-ventilation. The encroachment on the building separation is isolated to bedroom windows and balconies thus allowing sufficient achievement of privacy.
Deep Zones	Soil	25% of open space to be deep soil = 276sqm	No deep soil zones have been provided as the existing lot is predominately commercial with a restriction to maintain the ground floor	Given the nature of the site and the restrictions created by the at-grade parking it is considered that non-provision of deep soil zones is

Development Standard	Required	Proposed	Compliance
		as a car park. The ability to provide adequate deep soil zones is restricted in this instance.	acceptable in this instance.
Planting on structures	Soil depth dependent on height of trees	Appropriate plantings have been provided on the podium to accommodate appropriate planting	Complies
Communal Open Space	25% of site area = 6,475m ²	The application has provided for 1,472.8m ² of communal open space. This has been provided on the podium level.	Even though the proposal does not achieve the required communal open space, it is considered the amount provided in this instance as sufficient given the commercial zoning of the site. Moreover the applicant has achieved sufficient private open space for each unit, which is in excess of 10sqm per unit.
Open Space	Minimum 25sqm for GF apartments if the communal open space is not achieved.	A minimum of 25sqm has been provided for the units that are at the podium level.	Complies
Building Entry	Provide physical and visual connection between building and street Provide safe entrance Provide equitable entrance	Provided Safe entrance provided Provided	Complies
Parking	Provide underground car parking Provide bicycle parking	The proposal has incorporated parking in excess of the applicable parking requirements of the DCP. The proposal entails two basement parking levels that are to split the retail and residential portion and an at grade parking to enable satisfactory achievement	Complies

Development Standard	Required	Proposed	Compliance
		of an existing covenant on site	
Pedestrian Access	Barrier free access to at least 20% of dwellings	Proposal complies	Complies
Vehicle Access	Max width of driveway is 6m Located vehicle entry away from pedestrian entry	Provided	Complies
Apartment Layout	Single aspect max depth is 8m from a window Back of kitchen should be no more than 8m from a window Width of cross-over or cross-through apartments over 15m, should be min. 4m deep Min apartment size: 1 Bed- 50 m ² 2 Bed – 70m ² 3 bed – 95m ²	All apartments comply with this requirement All units comply with this requirement No cross-over apartments exceed a width of 15m >50sqm >70sqm >95sqm	Complies Complies Complies Complies
Apartment Mix	Provide an apartment mix	Out of the 145 Apartments 1 Bedroom = 26 2 Bedroom = 107 3 Bedroom = 12	Complies
Building Configuration	Balconies have a minimum depth of 2m Ceiling Heights 2.7m habitable 2.4 non habitable	All balconies have a minimum depth of 2m 2.7m provided for residential	Complies

Development Standard	Required	Proposed	Compliance
	3.3m for ground floor retail/commercial Storage 1 bed – 6m ³ 2 bed – 8m ³ 3+ bed – 10m ³	3.3m for ground floor retail	
Internal Circulation	Units accessed from a single corridor is 8	Block A = 9 apartments accessed from single corridor from level 2-7, level 8 is compliant Block B = is compliant a maximum of 8 units accessed from corridor through lifts 2 and 3.	Proposed non-compliance is minor in this instance and is considered worthy of support. The proposal demonstrates appropriate solar access and cross-ventilation
Acoustic Privacy	Like rooms together	Provided	Provided
Daylight Access	70% of units to receive 3 hours of daylight between 9am – 3pm In dense urban areas a minimum of two hours is considered acceptable.	Provided	Provided
Natural Ventilation	60% of units to be naturally cross ventilated	Provided	Provided

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

The objectives of SEPP 55 are:

- *to provide for a state wide planning approach to the remediation of contaminated land.*
- *to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.*

Pursuant to clause 7 the above SEPP, Council must consider:

- whether the land is contaminated.
- if the land is contaminated, whether it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the proposed use.

An investigation into the site history has indicated that the site has been utilised solely as a paved and sealed car park for the Miller Shopping Centre from circa 1964. Given the historic use of the site there is no evidence that the site has been utilised for potentially

contaminating activities pursuant to table 1 of the contaminated land planning guidelines.

Moreover the proposed development involves significant excavation across the majority of the development site to cater for two levels of basement. It is therefore expected that any potential contamination identified within the development site would be remedied through the proposed basement excavation. As part of the development application the existing at-grade parking area will be predominately replaced with a new sealed and paved public parking area to satisfy the requirements of the covenant on the site and to provide parking for the adjoining shopping centre. As such the predominant use of the ground level will not change.

To ensure further compliance with SEPP 55, the following conditions of consent have been imposed on the consent;

- *The development, including all civil works and demolition, must comply with the requirements of the Contaminated Land Management Act, 1997, State Environmental Planning Policy No. 55 – Remediation of Land, and Managing Land Contamination – Planning Guidelines (Planning NSW/EPA 1998).*
- *Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination and remediation must be notified to Council and the accredited certifier immediately after discovery. A Section 96 Application under the EP&A Act shall be made for any proposed works outside the scope of the approved development consent.*

Based on the above Council is satisfied that in accordance with clause 7 of SEPP 55, the site will be suitable for the proposed development.

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

A BASIX certificate and report has been submitted with the development application.

Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment (now deemed SEPP).

The Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment generally aims to maintain and improve the water quality and river flows of the Georges River and its tributaries.

When a consent authority determines a development application planning principles are to be applied (Clause 7(2)). Accordingly, a table summarising the matters for consideration in determining development application (Clause 8 and Clause 9), and compliance with such is provided below.

Clause 8 General Principles	Comment
When this Part applies the following must be taken into account:	Planning principles are to be applied when a consent authority determines a development application.
(a) the aims, objectives and planning principles of this plan,	The plan aims generally to maintain and improve the water quality and river flows of the Georges River and its tributaries.
(b) the likely effect of the proposed plan, development or activity on adjacent or downstream local government areas,	The proposal provides soil and erosion control measures and a Stormwater Concept Plan. The plans provided have been reviewed by Council's development engineer and considered satisfactory
(c) the cumulative impact of the proposed	The proposal has provided suitable storm

development or activity on the Georges River or its tributaries,	water concept plans that have been reviewed and considered satisfactory.
d) any relevant plans of management including any River and Water Management Plans approved by the Minister for Environment and the Minister for Land and Water Conservation and best practice guidelines approved by the Department of Urban Affairs and Planning (all of which are available from the respective offices of those Departments),	The site is located within an area covered by the Liverpool District Stormwater Management Plan, as outlined within Liverpool City Council Water Strategy 2004.
(e) the <i>Georges River Catchment Regional Planning Strategy</i> (prepared by, and available from the offices of, the Department of Urban Affairs and Planning),	The proposal includes a Stormwater Concept plan. There is no evidence that with imposition of mitigation measures, the proposed development would affect the diversity of the catchment.
(f) all relevant State Government policies, manuals and guidelines of which the council, consent authority, public authority or person has notice,	No State Government Agencies were required to be notified as part of the proposal.
(g) whether there are any feasible alternatives to the development or other proposal concerned.	The site is located in an area nominated for residential/commercial development.

Clause 9 Specific Principles	Comment
(1) Acid sulfate soils	The land is not identified as containing Acid Sulfate Soils.
(2) Bank disturbance	No disturbance of the bank or foreshore along the Georges River and its tributaries is proposed.
(3) Flooding	The subject site is not identified as being flood prone.
(4) Industrial discharges	Not applicable in this instance.
(5) Land degradation	An erosion and sediment control plan aims to manage salinity and minimise erosion and sediment loss.
(6) On-site sewage management	Not applicable.
(7) River-related uses	The proposal does not prevent access to the foreshore area by the public.
(8) Sewer overflows	Not applicable.
(9) Urban/stormwater runoff	A Stormwater Concept Plan proposes connection to existing services.
(10) Urban development areas	The site is not identified as being located within the South West Growth Centre within the Metropolitan Strategy. The site is not identified as being an Urban Release Area under LLEP 2008.
(11) Vegetated buffer areas	The site is not located within a Vegetated buffer area
(12) Water quality and river flows	A drainage plan proposes stormwater connection to existing services.
(13) Wetlands	Not applicable.

It is considered that the proposal satisfies the provisions of the GMREP No.2 subject to site remediation and appropriate sedimentation and erosion controls during construction, the development will have minimal impact on the Georges River Catchment.

Liverpool Local Environmental Plan 2008

As stated previously the subject site is zoned B2 Local Centre under Liverpool Local Environmental Plan 2008 (LLEP 2008). The proposed development is defined as a *shop top housing* with Council consent in the B2 Local Centre zone.

Zone Objectives

The objectives of the B2 – Local Centre zone are identified 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 allow for residential and other accommodation while maintaining active retail, business or other non-residential uses at street level.*
- *To facilitate a high standard of urban design and a unique character that contributes to achieving a sense of place for the local community.*

The proposed development is considered to be consistent with the objectives of the B2 zone. The development provides for ground floor commercial tenancies that will in turn cater for the residents within the surrounding locality. The provision of the ground floor commercial premises also allows for the provision of additional employment opportunities within the surrounding locality. The proposal allows for a high density form of residential development with a suitable apartment mix to cater for a range of markets, while still maintaining an active street frontage through the provision of ground floor commercial premises. The proposed development has also been designed to take into account the strategic location of the subject site within the Miller Town Centre. The development is considered to exhibit a high level of urban design and the provision of the additional height will create a sense of identity for the subject site and an indefinable landmark for the suburb of Miller and the Miller Town Centre.

Principal Development Standards

The following principal development standards are applicable to the proposal:

Development Provision	Requirement	Proposed	Comment
1.9A Suspension of covenants, agreements and instruments	For the purpose of enabling development on land in any zone to be carried out in accordance with this Plan or with a consent granted under the Act, any agreement, covenant or other similar instrument that restricts the carrying out of that	Refer to previous discussion in report	Complies

	development does not apply to the extent necessary to serve that purpose.		
4.3 Height of Building	21m	Building A = 29.1m at its highest point Building B = 23.6m at highest point	NO (Refer to clause 4.6 variation below)
4.4 Floor Space Ratio	1.7:1 as per clause 4.4 or	0.968:1 Existing Floor Area = 11,556.3sqm Proposed = 13,511.4sqm	Yes
7.14 Minimum building street frontage	24m	>24m Frontage proposed	Yes
7.16 Ground floor development in Zones B1, B2 and B4	Development consent must not be granted for the purpose of a building on land to which this clause applies unless the consent authority is satisfied that the ground floor of the building: (a) Will not be used for the purpose of residential accommodation, and (b) Will have at least one entrance and at least one other door or window on the front of the building facing a street other than a service lane	No residential accommodation proposed on ground floor. Proposed	Complies Complies
7.31 Earthworks	(3) Before granting development consent for earthworks, the consent authority must consider the following matters: (a) the likely disruption of, or any detrimental effect	The proposed plans were reviewed by	Complies

	on, existing drainage patterns and soil stability in the locality,	Councils Development Engineers and considered acceptable	
	(b) the effect of the proposed development on the likely future use or redevelopment of the land,	The proposed excavation is to cater for the redevelopment of the site.	Complies
	(c) the quality of the fill or the soil to be excavated, or both,	This is addressed through conditions of consent	Complies
	(d) the effect of the proposed development on the existing and likely amenity of adjoining properties	Conditions of consent will be imposed to ensure the excavation does not generate a detrimental impact on the adjoining residents.	Complies
	(e) the source of any fill material and the destination of any excavated material, the likelihood of disturbing relics,	Application reviewed by Council's Heritage Officer and no evidence of heritage items exist on the site.	Complies
	(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.	The proposed development is not in the vicinity of a watercourse.	Complies

Discussion on variation under Clause 4.6 of LLEP 2008 development standards

As identified in the compliance table above, the proposal is generally compliant with the majority of provisions prescribed by LLEP 2008 with the exception of the following:

Variation to Clause 4.3 Height of Buildings

Clause 4.3 of the LLEP 2008, stipulates that the maximum height permissible on the subject site is 21m. The proposed development has been lodged with a maximum height of 29.1m for tower A representing a variation of 38.5% and a maximum height of 23.6m for tower B representing a variation of 12.3%. Consequently the applicant has provided a clause 4.6 variation to justify the non-compliance. The clause 4.6 variation is attached to this report.

The submitted written request to vary Clause 4.3 (Height of buildings) has been assessed against the provisions of Clause 4.6; the objectives of the Clause being varied; and the objectives of the B2 zone, are discussed below:

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

- (b) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (c) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) the consent authority is satisfied that:*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

1) Circumstances of the development

The proposed development seeks consent for demolition of existing car parking and removal of trees within carpark; relocation of Telstra communications tower; construction of ground floor retail car parking and residential shop top housing (26 x 1 bedroom, 107 x 2 bedrooms and 12 x 3 bedrooms); two floors of basement residential car parking and associated works.

2) Written request addressing why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the contravening of the development standard

The applicant has provided the following comments addressing why compliance with the development standard is unreasonable or unnecessary in this case, as summarised:

- *Council's Design Review Panel have asked that the proponent explore increasing the scale and floor area of Block A so that it appropriately accentuates the prominent corner and gateway location of the site at the eastern corner of the 'heart' of Miller's Town Centre. This is the approach taken by the development concept to align with these comments and the proposal aligns with the AECOM Master Plan;*
- *The overall site is permitted a 1.7:1 FSR and currently the site is underutilising the permitted FSR and does not deliver on its strategic location at the heart of Miller.*

Therefore the increased height permits additional units to be delivered on site that will aim to deliver a critical mass/population density in the area that is commensurate with the site's strategic location and that will serve to revitalise the area. Across the entire site the development remains well below the maximum FSR and redevelopment of the existing shopping centre is unlikely to occur in the near future and as such it is appropriate to transfer the anticipated density to the corner through the increased height;

- The higher population density aligns with the principles of urban consolidation noting the proximity of bus stops and the level of services to the Miller shopping centre and even the centre itself. The increased population in the area will help to sustain local business and the enhanced viability may even see upgrading/improvement of the existing retail/commercial services and the opening of new services.*
- Upper floor levels are designed as penthouse verandas that will moderate the scale of the proposal by providing a recessive appearance giving a defined base middle and top the building as reflected in the photomontage;*
- The proposed buildings will present an appropriate bulk and scale on the site with a podium element design and slender tower above that will deliver a complying overall FSR of less than 1:1. The additional height does not generate any additional amenity impacts given the location of the site and the surrounding site context;*
- The proposed additional floor levels will ensure that the area is provided with a high density of residential development to support the growth of Miller and to align with the principles of urban consolidation that seek to ensure the efficient use of community infrastructure by providing higher density residential development at strategic locations.*
- The proposal has been designed to ensure that privacy impacts are mitigated against and that the proposal will not obstruct existing view corridors – noting that as the site is an 'island' there are limited privacy impacts to other development as they are separated by roads.*
- As outlined above the proposal remains consistent with the underlying objectives of the control and as such compliance is considered unnecessary or unreasonable in these unique circumstances.*

In response to the comments raised above, Council has provided the following justification as to why the imposition of the applicable height control is unreasonable and unnecessary in this instance:

- The subject site is considered to be a strategic location within the Miller Town Centre precinct. It is considered that the subject site is effectively a gateway site into the Miller Town Centre and given the strategic location and prominence of the site, an increased height to create a sense of prominence for the location is considered appropriate in this instance.
- The proposed development was reviewed separately during the DA process by both Council's Design Review Panel and Design Excellence Panel. The Panels found that the proposed development exhibits design excellence when assessed against the design principles of SEPP 65 such as context, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics.
- The Design Excellence Panel were in support of the additional height at the corner despite the non-compliance.
- Given the large site area and permissible FSR of 1.7:1, it is considered that the proposed development is of an appropriate bulk and scale.

- The proposed development has demonstrated compliance with all other relevant applicable EPI's that apply to the site.
- The proposal has presented a suitable design outcome and has taken into account the desired future character of the area.
- The draft Miller Master Plan envisages the potential to increase the density of the subject site to a maximum height of 31m and an FSR of 2.5:1. As such the development proposal is consistent with the intent of the draft master plan in that the increased height will provide an incentive for redevelopment and a focal point for the Town Centre.

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

The objectives of Clause 4.3 and assessment are as follows:

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

The proposed development is considered to be consistent with the objectives of clause 4.3, in that notwithstanding the height exceedance, the development is well under the applicable FSR development standard of 1.7:1. The proposal allows for a development that encourages high quality urban form and not only takes into consideration the applicable planning principles of SEPP 65 but also acknowledges the strategic location of the subject site as a gateway corner location for the Miller Town Centre. The design of the buildings including their predominant slender design enables adjoining development sites to receive satisfactory exposure to sunlight. The proposal takes into account the envisaged and intended future character of the area particularly in respect to the subject site and its strategic location within the Miller Town Centre. Therefore having regard to above it is considered the proposed development is consistent with the objectives of clause 4.3.

4) Consistency with objectives of the zone – B2 Local Centre

The objectives of 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 allow for residential and other accommodation while maintaining active retail, business or other non-residential uses at street level.*
- *To facilitate a high standard of urban design and a unique character that contributes to achieving a sense of place for the local community.*

The proposed development is considered to maintain consistency with the majority of the B2 zone objectives. The development provides for ground floor commercial tenancies that will in turn cater for the residents within the surrounding locality. The provision of the ground floor commercial premises also allows for the provision of additional employment opportunities within the surrounding locality. The proposal allows for a high density form of residential development with a suitable apartment mix to cater for a range of markets, while still maintaining an active street frontage through the provision of ground floor commercial premises. The proposed development has also been designed to take into account the

strategic location of the subject site within the Miller Town Centre. The development is considered to exhibit a high level of urban design and the provision of the additional height will create a sense of identity for the subject site and a landmark for the suburb of Miller and the Miller Town Centre.

5) Consistency with Clause 4.6 objectives

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

It is considered appropriate in this instance to apply a degree of flexibility when applying the maximum height development standard applicable to the subject site given the envisaged strategic location of the subject site within the Miller Town Centre. It is considered that achieving a greater height in this instance will allow for the creation of a landmark site within the locality and in turn represent a design outcome that is suitable for the town centre.

6) Recommendation

With considerations to the discussion above, the proposed variation to the Clause 4.3 “height of buildings” has satisfied the provisions of Clause 4.6 and is supported in this circumstance.

6.2 Section 79C(1)(a)(ii) - Any Draft Environmental Planning Instrument

The following draft Environmental Planning Instruments applies to the site,

6.3 Section 79C(1)(a)(iii) - Provisions of any Development Control Plan

Part 1 - General Controls for all Development and Part 4 - Development in The Liverpool City Centre of the Development Control Plan apply to the proposed development and prescribe standards and criteria relevant to the proposal.

The following compliance table outlines compliance with these controls.

Controls	Comment	Complies
PART 1 - GENERAL CONTROLS FOR ALL DEVELOPMENT		
2. TREE PRESERVATION	No major trees on site are being removed	Yes
3. LANDSCAPING	Majority of the landscaping is proposed on podiums on level 2	Yes
4. BUSHLAND AND FAUNA HABITAT PRESERVATION	N/A	N/A
7. DEVELOPMENT NEAR WATERCOURSE	Subject site is not near a watercourse or river	N/A
8. EROSION AND SEDIMENT CONTROL	Will be addressed through conditions of consent.	Yes
9. FLOODING RISK	Subject site not flood affected	Yes
10. CONTAMINATION LAND RISK	Site not	N/A

	recognised as being contaminated	
11. SALINITY RISK	Proposal will not have detrimental impacts on salinity	Yes
12. ACID SULFATE SOILS	Site is not affected by Acid Sulfate Soils	N/A
13. WEEDS	No identifiable noxious weeds on site	N/A
14. DEMOLITION OF EXISTING DEVELOPMENT	Development site is a carpark	Yes
15. ON-SITE SEWERAGE DISPOSAL	Considered satisfactory	Yes
16. ABORIGINAL ARCHAEOLOGICAL SITES	No items identified	N/A
17. HERITAGE AND ARCHAEOLOGICAL SITES	No heritage sites	N/A
18. NOTIFICATION OF APPLICATIONS	Application was notified in accordance with DCP.	N/A
19. USED CLOTHING BINS	N/A	N/A
20. CARPARKING AND ACCESS		
Within the Liverpool City Centre		
Car Spaces		
<u>Residential Component</u>		
1 space per one bedroom dwelling	1 bedroom = 26	211 Residential spaces provided, 37 Visitor Spaces provided
1.5 space per 2 bedroom dwelling	2 bedroom = 160.5	
2 space per 3 bedroom dwelling	3 bedroom = 24	
1 visitor car space for every 4 dwellings	Visitors = 36	
	Total =	
	211 Residential required and 36 visitor spaces required.	
<u>Commercial Component</u>		
1 space per 20sqm of LFA	Required =22	90 Retail car spaces provided
21. SUBDIVISION OF LAND AND BUILDINGS	No subdivision proposed	N/A
22. WATER CONSRVATION	Proposed development	Yes

	provided BASIX certificate. Certificate was reviewed and considered satisfactory.	
23. ENERGY CONSERVATION	Proposed development provided BASIX certificate. Certificate was reviewed and considered satisfactory.	Yes
25. WASTE DISPOSAL & RE-USE FACILITIES	Consent will have necessary conditions imposed regarding waste disposal	Yes
26. OUTDOOR ADVERTISING AND SIGNAGE	N/A	N/A

PART 6 DEVELOPMENT IN BUSINESS AREAS

2. SUBDIVISION, FRONTAGE AND ALLOTMENT SIZE - Site must have a minimum street frontage of 20m	Development site has a frontage width in excess of 20m	Yes
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12. SHOP TOP HOUSING		
a. BUILDING DESIGN, STREETSCAPE AND LAYOUT	The proposed development presents an innovative design that is generally compliant with SEPP 65. It provides for appropriate building design components and appropriate access points along the street. The proposed building takes advantage of the prominent site location, particularly the corner location and proposes a design that extenuates the location through appropriate design measures such as articulation, utilisation of different building materials and increased height. The design of the shop top housing development ensures adequate solar access is achieved to all residential units.	Yes
b. LANDSCAPING AND FENCING	The proposed development has been designed to accommodate appropriate landscaping in the form of communal open space on the podium.	Yes
c. CAR PARKING AND ACCESS	The proposal has provided parking in excess of the requirement of the LDCP 2008. Access to the proposed parking spaces have been adequately provided.	Yes
d. AMENITY AND ENVIRONMENTAL IMPACT	The proposed development has been designed to provide for appropriate amenity to the residents, including privacy and acoustic treatments	Yes

6.4 Section 79C(1)(a)(iia) - Any Planning Agreement or any Draft Planning Agreement

No planning agreement relates to the site or proposed development.

6.5 Section 79C(1)(a)(iv) – The Regulations

The Environmental Planning and Assessment Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. If approved appropriate conditions of consent will be imposed requiring compliance with the BCA.

6.6 Section 79C(1)(a (v) – Any coastal zone management plan (within the meaning of the Coastal Protection Act 1979), that apply to the land to which the development application relates

There are no or there are Coastal Zones applicable to the subject site.

6.7 Section 79C(1)(b) – The Likely Impacts of the Development

(a) Natural and Built Environment

Built Environment

The proposed development is considered to have an overall positive impact on the surrounding built environment. The proposal is its first of its kind that will revitalize the Miller Town Centre. The proposal has been designed to take into account the prominent corner location of the allotment and has created a landmark site. The proposal is considered to be consistent with the desired future character of the area.

Natural Environment

The proposed development is not considered to have a detrimental impact on the existing natural environment. The development proposal is located within a commercial zone that is fairly well developed.

(b) Social Impacts and Economic Impacts

The development is considered beneficial from a social aspect as it provides for a development that will revitalize the Miller Town Centre. It will provide a mixed use development with appropriate apartment mix to cater for a range of consumer markets. It provides for retail uses on the ground floor that will encourage employment. The increase density of the area created by this development will provide for an opportunity for the surrounding commercial development to profit.

Liverpool Contributions Plan 2009

The Liverpool Contributions Plan 2009 provides information on the extent of anticipated new development, the extent of new public services and amenities needed to support the new development and the contributions that the new development must make to fund the public services and amenities.

The development will generate additional demand as follows:

Check average per Lot or Dwelling	CPI rates reflect new ABS referencing system	
	D15	108.9
\$3,214	S10	96.3
Facilities	Amount (\$)	Job No.
Whitlam Centre Extensions	\$24,112	GL.10000001869.10110

Central Library Extensions	\$16,365	GL.10000001870.10112
Powerhouse	\$13,191	GL.10000001870.10114
District Community Facilities	\$20,816	GL.10000001870.10099
District Recreation	\$77,188	GL.10000001869.10093
Local Recreation	\$308,754	GL.10000001869.10096
Administration	\$5,588	GL.10000001872.10104
TOTAL	\$466,014	

6.8 Section 79C(1)(c) – The Suitability of the Site for the Development

The subject proposal has been designed to accommodate the prominent location of the development site. The proposal has been designed in line with the desired future character of the site and the surrounding locality. The proposed development is of an appropriate bulk and scale and has been designed to accommodate the exiting site attributes. Given the above the proposed development is considered suitable for the site.

6.9 Section 79C(1)(d) – Any submissions made in relation to the Development

(a) Internal Referrals

The following comments have been received from Council's Internal Departments:

Internal Department	Status and Comments
Building	No objection, subject to conditions
Landscaping	No objection, subject to conditions
Environmental Health	No objection, subject to conditions
Land Development Engineering	No objection, subject to conditions
Traffic Engineering	No objection, subject to conditions
Landscaping	No objection, subject to conditions
Heritage	No objections and no conditions recommended

(b) External Referrals

The following comments have been received from External agencies:

External Department	Status and Comments
Roads and Maritime Services	Satisfactory. No conditions imposed.
Endeavour Energy	Satisfactory subject to conditions of consent

(c) Community Consultation

The development application was on public exhibition from 24 February 2015 to 10 March 2015 in accordance with Liverpool Development Control Plan 2008 (LDCP 2008). During the exhibition period two submissions were received. Outside the exhibition period Council also received a further submission. The concerns raised in the submissions are discussed below;

ISSUE 1: The proposal has a height non-compliance that is inconsistent with the context of the area

Comment: Notwithstanding the non-compliance in height the proposal has provided a suitable clause 4.6 variation that has been detailed previously in this report that is considered worthy of support in this instance. The non-compliant height is considered worthy of support given the prominent location of the site and its future potential as a landmark site for the Miller Town Centre.

ISSUE 2: The proposed development does not achieve the CPTED Principles.

Comment: The proposed development is considered to effectively respond to the CPTED principles. The proposal has been designed to provide for passive and natural surveillance. It has provided a design with adequate sightlines to alleviate any detrimental impacts on pedestrian safety.

ISSUE 3: The proposed development needs to demonstrate permissibility given that retail premises is separately defined

Comment: Shop-top housing is a permitted use within the B2 zone. The proposed development is considered to be a shop-top housing development and there is considered no need to separately define the commercial/retail ground floor uses.

ISSUE 4: Access through the rear right of way could be denied during construction

Comment: Access through the right of way between the existing pawn shop and the Green Valley Hotel will not be restricted during construction.

ISSUE 5: Parking will be restricted during construction thus affecting business operations

Comment: The applicant has provided suitable alternatives to cater for the temporary loss of parking during the construction phase of the development. As discussed previously in this report the applicant is utilising Michael Wenden reserve east of the development site. It is considered that the provision of temporary parking in this location is sufficient to cater for the temporary loss of parking during construction.

ISSUE 6: The proposed development is inconsistent with the objectives of the zone

Comment: As discussed previously in this report the proposed development is considered consistent with the objectives of the zone.

ISSUE 7: The proposal is not in the public interest

Comment: The subject development site is considered to be in the public interest. The proposed development will assist in revitalising the Miller Town Centre and will be a catalyst for future re-development of the Miller Town Centre.

ISSUE 8: There is an existing covenant on the subject site that restricts the use of the lot to a car park and thus the proposal should be rejected as it is inconsistent with the terms of the covenant.

Comment: As discussed previously in this report, Council has received advice that the application does not need to be rejected even with the existence of a covenant on the development site.

ISSUE 9: Parking at the shopping centre is currently insufficient and a construction of this nature would worsen parking issues into the future

Comment: As discussed previously in this report, the proposal has provided a compliant development proposal with regards to parking. The proposal has also provided for additional retail spaces above what is required, which will assist in alleviating parking congestion within the area.

As also detailed previously in this report, temporary parking arrangements will be provided during the construction period to cater for the temporary parking shortfall on site during construction.

6.8 Section 79C(1)(e) – The Public Interest

The subject development site is considered to be in the public interest. The proposed development will assist in revitalising the Miller Town Centre and will be a catalyst for future re-development of the Miller Town Centre.

7 CONCLUSION

In conclusion, the following is noted:

- The subject Development Application has been assessed having regard to the matters of consideration pursuant to Section 79C of the Environmental Planning and Assessment Act 1979 and is considered satisfactory.
- The Development Application seeks development consent for a Shop Top Housing Development at 90 Cartwright Avenue Miller.
- The proposal is consistent with the objectives of the B2 Local Centre zone that is applicable to the site under the LLEP. The proposal is also consistent with the objectives of the height development standards despite the numerical non-compliance. The application is supported by requests to vary this development standard in order to accommodate the form, scale and density proposed.
- The proposal substantially complies with the provisions of the LDCP 2008. There are variations proposed to some development controls, however these are considered acceptable on merit.
- The proposal provides an appropriate response to the site's context and satisfies the SEPP 65 design principles and the requirements of the Residential Flat Design Code. The scale and built form is consistent with the desired future character of the area that is envisaged under the LLEP and LDCP.
- The development will be well located in relation to transport, employment, shopping, business and community services, as well as recreation facilities. It will deliver an efficient use of the site with well-designed high amenity dwellings.
- The application was referred to a number of external authorities with no objections raised, subject to imposition of conditions.

It is for these reasons that the proposed development is considered to be satisfactory and notwithstanding the submissions received, the subject application is recommended for approval, subject to conditions.

8 ATTACHMENTS

- **Final Conditions of consent**
- **Final Architectural Plans**
- **Clause 4.6 Variation**
- **Design review panel report**
- **Design excellence panel report**
- **Covenant applying to the site**
- **Legal advice provided to Council**
- **Submissions lodged with the DA**
- **Court judgment**
- **Draft Miller Master Plan**
- **Statement of Environmental Effects**
- **SEPP 65 Design Verification Statement**
- **Arborist Report prepared by Redgum Horticultural**
- **BASIX Report prepared by ESD Synergy**
- **Section J Report Prepared by ESD Synergy**
- **Acoustic Report prepared by Acoustic Logic**
- **BASIX Certificate Building A**
- **BASIX Certificate Building B**
- **Access/Compliance Report Prepared by PSE Access Consulting**