

Proposal: S.96(2) modification seeking alterations and additions to an approved mixed use development comprising the reduction of 186sqm in commercial floor area, an increase of 6 residential units and an increase of 5 car parking spaces

Location:

Lot 8, Sec 1, DP 752	1 Addlestone Road
Lot 1A, DP 315369	272 Merrylands Road
Lot 2A, DP 315369	274 Merrylands Road
Lot 3A, DP 315369	276 Merrylands Road
Lot 42, DP 1005784	280 Merrylands Road
Lot 41, DP 1005784	282-284 Merrylands Road

Owner/

Proponent: NR Complex Pty Ltd

**Capital
Investment**

Value: \$38,992,494

File No: DA 2013/450/-02

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Holroyd City Council

RECOMMENDATION

That the Section 96(2) application to modify Development Consent No. 2013/450/1 (JRPP No. 2012SYW004) be approved, subject to conditions as outlined in Attachment E of this report.

SUPPORTING DOCUMENTS

AT-A Site Locality Plan
AT-B Architectural Plans
AT-C Statement of Environmental Effects
AT-D Submissions
AT-E Draft Conditions of Consent

EXECUTIVE SUMMARY

On 17 July 2014, the Joint Regional Planning Panel resolved to approve Development Consent No. 2013/450/1 (JRPP No. 2013SYW102) for the demolition of existing structures; consolidation of 6 lots into 1 lot; construction of a 9 storey mixed commercial/residential development over 2 levels of basement parking and a 2 storey commercial building, accommodating (8) commercial suites with a total gross leaseable floor area of 2229sqm, 146 dwellings, 246 parking spaces and strata subdivision into 154 lots.

The subject S.96(2) application seeks to amend the approved development by a reduction of 186sqm in commercial floor area, an increase of 6 residential units and an increase of 5 car parking spaces.

This report summarises the key issues associated with the development application and provides an assessment of the relevant matters of consideration in accordance with the Environmental Planning and Assessment Act 1979, State Environmental Planning Policy No. 65 – Residential Flat Development, the Holroyd Local Environmental Plan 2013 and the Holroyd Development Control Plan 2013.

The application was placed on public exhibition for a period of twenty-one (21) days. One (1) submission was received in response, raising concern with the reduction in commercial floor space, the increase in residential units and the impact of the development on local traffic. A letter was forwarded to this objector addressing their concerns. A follow up letter was received from the objector reiterating their previous concerns. It is considered that these concerns have been appropriately addressed.

The application was referred to Council's Development Engineering Section, Traffic Section, Landscaping and Tree Management Section, Environmental Health Unit, Waste Management Section and Community Services Section (Social Planning and Accessibility). In addition, the application was referred externally to the Roads and Maritime Services and Sydney Water for comments. No objections were raised to the development, subject to conditions.

The application is referred to the Sydney West Joint Regional for consideration pursuant to Clause 23G of the Environmental Planning & Assessment Act 1979, as the development has a capital value in excess of \$20 million, and pursuant to Clause 21 of State Environmental Planning Policy (State and Regional Development) 2011.

In accordance with Section 96(2) of the EP&A Act, Council is satisfied that the development as modified is substantially the same as the development as originally approved. It is considered that the proposed modified development is appropriate for the site and for the locality and will have minimal impact on the surrounding environment. Based on an assessment of the application, it is recommended that the application be approved subject to conditions as outlined in Attachment E of this report.

SITE DESCRIPTION AND LOCALITY

The subject site encompasses a number of allotments, which are identified as follows:

Lot 8, Sec 1, DP 752	1 Addlestone Road
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Lot 1A, DP 315369	272 Merrylands Road
Lot 2A, DP 315369	274 Merrylands Road
Lot 3A, DP 315369	276 Merrylands Road
Lot 42, DP 1005784	280 Merrylands Road
Lot 41, DP 1005784	282 Merrylands Road

The subject site is situated on the southern side of Merrylands Road, approximately 450 metres west of Merrylands Railway Station. The subject site is bounded on 3 sides by Addlestone Road to the east, Merrylands Road to the north and Burford Street to the west. To the south are two residential flat buildings.

The site is rectangular in shape and has a combined area of approximately 5,480sqm. The site has a frontage to Merrylands Road of approximately 90 metres and frontage to Addlestone Road and Burford Street of approximately 60 metres.

The site is currently vacant. Traversing the site is a large concrete-lined stormwater canal which is a significant development constraint.

The subject site is located on the south-western periphery of the Merrylands Town Centre. To the north and east is single and two-storey commercial development characteristic of the town centre. To the south and west is residential flat development, 3-4 storeys in height. To the north-west are 2 heritage items, being the Merrylands School of Arts and an Electrical substation.



Site Plan (Source: Statement of Environmental Effects – Think Planners, 30 October 2013)

PROPOSAL

This S.96(2) application seeks to amend the approved mixed-use development by a reduction of 186sqm in commercial floor area, an increase of 6 residential units and an increase of 5 car parking spaces.

Specific details of the proposed development are provided as follows:

Parking

- Amendments to the basement parking levels to reflect consent conditions with regard to column layouts, ramps and adaptable spaces.
- An increase in parking from 246 to 251 spaces, with the following breakdown:
 - 179 resident spaces (previously 172)
 - 31 visitor spaces (previously 29)
 - 41 commercial spaces (previously 45)

Residential Units

- Increase in total residential units from 146 to 152. The revised unit mix is provided as follows:
 - 22 x 1 bedroom (including 6 studios)
 - Previously 16 x 1b/r units
 - Increased through a reconfiguration of 3 larger units on the eastern side of the building on Level 3 and Levels 4-8 to create 4 smaller units on each level. On Level 3, Units 51-53 are reconfigured to create Units 51-54. On Levels 4-8, Unit 69-71 are reconfigured to create Units 70-73 (over 5 levels).
 - 118 x 2 bedroom (unchanged)
 - 12 x 3 bedroom (unchanged)
- Relocation of 17 adaptable dwellings and an increase in the overall number of adaptable dwellings from 30 to 31.

Commercial Tenancies

- Reduction of 186sqm in Gross Leaseable Floor Area (GLFA) from 2,229sqm to 2,043sqm, primarily due to the provision of a substation, the provision of plant and equipment and to meet fire safety requirements.

SECTION 79C OF THE EP&A ACT

The application has been assessed against the relevant matters for consideration under Section 79C(1) of the *Environmental Planning and Assessment Act, 1979* as amended. The assessment is as follows:

(1) Matters for consideration—general

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

(a) *the provisions of:*

(i) *Any environmental planning instrument*

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

An amended BASIX Certificate (No. 510445M-03, dated 1 July 2015) has been submitted with the application and demonstrates that the proposed development meets the required water, thermal comfort and energy targets. The BASIX Commitments specified in the BASIX Certificate and nominated on the architectural drawings will need to be incorporated into the construction and fit-out of the development. A condition to require the BASIX commitments to be implemented in the construction of the development will be included in the recommended conditions of consent. As such, Council is satisfied that the sustainability obligations under the SEPP have been met.

State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings

By virtue of its height and number of dwellings, the proposed development is subject to SEPP 65. The modification application included an updated design verification statement from the registered architect who designed the building. The design verification statement demonstrates that the proposal is consistent with the 10 design principles. The design verification statement has been assessed as being acceptable.

Whilst the original application was assessed against the *Residential Flat Design Code* (RFDC) in accordance with Clause 30(2) of SEPP 65, the proposed modifications were assessed having regard to the *Apartment Design Guidelines* (ADG), as the modification was lodged after the new legislation was notified. However, the requirements of the ADG relate only to the proposed modifications and do not affect the original approved development.

An assessment of the proposal against the relevant provisions of the *Apartment Design Guidelines* is presented in the following table:

PART 3 – Siting the Development			
Control	Criteria / Guidance		Proposed / Comment
3F Visual Privacy	Criteria Minimum required separation distances from buildings to the side & rear boundaries are as follows:		Whilst the units on Levels 3-8 on the eastern side of the building are proposed to be reconfigured, the building footprint does not change. In this regard, setbacks and separations are the same as previously approved.
	Building height	Habitable rooms & balconies	
	up to 12m (4 storeys)	6 m	
	up to 25m (5-8 storeys)	9 m	
	over 25 m (9+ storeys)	12 m	
	New development should be located & oriented to maximise visual privacy between buildings on site & for neighbouring buildings. Design solutions include: • site layout & building orientation to minimise privacy impacts • on sloping sites, apartments on different		With regard to privacy, the reconfigured dwellings do not create any privacy issues. There are still bedrooms, living areas and balconies orientated to the east as previously approved. There are no residential

	levels have appropriate visual separation distances (see figure 3F.4)	properties to the east of the development that would be affected.	
	Habitable rooms should be separated from gallery access & other open circulation space by the apartment's service areas	The amended layout complies in this respect	Yes
	Balconies & private terraces should be located in front of living rooms to increase internal privacy	POS locations are as previously approved, albeit reduced in size.	Yes
	Windows should be offset from the windows of adjacent buildings	There are no residential buildings to the east that would be impacted	Yes
	Recessed balconies &/or vertical fins should be used between adjacent balconies	Balcony separation is satisfactory	Yes
3J Bicycle & Car Parking	<u>Criteria</u> For sites that are within 800m of railway station or light rail stop in Sydney Metro Area the min rate is as per RMS <i>Guide to Traffic Generating Development</i> , or the rate prescribed by Council, whichever is less		Yes
	RMS for RFB with 20 or more units in Metro Sub-Regional centres:		
	1 bedroom	0.6 spaces	
	2 bedroom	0.9 spaces	
	3 bedroom	1.4 spaces	
	visitors	1 space per 5 units	
	The subject site is approximately 500 metres from Merrylands Railway Station. In accordance with the RMS guidelines, the development would be required to provide 167 spaces. Council's DCP requires 178 spaces. 208 spaces are proposed.		

PART 4 – Designing the Building			
Control	Criteria / Guidance	Proposed / Comment	Compliance
4A Solar & Daylight Access	<u>Criteria</u> Living rooms & POS of at least 70% of apartments receive a minimum of 2 hours direct sunlight between 9 am & 3 pm at mid winter	The location of living rooms and POS areas for the reconfigured dwellings are similar to that which was initially approved. However, instead of deep balconies, only shallow balconies are now proposed (given the reconfigured space) which only improves solar access to living spaces. The modification plans show that 109/152 (71%) of dwellings achieve the required 2 hours.	Yes

	A maximum of 15% of apartments receive no direct sunlight between 9 am & 3 pm at mid winter	The reconfigured units all receive direct sunlight	Yes
4B Natural Ventilation	<u>Guidance</u> The building's orientation maximises capture & use of prevailing breezes for natural ventilation in habitable rooms	Siting and orientation are as previously approved.	Yes
	Depths of habitable rooms support natural ventilation	The depth of the habitable rooms of the 6 single aspect units proposed are 8 metres.	Yes
	The area of unobstructed window openings should be equal to at least 5% of the floor area served	The main opening for the living area of the reconfigured units is a 7sqm sliding door. These units range from 56 – 77sqm in area. The main opening is significantly higher than 5%.	Yes
	Light wells are not the primary air source for habitable rooms	Each reconfigured unit proposes large sliding doors onto balconies.	Yes
	Doors & openable windows maximise natural ventilation opportunities by using the following design solutions: • adjustable windows with large effective openable areas • a variety of window types that provide safety and flexibility such as awnings and louvres • windows which the occupants can reconfigure to funnel breezes into the apartment such as vertical louvres, casement windows & externally opening doors	Window and door openings provide for adequate ventilation.	Yes
	Apartment depths are limited to maximise ventilation and airflow (see also figure 4D.3)	The depth of the habitable rooms of the 6 single aspect units proposed are 8 metres.	Yes
	Natural ventilation to single aspect apartments is achieved with the following design solutions: • primary windows are augmented with plenums & light wells (generally not suitable for cross ventilation) • stack effect ventilation / solar chimneys or similar to naturally ventilate internal building areas or rooms such as bathrooms & laundries • courtyards or building indentations have a width to depth ratio of 2:1 or 3:1 to ensure effective air circulation and avoid trapped smells	The 6 additional units are all single aspect. However, 91/152 units (61%) achieve natural ventilation.	Yes

	<u>Criteria</u> At least 60% of apartments are naturally cross ventilated in the first 9 storeys of the building.	91/152 units (61%) are naturally cross-ventilated.	Yes										
4D Apartment Size & Layout	<u>Criteria</u> <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>35m²</td></tr><tr><td>1 bedroom</td><td>50m²</td></tr><tr><td>2 bedroom</td><td>70m²</td></tr><tr><td>3 bedroom</td><td>90m²</td></tr></table> Includes only one bathroom	Apartment type	Minimum internal area	Studio	35m ²	1 bedroom	50m ²	2 bedroom	70m ²	3 bedroom	90m ²	The reconfigured units, including the 6 additional studios all achieve the minimum areas.	Yes
	Apartment type	Minimum internal area											
	Studio	35m ²											
	1 bedroom	50m ²											
	2 bedroom	70m ²											
	3 bedroom	90m ²											
	Additional bathrooms increase the minimum internal area by 5m ² each, so with 2 bathrooms: <table><tr><th>Apartment type</th><th>Minimum internal area</th></tr><tr><td>Studio</td><td>40m²</td></tr><tr><td>1 bedroom</td><td>55m²</td></tr><tr><td>2 bedroom</td><td>75m²</td></tr><tr><td>3 bedroom</td><td>95m²</td></tr></table>	Apartment type	Minimum internal area	Studio	40m ²	1 bedroom	55m ²	2 bedroom	75m ²	3 bedroom	95m ²	N/A	N/A
	Apartment type	Minimum internal area											
	Studio	40m ²											
	1 bedroom	55m ²											
2 bedroom	75m ²												
3 bedroom	95m ²												
A 4th bedroom & further additional bedrooms increase the minimum internal area by 12m ² each	N/A	N/A											
Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight & air may not be borrowed from other rooms.	The sliding door of the living areas achieves almost 10% of the size of the entire dwelling. The bedroom windows also exceed 10% of the bedroom they are servicing.	Yes											
<u>Guidance</u> Kitchens should not be located as part of the main circulation space in larger apartments (such as hallway or entry space)	Kitchen spaces are separated.	Yes											
A window should be visible from any point in a habitable room	Windows are visible	Yes											
Where minimum areas or room dimensions are not met apartments need to demonstrate that they are well designed & demonstrate the usability & functionality of the space with realistically scaled furniture layouts & circulation areas – to be assessed on their merits	N/A	N/A											
<u>Criteria</u> Habitable room depths are limited to a maximum of 2.5 x the ceiling height	The habitable room depth of the reconfigured units is 8 metres. However, all units are open plan, and in this regard, 8m is satisfactory as provided in the following control.	Yes											

	In open plan layouts (where the living, dining & kitchen are combined) the maximum habitable room depth is 8m from a window	All reconfigured dwellings are open plan and achieve a depth of 8 metres.	Yes																
	All living areas & bedrooms should be located on the external face of the building	All living areas and bedrooms of the reconfigured units have access to an external wall.	Yes																
	Where possible: • bathrooms & laundries should have external openable window • main living spaces should be oriented toward the primary outlook & aspect & away from noise sources	As previously approved, not all bathrooms & laundries have access to an openable window All main living areas are orientated towards the primary outlook.	Considered satisfactory Yes																
4E Private Open Space & Balconies	Criteria Primary balconies to be: <table><tr><th>Type</th><th>Min area</th><th>Min depth</th></tr><tr><td>Studio</td><td>4m²</td><td>1m</td></tr><tr><td>1 bed</td><td>8m²</td><td>2m</td></tr><tr><td>2 bed</td><td>10m²</td><td>2m</td></tr><tr><td>3 bed</td><td>12m²</td><td>2.4m</td></tr></table> Only count areas 1m or more deep		Type	Min area	Min depth	Studio	4m ²	1m	1 bed	8m ²	2m	2 bed	10m ²	2m	3 bed	12m ²	2.4m	All balconies achieve minimum areas.	Yes
	Type	Min area	Min depth																
	Studio	4m ²	1m																
	1 bed	8m ²	2m																
	2 bed	10m ²	2m																
	3 bed	12m ²	2.4m																
POS to be located adjacent to living room, dining room or kitchen.		POS is directly adjacent living spaces.	Yes																
POS to predominantly face north, east or west		Orientation of POS is as previously approved.	Yes																
Design & detailing of balconies avoids opportunities for climbing and falls		As previously approved.	Yes																
4G Storage	Criteria In addition to storage in kitchens, bathrooms & bedrooms provide: <table><tr><th>Dwelling type</th><th>Storage volume</th><th>size</th></tr><tr><td>Studio</td><td>4m³</td><td></td></tr><tr><td>1 bedroom</td><td>6m³</td><td></td></tr><tr><td>2 bedroom</td><td>8m³</td><td></td></tr><tr><td>3+ bedroom</td><td>10m³</td><td></td></tr></table> At least 50% of the required storage is to be located within the apartment		Dwelling type	Storage volume	size	Studio	4m ³		1 bedroom	6m ³		2 bedroom	8m ³		3+ bedroom	10m ³		All reconfigured units provide internal and basement storage, which meets the minimum requirements. Provided	Yes Yes
	Dwelling type	Storage volume	size																
	Studio	4m ³																	
1 bedroom	6m ³																		
2 bedroom	8m ³																		
3+ bedroom	10m ³																		
4K Apartment Mix	Guidance A variety of apartment types is provided	An appropriate mix of 1, 2 & 3 bedroom units is proposed.	Yes																
4M Facades	Guidance Design solutions for front building facades may include: • a composition of varied building elements	Minor changes to façade are considered satisfactory.	Yes																

	• a defined base, middle & top • revealing & concealing certain elements • changes in texture, material, detail & colour to modify the prominence of elements		
4Q Universal Design	Adaptable housing should be provided in accordance with council policy (i.e. 20% of units)	31/152 (20%) accessible dwellings provided.	Yes

As demonstrated above, the proposed modifications are considered to comply with the requirements of the (ADG).

Holroyd Local Environmental Plan 2013

The Holroyd Local Environmental Plan 2013 applies and the site is located in the B4 – Mixed Use zone. The proposed 9 storey mixed-use building is best defined as ‘shop top housing’ under the LEP, which is permissible within the zone. The proposed 2 storey commercial building is best defined as a ‘commercial premises’, which is also permissible in the B4 zone.

The objectives of the B4 zone are:

- *To provide a mixture of compatible land uses.*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.*
- *To facilitate a vibrant, mixed-use centre with active retail, commercial and other non-residential uses at street level.*
- *To encourage the development and expansion of business activities that will strengthen the economic and employment role of the Merrylands town centre.*

The proposed development as modified is considered to be consistent with the objectives of the zone as it provides for a mixed commercial / residential development with provision for active retail, commercial and other non-residential activities within the Merrylands Town Centre and in close proximity to the Merrylands Railway Station.

An assessment against the relevant LEP clauses is provided in the table below:

Standard	Required/Permitted	Provided	Compliance
2.2	Demolition requires consent.	Consent is being sought for demolition of the existing buildings on the site.	Yes
4.3	Height of Buildings - Max. 29 metres	The proposed maximum building height is 32.2 metres	No change to existing
Standard	Required/Permitted	Provided	Compliance
4.4	Floor Space Ratio - Max. 4:1	FSR for previous approval was 2.8:1. The proposed reduction in commercial floor space has reduced the FSR to 2.74:1	Yes Yes
	Minimum Lot Size - No minimum in Town Centre	The subject site has an area of 5,480m ² .	N/A

5.10	Heritage	The site is not listed as a heritage item, but is located directly across from two heritage items. Council's Heritage Advisor assessed the original development and indicated that the proposal would not have a negative impact on either item.	Yes
6.1	Acid Sulfate Soils	The site is not affected by ASS	Yes
6.4/6.7	Flood Planning and Stormwater Management	Council's records indicate that an overland flow path inundates the site in the 1% Annual Exceedance Probability (AEP) storm event. A flood impact assessment report was submitted and the findings were accepted by Council's Development Engineering Branch.	The amended design has been assessed by Council Development Engineering Section as being satisfactory.
6.5	Terrestrial Biodiversity	There is no evidence of any terrestrial biodiversity on the site.	Yes
6.8	Salinity	The site is located on lands identified as being affected by moderate salinity.	To be conditioned

- (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*

There are no draft environmental planning instruments affecting the site.

- (iii) *any development control plan*

Holroyd Development Control Plan 2013

The Holroyd Development Control Plan (DCP) 2013 came into effect on 5 August 2013 replacing the Holroyd DCP 2007. The DCP provides guidance for the design and operation of development within Holroyd to achieve the aims and objectives of *Holroyd Local Environmental Plan 2013*.

The following table provides an assessment of the proposed development against the relevant controls under Holroyd Development Control Plan 2013:

Part A – General Controls			
Standard	Required/Permitted	Provided	Compliance
3.1	Car Parking:		

	<u>Residential</u> - 0.8 spaces per studio / 1 b/r unit (22 units) = 17.6 spaces - 1 space per 2 b/r unit (118 units) = 118 spaces - 1 space per 3 b/r unit (12 units) = 12 spaces - Visitor parking 0.2 spaces per unit (152 units) = 30.4 Total = 178 spaces	- 177 resident and 31 resident visitor spaces (Total 208) proposed within the basement level. * ADG requires 167 spaces	Yes
	<u>Commercial</u> - 1/50sqm GFA (B4 zone) - 2,043sqm of GFA @ 1/50sqm = 40.86 Total = 41 spaces	- 41 commercial spaces provided within the basement levels and at grade	Yes
	<u>Bicycle</u> Commercial GF: Staff – 1/300sqm Visitor – 1/2500sqm Commercial FF: Staff – 1/200sqm Visitor – 1/750sqm Residential: 0.5 per dwelling 0.1 per dwelling for visitors = 58 required	- 58 bicycle spaces have been proposed within the basement level.	Yes
3.3	Dimensions of Car Parking Facilities, Gradients, Driveways, Circulation and Manoeuvring.	Council's Traffic Engineer has assessed the submitted plans and documentation and advised the proposal is acceptable, subject to conditions.	Yes
3.5	Driveways Driveways shall be setback a minimum of 1.5m from the side boundary.	The proposed driveways are located a minimum of 1.5 metres from the	No change to existing

		southern boundaries.	
3.6	Accessible parking - 2 spaces per 100 spaces	2 accessible spaces for commercial provided	No change to existing
6.1	Retaining walls - Generally <1m in height.	There are no proposed retaining walls higher than 1m.	No change to existing
6.3	Erosion and Sediment Control	A detailed sediment and erosion control plan was submitted and is considered to be acceptable.	No change to existing
7.4	Stormwater Management	Council's Development Engineer has reviewed the amended stormwater drainage plans and calculations and advises that the design is acceptable.	Yes
11	Site Waste Minimisation and Management Plan (SWMMP)	Council's Waste Officer has reviewed the proposed waste and recycling arrangements and SWMMP and has advised that they are acceptable.	Yes
Part M – Merrylands Centre Controls			
Standard	Required/Permitted	Provided	Compliance
3	Public Domain		
3.1	Roads and Circulation The DCP requires the provision of an 8 metre wide laneway at the rear of the site.	Given that Sydney Water will not allow the stormwater canal to be built upon, the proposal is unable to provide a dedicated through laneway. However, a minimum 8 metres has been provided at the rear of the site for vehicle access, which if not for the canal, would constitute a laneway, and could be converted in the future if required.	No change to existing
3.3	Landscaping and Open Space Given the commercial nature of the site / locality, the DCP indicates that the site is required	The proposal includes a roof top garden with an area of 1,525sqm.	No change to existing

	to provide ‘planting on structures’ as the opportunity to provide deep soil zones is limited.	240sqm dedicated deep soil zone is proposed.						
4	Building Envelope							
	Site amalgamation and Minimum Frontage Amalgamation of lots in accordance with Figure 5 is required for redevelopment. The minimum site width achieved shall determine the height of buildings (in storeys) Site width shall be measured at the primary frontage. Site width (m) / Max. Height (storeys) 20m / Maximum 3 storeys 26m / Maximum 8 storeys 32m / Maximum 20 storeys	The lots are to be amalgamated in accordance with the lot amalgamation diagrams provided in the DCP. The consolidated site has a width of approximately 90 metres and a depth of approximately 61 metres. The site meets the minimum requirements.	Yes Yes					
	Building and Ceiling Height Maximum permitted building height in storeys shall be in accordance with the following table (refer DCP for full table). <table border="1"><tr><th colspan="2">Permitted Height (storeys)</th></tr><tr><th>Height (m)</th><th>Storeys</th></tr><tr><td>29</td><td>8</td></tr></table> Each storey shall have the following minimum floor to ceiling heights: Ground floor - 3.5m First floor (regardless of use) - 3.3m All other floors - 2.7m	Permitted Height (storeys)		Height (m)	Storeys	29	8	The proposed development is 9 storeys in height. Minimum floor to ceiling heights provided.
Permitted Height (storeys)								
Height (m)	Storeys							
29	8							
4.3	Street Setbacks, Road Widening and Street Frontage Heights Street setbacks in accordance with Figure 6 are required for redevelopment.	0m on all frontages for podium level, except for canal side.	No change to existing					

	0.5m road widening is required for both sides of Merrylands Road in accordance with Figure 2. Street wall height of buildings (podium) shall be 3 storeys, with a minimum height of 11m and maximum height of 14m. Upper level (above street wall) street frontage setbacks for Merrylands Road, McFarlane Street and Pitt Street will be based on storey height, in accordance with the table below and Figure 7: <table><tr><th>Storeys</th><th>Street frontage setback (m)</th></tr><tr><td>4-8</td><td>4</td></tr><tr><td>9-12</td><td>5</td></tr><tr><td>13-20</td><td>6</td></tr></table> Minor projections into the street setback will be accepted for sites where 0m setback is required, in accordance with the table below: <table><tr><th>Projection</th><th>Permitted length</th></tr><tr><td>Awnings</td><td>3m</td></tr><tr><td>Awnings (laneways)</td><td>Max. 1.5m</td></tr><tr><td>Balconies (above 3rd storey)</td><td>600mm</td></tr></table>	Storeys	Street frontage setback (m)	4-8	4	9-12	5	13-20	6	Projection	Permitted length	Awnings	3m	Awnings (laneways)	Max. 1.5m	Balconies (above 3 rd storey)	600mm	0.5m road widening along Merrylands Road provided. 3 storey street wall height provided. 4 metre setback provided on Storeys 4-8. 4 metre setback only provided on 9th storey. Awning projects 3 metres as per DCP requirements.	
Storeys	Street frontage setback (m)																		
4-8	4																		
9-12	5																		
13-20	6																		
Projection	Permitted length																		
Awnings	3m																		
Awnings (laneways)	Max. 1.5m																		
Balconies (above 3 rd storey)	600mm																		
4.4	Building Depth and Length The maximum permissible building plan depth for residential accommodation is 18m. The maximum permissible building envelope depth for residential accommodation is 22m.	The depth of the building from glass line to glass line is generally 18 metres or less. There are a small number of instances where the recommended 18 metre depth is exceeded, however, adequate light and ventilation is still achieved.	No change to existing																
4.5	Setbacks and Separation Where street setback is 0m, a continuous built edge shall be provided	Continuous built edge provided.	No change to existing																

	Where a lane is required, the minimum rear setback shall be 8 metres. Setbacks to secondary streets (above podium) to the property line shall be provided as below: <table><tr><th>Storeys</th><th>Setback (m)</th></tr><tr><td>4-8</td><td>3</td></tr><tr><td>9-12</td><td>6</td></tr></table> Minimum rear setbacks to a common boundary with a residential zone. (Maximum 12 metres required)	Storeys	Setback (m)	4-8	3	9-12	6	9.5 metres provided Storeys 4-9 provide a 4 metre setback, consistent with the primary street setback. Development provides 14.2 metres.	
Storeys	Setback (m)								
4-8	3								
9-12	6								
4.6	Active Frontage, Street Address and Building Use Provide Active frontages at street level, orientating onto streets, laneways and public places, as identified on Figure 9. Active frontages consist of the following: - Shopfront - Food and Drink premises such as Restaurant or Café - Entrance to public buildings or commercial building foyers - Customer service areas and receptions (where visible from the street)	Active frontage provided, with the ability to provide retail and outdoor dining facilities.	No change to existing						
Part C – Commercial Controls									
Standard	Required/Permitted	Provided	Compliance						
1	Movement								
1.1	Building Envelope Min. lot frontage for Zone B2, B4, B5 and B6 is: • Up to 3 storeys – 20m • 4-8 storeys – 26m • ≥9 storeys – 32m Council may require consolidation of more than 1 existing allotment to meet the DCP.	90 metre frontage to Merrylands Road Lot consolidation undertaken in accordance with Part M	Yes Yes						
1.2	Building Use								

	Commercial development shall be located at street level, fronting the primary street, and where possible the secondary street. Residential development is not permitted at ground floor in Zone B2 and B4.	Commercial development fronts Merrylands Road, Addlestone Street and Burford Street. Complies	Yes Yes
1.3	Building height Min. floor to ceiling height of commercial development / component: Ground Floor - 3.5m First Floor (regardless of use) - 3.3m All other floors - 2.7m Maximum building height in storeys shall be provided in accordance with the table below: - 29m or 8 storeys	Min. floor to ceiling levels provided. 32.2 metres / 9 storeys	No change to existing No change to existing
1.4	Front Setback Zone B2 and B4 are within site specific section of DCP Street wall height of 3 storeys (11-14m) is required for all commercial development and mixed use development, unless otherwise stated in site specific controls. 3m setback required above street wall height Where site adjoins a business zone, no side setback requirement, unless otherwise stated in site specific controls. Development adjoining residential zone shall have a rear setback of 6m. Where adjoining a residential zone, the development must demonstrate that the proposed setbacks will enable the achievement of access to sunlight and privacy	Complies with site specific controls in Part M of DCP Street wall height provided Minimum setbacks provided as per site specific controls in Part M Complies with Part M Min. 8 metres provided The development complies with the minimum separation requirements as per SEPP 65. In addition, the proposed development provides significant separation to the residential flat buildings (RFB) to the south. At its minimum, the south-western portion of the development provides a 15 metre separation to the rear	No change to existing

		RFB. The south-eastern portion of the development provides a 22 metre separation to the rear RFB. Through the middle of the development, the building is 33 metres from the southern boundary. Such separations allow northern, north-eastern and north-western sun to penetrate the rear development. The large separation also negates any privacy concerns.	
1.5	Landscaping and Open Space Landscaped area is not required in business zones	Whilst landscaping and open space are not a requirement in the commercial zone, the development includes residential dwellings, and as such, the development provides a roof-top garden with 1,525sqm of communal open space area	No change to existing
2	Movement		
2.1	Rear Laneways Vehicular access must be provided where buildings have access to existing laneways Laneways shall be min. 8m in width.	Access from secondary street and rear laneway Min. 8 metres provided	Yes Yes
2.2	Pedestrian Access Direct access shall be provided from the car park to all residential and commercial units. Main building entry points shall be clearly visible.	Provided Three (3) entry points are clearly visible	Yes
2.3	Building Entries Separate entries from the street shall be provided for cars, pedestrians, multiple uses and ground floor apartments.	Separate entries provided	Yes

	Residential entries must be secure where access is shared between residential and commercial uses.	Access control provided	Yes
	Multiple cores which access above ground uses shall be provided where the site frontage $\geq 30\text{m}$.	Multiple cores provided	Yes
2.4	Vehicle Access Driveways shall be provided from laneways, private access ways and secondary streets where possible. Loading and unloading facilities shall be provided from a rear lane, side street or right of way where possible. One two-way driveway is permitted per development site up to $10,000\text{m}^2$. Driveways are limited to a maximum of 6m or 8m for commercial loading docks and servicing.	Vehicle access to basement provided from secondary street and rear laneway Loading / unloading facilities provided off rear driveway Provided 7 metre two-way driveway proposed off rear laneway. Considered satisfactory by Council's Traffic Section	Yes Yes Yes Yes
2.5	Parking Onsite parking is to be provided underground where possible. Basement parking shall be consolidated under building footprint to maximise landscaping. Parking shall not be visible from main street frontages. Natural ventilation or ventilation grills shall be provided to basement parking. Visitor parking shall is not to be stacked parking.	Basement parking provided Development complies Basement parking provided for main building. Parking for secondary building to be screened from view by site landscaping. Basement car park will be both naturally and mechanically ventilated Development complies	Yes Yes Yes Yes Yes
3	Design and Building Amenity		
3.1	Safety and Security		

	Casual surveillance is to be achieved through active street frontages and creating views of common internal areas. Building entries are to be provided with clear lines of site, should be provided in visually prominent locations and separate residential and commercial entries shall be observed. Adequate lighting shall be provided within the development i.e. pedestrian access ways, common areas and communal open space, car parking areas and all entries. Landscaping shall avoid opportunities for concealment.	Casual surveillance provided to all 3 street frontages and to the rear loading areas Development complies Conditioned as part of original development consent. Landscaping considered satisfactory.	Yes Yes Yes Yes
3.2	Façade Design and Building Materials All walls are to be articulated via windows, verandahs, balconies or blade walls. Articulation elements forward of the building line max. 600mm.	The design of the building is considered satisfactory.	Yes
3.3	Laneways Laneways shall: - Define private and public spaces. - Ensure clear lines of sight. - Eliminate spaces that enable hiding. - Ensure overlooking through balcony / window location. - Provide suitable lighting. - Public access shall be provided at all times. Min. width of 6m and minimum 4m high. Direct and unrestricted access to be provided during business	Treatment to rear laneway considered satisfactory. Main entrance and internal arcade is 6 metres wide and has a head height of 4 metres at the entrance, and an internal head height ranging from 4 metres to 3.3 metres. Conditioned as part of original development	Yes No change to existing Yes

	trading hours.	consent.	
3.4	Shop Fronts Solid roller shutters and security bars are not permitted. Open grill (concertina) and transparent grill shutter security devices are permitted. All windows on the ground floor to the street frontage are to be clear glazing.	Roller shutters not proposed. Shutters on shop fronts not proposed as part of this application. Glazing provided.	Yes Yes Yes
3.5	Daylight Access Developments shall be designed to maximise northern aspects for dwellings and offices. Habitable rooms and primary private open spaces should be located on northern, eastern and western aspects. Single aspect dwellings that have a southerly aspect (SW-SE) shall be limited to a maximum of 30% of the total number of dwellings proposed within a development. Living rooms and private open spaces in a minimum of 70% of dwellings within a development shall receive at least 2 hours of direct sunlight between 9am and 3pm in Mid-winter. Maintain 3 hours of direct sunlight to 70% of dwellings in adjoining R4 zones.	Given the nature of the site, the building is able to maximise exposure to north, east and west, allowing for sufficient solar access to both dwellings and commercial suites. There are no units with a single aspect that are south facing (SW-SE). Additionally, there is only a small percentage of units on the southern side, and all are dual aspect with the primary or secondary aspect facing east or west. The applicant has demonstrated through amended plans that 71% of dwellings receive 2 hours of direct sunlight during mid-winter. Shadow diagrams submitted in support of the original application show the following: - Southern RFB on Addlestone Road – of the 9 units facing north, only 1 receives less than 3 hours, and receives at least 2 hours (89%).	No change to existing

		- Southern RFB on Burford Street – of the 9 units facing north, only 2 receive less than 3 hours, and these units receive between at least 2 hours (78%).	
3.6	Visual and Acoustic Privacy Provide adequate building separation and setbacks Building and apartment configuration shall be designed to minimise noise intrusion	The proposed development complies with the setback requirements of Part M and Part C of the Holroyd DCP 2013, as well as the separation requirements of SEPP 65 Visual privacy between units is maintained via blade walls. Standard construction methods in accordance with BCA will ensure acoustic privacy between units.	No change to existing
3.7	Managing External Noise and Vibration	Acoustic report submitted to demonstrate compliance with requirements of ISEPP.	Yes, as part of original application / approval
3.8	Awnings Awnings: • Should be flat. • Must be 3m deep. • Setback from the kerb a min. 600mm. • Min. soffit height of 3.2m-3.3m. • Slim vertical facias and/or eaves $\leq 300\text{mm}$. • To be located over all building entries.	Development considered satisfactory	Yes
3.9	Apartment layout No part of any residential unit shall be more than 8m from the glass line. Single aspect apartments are to have a maximum depth of 8m	The development complies with the stated controls, which are taken from SEPP 65.	Yes

	from the glass line. The back of the kitchen shall be no more than 8m from a window. The width of any apartment is to be no less than 4.5m (4.3m internally). Residential apartments are to have the following minimum internal floor areas: • Studio - 40m² • 1 bedroom - 50m² • 2 bedroom - 70m² • 3 bedroom - 95m² • 4 bedroom - 120m²		
3.10	Flexibility and Adaptability Design commercial uses to permit adaptation and flexibility for future development. 20% of dwellings to meet adaptable housing requirements Pre- and post-adaptive designs are required to be submitted at DA stage to demonstrate compliance with the relevant sections of the checklist provided in Appendix A of AS 4299-1995. A variety of apartment types between studio, one, two, three and three plus bedroom apartments shall be provided in each development. Studios and 1 bedroom apartments are not to exceed 20% of the total apartment mix within each development.	Commercial suites are able to be adapted to suit future uses. 31 units (20%) provided as adaptable. Provided as per original application. Unit mix provided: - 6 x studio units - 16 x 1 bedroom units, - 118 x 2 bedroom units - 12 x 3 bedroom units 14% provided	Yes Yes Yes Satisfactory mix provided Yes
3.11	Corner Buildings Generally, corner building shall be designed to: - Articulate street corners by massing and building articulation, - To add variety and interest to	The proposed development is considered to satisfy this criteria.	Amended design is considered satisfactory

	the street, - Present each frontage of a corner building as a main street frontage, - Reflect the architecture, hierarchy and characteristics of the streets they address, and - Align and reflect the corner conditions.		
3.13	Internal Circulation & Storage for Residential Use Where apartments are arranged off a double-loaded corridor, the number of units accessible from a single core/corridor is to be limited to eight. In addition to kitchen cupboards and bedroom wardrobes, accessible storage facilities shall be provided at the following rates as a minimum: • Studio apartments 6m², • One bedroom apartments 6m², • Two bedroom apartments 8m², and • Three plus bedroom apartments 10m².	Multiple cores provided Minimum storage requirements provided within basement level	Yes Yes
3.18	Waste Management Garbage/recycling storage areas must be located so as to be easily serviced and not cause any negative impacts in terms of visual appearance, noise or smell, to residents, adjoining properties or to the street. Storage areas for bins are to be located away from the front of the development in a location with a practical distance from the final collection point.	The proposed waste system has been assessed by Council's Waste Management Section and is considered to be satisfactory	No change to existing
7.	Residential Mix for business zoned land A mix of residential unit accommodation shall be provided, involving no less than 10% of either: studio/one bedroom, two-bedroom, three-bedroom units. Minimum net unit area as follows:	It is considered that an appropriate mix of residential units is provided. Whilst the number of 3 bedroom units are less than	Considered satisfactory

	• Minimum studio size of 40m2 • One bedroom unit size 50m2 • Two bedroom unit size 70m2 • Three bedroom unit size 95m2	10% (12 are proposed, which represents 7.8%), the number of 3 bedroom units remain the same as previously approved, even though the percentage has decreased slightly (from 8.2% to 7.8%). Given the site's location within the Merrylands CBD and in close proximity to public transport, it is not unusual for a larger proportion of 1 and 2 bedroom dwellings to be provided within apartment buildings. Council has found however, that 3 + bedroom dwellings are typically well catered for within multi-unit developments. All units meet the minimum sizes.	
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As demonstrated above, the proposal is considered to comply with the requirements of the Holroyd DCP 2013, with the exception of Building height. This issue was assessed as part of the previous development application and the non-compliance was considered satisfactory. The amended design does not alter this aspect of the development.

(iia) any 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, and

N/A

(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),

There are no specific matters prescribed by the Regulations that apply to this development.

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

It is considered unlikely that the development as proposed to be modified will result in any additional impacts.

(c) the suitability of the site for the development

The site is considered suitable for the proposed development. There are no known constraints which would render the site unsuitable for the proposed development.

(d) any submissions made

In accordance with the Holroyd Development Control Plan 2013, the application was notified to adjoining and surrounding owners and occupiers for a period of twenty-one (21) days, an advertisement was placed in the local newspaper and a notice was placed on the site. During this time, one (1) submission was received raising concern with the proposed development. These concerns are addressed below:

1. Merrylands is in short supply of quality commercial floor space and it is questioned how this application can now be seeking to reduce commercial floor space but increase the number of units.

With the number of mixed use developments proposed and being constructed in the Merrylands Town Centre, commercial space will no doubt increase accordingly. This application proposes to decrease commercial gross leaseable floor area by 186sqm from 2,229 to 2,043sqm, which is still a significant increase in commercial floor space than what existed on this site previously. The reduction is primarily due to the provision of a substation, the provision of plant and equipment, and to meet fire safety requirements.

With a proposed floor space ratio (FSR) of 2.74:1, the development is well under the maximum FSR of 4:1 for the site. In this regard, the developer is not maximising their floor space, and this is probably due to the canal traversing the site and the rear road widening requirements.

It is considered that the proposed amount of commercial floor space is appropriate for the site and for the Merrylands Town Centre.

2. The original plans were non-compliant with regard to the number of 3 bedroom dwellings. If the number of 3 bedroom dwellings is further decreased, the development will become more non-compliant.

The dwelling mix for the originally approved development is provided as follows:

- 16 x 1 bedroom
- 118 x 2 bedroom (unchanged)
- 12x 3 bedroom (unchanged)

The proposed dwelling mix is as follows:

- 22 x 1 bedroom (including 6 studio units)
- 118 x 2 bedroom (unchanged)
- 12x 3 bedroom (unchanged)

The increase has been facilitated through the reconfiguration of 3 larger units on the eastern side of the building on Levels 3, 4, 5, 6, 7 & 8 to create 4 smaller units on each level. There is no reduction in the number of 3 bedroom units, however, the percentage provided decreases from 8.2% (as per the previous approval) to 7.8%.

Whilst this is below the 10% minimum as required by the DCP, given the site's location within the Merrylands CBD and in close proximity to public transport, it is not unusual for a larger proportion of 1 and 2 bedroom dwellings to be provided within apartment buildings. Council has found however, that 3 + bedroom dwellings are typically well catered for within multi-unit developments.

It is considered that the mix of units as proposed within the original development and that proposed within the modified development is satisfactory.

3. The proposal is non-compliant with regard to car parking.

Car parking for originally approved development is provided as follows:

Required

- 0.8 spaces per studio /1 b/r unit (16 units) = 12.8
- 1 space per 2 b/r unit (118 units) = 118
- 1 space per 3 b/r unit (12 units) = 12
- Visitor parking 0.2 spaces per unit (146 units) = 29.2

- 1/50sqm of GLFA – 2,229sqm @1/50 = 44.6
- **Total required** = 217 spaces

Provided

- 171 resident
- 30 resident visitor
- 45 commercial

- **Total provided** = 246 spaces

Car parking for the development as modified is as follows:

Required

- 0.8 spaces per studio /1 b/r unit (22 units) = 17.6
- 1 space per 2 b/r unit (118 units) = 118
- 1 space per 3 b/r unit (12 units) = 12
- Visitor parking 0.2 spaces per unit (152 units) = 30.4

- 1/50sqm of GLFA – 2,043sqm @1/50 = 40.86
- **Total required** = 219 spaces

Provided

- 177 resident
- 31 resident visitor
- 41 commercial

- **Total provided** = 249 spaces

Parking for both the original development and the development as modified exceeds the minimum requirements by approximately 30 spaces. It is noted that, in accordance with the *Apartment Design Guidelines*, only 167 residential parking spaces (including visitor spaces) are required to be provided, which means that the development provides 41 extra car parking spaces than is required under the ADG.

4. Addlestone Road is very chaotic, almost dangerous, due to the intersection with Merrylands Road

There is only a small car parking area for 8 cars and a loading dock accessible from Addlestone Road. Access to the basement for the development is via Burford Street.

In order to improve traffic safety, the original application proposed a 'No Right Turn' into Burford Street. The application was reported to the Holroyd Traffic Committee, wherein the inclusion of a 'seagull' median at this intersection was recommended in order to provide a physical measure to reinforce the no right turn restriction. The development consent was conditioned accordingly.

It is considered that the issue of traffic safety was adequately addressed during the assessment of the original development application.

A seven (7) day mediation letter was forwarded to the objector responding to the concerns raised. As a response was not received, the objector was asked to formally withdraw their objection. In response to this, a further submission was forwarded to Council, reiterating previous concerns in relation to the amount of commercial space proposed, the unit mix proposed and traffic safety (refer attached). It is considered that these issues insofar as they relate to the subject modification application have been adequately dealt with above.

(e) the public interest

The proposed development as modified is considered to be in the public interest.

INTERNAL REFERRALS

During the assessment process, comments were sought from a number of sections within Council, as detailed below:

Development Engineering Section	No objection
Traffic Section	No objection
Landscaping Section	No objection
Environmental Health Unit	No objection
Waste Management Section	No objection,
Community Services Section (Social Planning and Accessibility)	No objection

EXTERNAL REFERRALS

Comments were also sought from a number of external authorities, as provided below:

Sydney Water	No objection
Roads and Maritime Services	No objection

SECTION 96(2) OF THE EP&A ACT 1979

(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*

The proposed modifications to an approved mixed use development consists primarily of the reduction of 186sqm in commercial floor area to facilitate a substation, provision of additional plant and equipment and changes to ingress/egress in order to comply with fire safety requirements; an increase in 1 b/r units through the reconfiguration of some larger units; and an increase of 5 parking spaces. There is no change to the height of the buildings or the building footprints. In this regard, it is considered that the development as modified will be essentially and materially the same as originally approved. In this regard, the development as modified is considered to be substantially the same as the development for which consent was originally granted.

- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*

- (c) it has notified the application in accordance with:*

- (i) the regulations, if the regulations so require, or*
(ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and

The proposed modification was publicly exhibited in accordance with Part E of the Holroyd Development Control Plan 2013 – *Public Participation*.

- (d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

One (1) submission received. The concerns raised are addressed above.

RECOMMENDATION

This modification application has been assessed having regard to the relevant statutory requirements and is considered to be satisfactory. The proposed changes to the approved mixed use development are considered to be minor in nature and the development as modified is considered to be substantially the same as the development that was originally approved. It is considered that there is unlikely to be any adverse impacts that would occur as a result of the modifications proposed.

It is therefore recommended that the Section 96(2) application to modify Development Consent No. 2013/450/1 (JRPP No. 2012SYW004) be approved, subject to conditions as outlined in Attachment E of this report.