

SYDNEY WEST CENTRAL PLANNING PANEL

Panel Reference Number	2016SYW098 DA
DA Number	DA 2016/164
Local Government Area	Cumberland
Proposed Development	Demolition of existing structures; consolidation of 3 lots into 1 lot; construction of a part 4, part 5 and part 7 storey shop top housing comprising 86 residential units; 6 retail tenancies at grade and basement parking accommodating 176 carparking spaces.
Street Address	9-11 Sherwood Road, Merrylands West
Applicant	Revelop Projects Pty Ltd
Owner	Barich Family Group Pty Limited
Number of Submissions	Two (2) submissions
Regional Development Criteria (Schedule 4A of the Act)	Capital Investment Value \$25,229,133 (>\$20 million)
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> • State Environmental Planning Policy No. 55 – Remediation of Land • State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development • State Environmental Planning Policy (BASIX) 2004 • State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure) • State Environmental Planning Policy (State and Regional Development) 2011 • Holroyd Local Environmental Plan 2013 (HLEP 2013) • Holroyd Development Control Plan 2013 (HDCP 2013) • Section 92 of the EP&A Regulation
Recommendation	Approval, subject to conditions
Report by	Ali Hammoud, Consultant Senior Planner, Cumberland Council
Meeting date	30 August 2017



Figure 1 – Perspective from Sherwood Road looking south-west (Source: Architex, 2016)

TABLE OF CONTENTS

1	Executive Summary.....	1
2	Site and Context.....	2
3	The Proposal.....	4
4	Planning Controls.....	7
5	Key Issues.....	8
6	External Referrals.....	13
7	Internal Referrals.....	13
8	Public Comment.....	14
9	Section 79C Consideration.....	14
10	Conclusion.....	15
11	Recommendation.....	16

TABLE OF FIGURES

Figure 1 – Perspective from Sherwood Road looking south-west (Source: Architex, 2016)...	1
Figure 2 – Location Map (Source: Cumberland Council, 2017)	3
Figure 3 – Zoning Map (Source: Cumberland Council, 2017).....	3
Figure 4 – Aerial Photo of Site and Surrounds (Source: Cumberland Council, 2017)	4

ATTACHMENTS

- Attachment 1 – Development Application Plans
- Attachment 2 – Applicant’s clause 4.6 request for variation
- Attachment 3 – Proposed Conditions of Consent
- Attachment 4 – Assessment of compliance with SEPP 65 Apartment Design Guide
- Attachment 5 – Assessment of compliance with Holroyd LEP 2013
- Attachment 6 – Assessment of compliance with Holroyd DCP 2013

1 Executive Summary

- 1.1 Council is in receipt of a Development Application (DA) from Revelop Projects Pty Ltd proposing a shop top housing development at 9-11 Sherwood Road, Merrylands West. The DA seeks approval for the demolition of existing structures; consolidation of 3 lots into 1 lot; construction of a part 4, part 5 and part 7 storey shop top housing comprising 86 residential units; 6 retail tenancies at grade and basement parking accommodating 176 carparking spaces. A copy of the proposed DA plans are provided at **Attachment 1** to this report.
- 1.2 The proposed development constitutes 'regional development' requiring referral to the Sydney West Central Planning Panel (the Panel), as it has a capital investment value of \$25,229,133. While Council is responsible for the assessment of the DA, the Panel is the consent authority.
- 1.3 The site is zoned B2 Local Centre pursuant to Holroyd Local Environmental Plan (HLEP) 2013. Shop top housing, defined as *"one or more dwellings located above ground floor retail premises or business premises"*, is permissible with development consent and the development is consistent with the objectives of the zone.
- 1.4 The proposal is consistent with the objectives of State Environmental Planning Policy No. 65 (SEPP 65) and satisfactorily achieves the 9 design quality principles listed under Schedule 1. The proposal achieves the objectives of the Apartment Design Guide (ADG) and complies with numerical design criteria, with the exception of the communal open space, building separation, solar access, storage and adaptable dwelling requirements. The variations are discussed in further detail in Section 5 of this Report.
- 1.5 The development complies with the development standards contained within HLEP 2013 with the exception of building height.
- 1.6 The maximum permissible height of buildings on the site is 23 metres from the Sherwood Road boundary 20 metres into the site and 17 metres for the remainder of the site to the Coolibah Street boundary. Various parts of the proposed development exceed the maximum height of building development standard by up to 1.76 metres or 10.4% over the 17 metre height limit and 1.29 metres or 5.6% over the 23 metre height limit. The degree of variations is tabled below:

Building – Component	Maximum Height Permitted	Maximum Height Proposed	Extent of Variation
Building A – Lift Overrun	17 metres	18.76 metres	1.76 metres / 10.4%
Building B – Stair Overrun	17 metres	17.48 metres	480mm / 2.8%
Building C – Lift Overruns	23 metres	24.29 metres	1.29 metres / 5.6%

- 1.7 The applicant has lodged a request under Clause 4.6 of HLEP 2013 seeking a variation to the height of building development standard. A copy of the Clause 4.6 request is provided at **Attachment 2** to this report. The variation is supported as the objectives of the standard are achieved and the proposal results in a better planning outcome for the site with no adverse streetscape, overshadowing or amenity impacts on adjoining properties.

- 1.8 The development is generally consistent with the requirements of the Holroyd Development Control Plan (HDCP) 2013 with the exception of the loading & unloading facilities; dimensions and height clearances for through site link; adaptable dwellings; vehicular access and storey limit controls. The proposed variations are considered acceptable as discussed in further detail in Section 5 of this Report.
- 1.9 The DA was externally referred to the NSW Roads and Maritime Services (RMS), NSW Police, Endeavour Energy and Transgrid for comments, all of which raised no objection to the proposal subject to conditions of consent.
- 1.10 The DA was notified to surrounding property owners and occupiers, during which time a total of 2 submissions were received. The grounds of objection raised in the submissions have been satisfactorily addressed as a part of the DA and are not considered sufficient to warrant refusal of the DA.
- 1.11 The proposed development is considered satisfactory with regard to key issues such as siting and design, bulk and scale, privacy, overshadowing, access, traffic impacts, parking, site contamination, stormwater drainage and social and economic impacts. The proposed development has been assessed against the relevant matters for consideration pursuant to Section 79C of the Environmental Planning and Assessment Act, 1979 including the suitability of the site for the development and the public interest, and is considered satisfactory subject to the imposition of suitable conditions of consent to satisfactorily control the development.
- 1.12 In light of the above, it is recommended that the Panel approve the DA subject to the imposition of suitable conditions of consent. Recommended conditions are provided at **Attachment 3** to this Report.

2 Site and Context

- 2.1 The subject land is known as Lot 2, DP 616486 and Lot 101, DP 789369, 9-11 Sherwood Road, Merrylands West. The site comprises 2 land parcels that are each regular shaped lots and have a combined frontage of 47.5 metres to the eastern Sherwood Road boundary; a 33.2 metre frontage to the western Coolibah Street secondary frontage, an overall depth along the northern side boundary of 95.47 metres and a depth along the southern side boundary of 95.68 metres. The total site area is 3,734.4sqm. The site is illustrated in Figure 2 below:

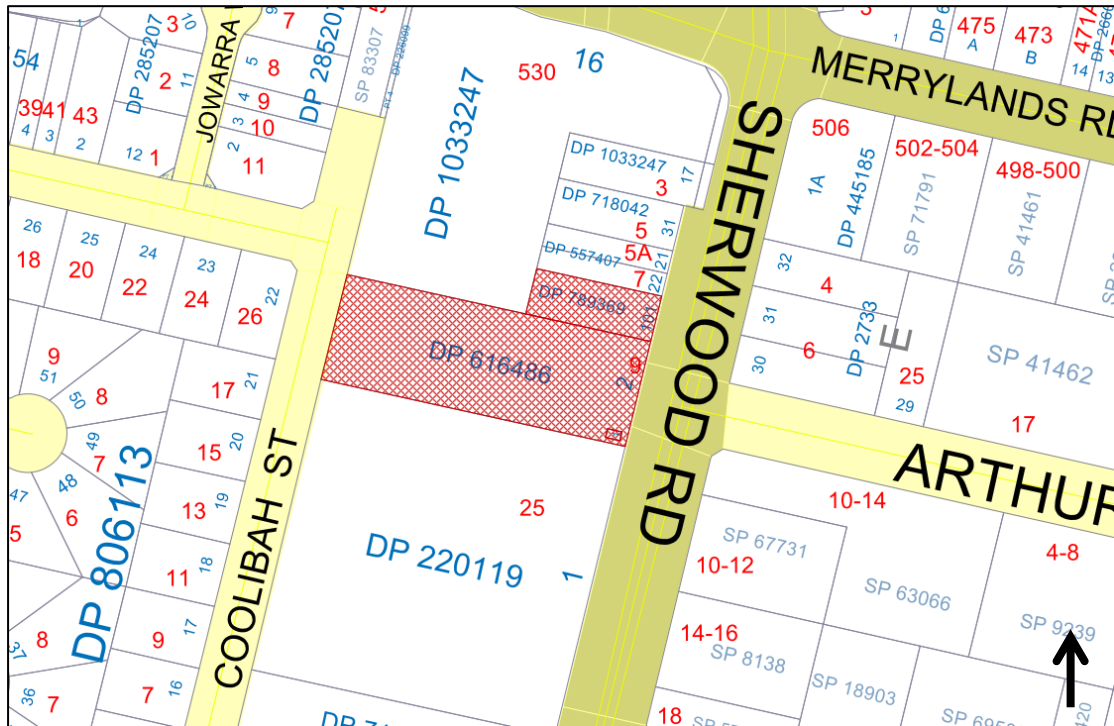


Figure 2 – Location Map (Source: Cumberland Council, 2017)

- 2.2 The subject site is currently occupied by a number of commercial buildings and at grade car parking.
- 2.3 The topography of the site creates a slope from the eastern Sherwood Road frontage to the western Coolibah Street frontage with a fall of up to 4.4 metres.
- 2.4 The subject site is zoned B2 Local Centre pursuant to Holroyd Local Environmental Plan (HLEP) 2013 as shown in Figure 3 below:

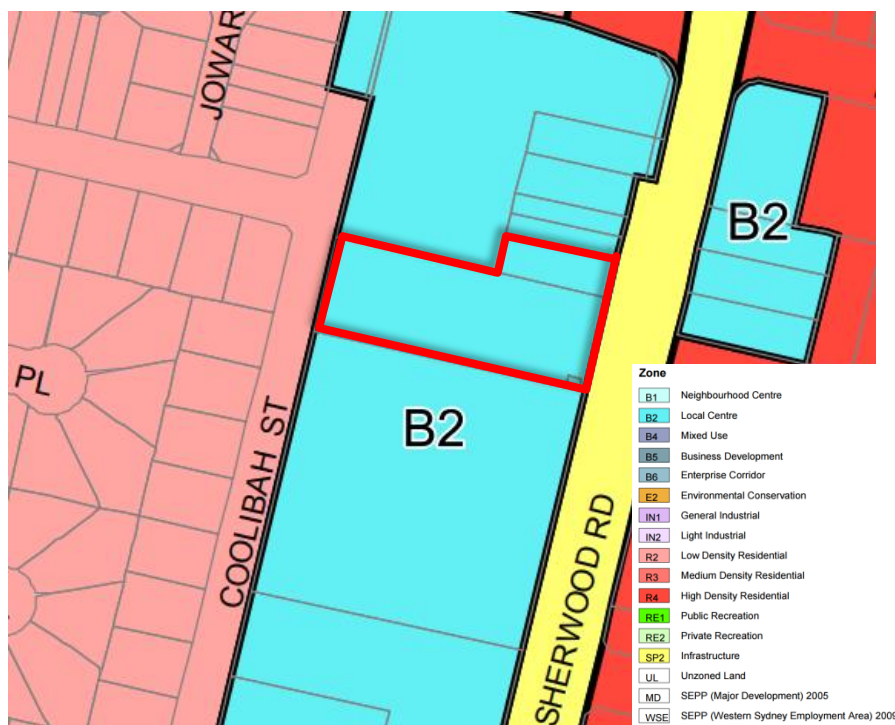


Figure 3 – Zoning Map (Source: Cumberland Council, 2017)

- 2.5 The subject site is situated on the western side of Sherwood Road, Merrylands West and has a secondary street frontage to Coolibah Street to the west of the site as illustrated in Figure 4 below:



Figure 4 – Aerial Photo of Site and Surrounds (Source: Cumberland Council, 2017)

- 2.6 The subject DA proposes construction of 3 buildings that will be referred to as Buildings A, B and C in this report.
- 2.7 Building A is proposed to be constructed fronting Coolibah Street and is a 5 storey shop top housing development comprising a ground floor commercial level and 4 residential levels above.
- 2.8 Building B is proposed to be constructed in the centre of the site and is a 4 storey building that will be connected to Building A by a common corridor. Building B comprises ground floor commercial tenancies and car parking and 3 residential levels above.
- 2.9 Building C is a separately detached building that will be constructed fronting Sherwood Road and is a 7 storey shop top housing development comprising a ground floor commercial level and 6 residential levels above.
- 2.10 The locality is characterised by existing low rise commercial buildings and zoning to the north and south, low density residential development and zoning to the west and high density residential development and zoning to the east.
- 2.11 The subject site currently benefits from vehicular access directly from both the Sherwood Road and Coolibah Street frontages. Vehicular access to the development is proposed from both street frontages with the main vehicular access to the lower basement levels proposed from the Coolibah Street frontage.
- 2.12 The site has access to the surrounding regional road network of the M4 Motorway and Great Western Highway via Merrylands Road and Cumberland Highway to the west and north.

3 The Proposal

3.1 The proposal is for the demolition of existing structures; consolidation of 3 lots into 1 lot; construction of a part 4, part 5 and part 7 storey shop top housing comprising 86 residential units; 6 retail tenancies at grade and basement parking accommodating 176 carparking spaces.

3.2 Specific details of the proposed development are as follows:

	Building A	Building B	Building C
<i>No. of Storeys / Height in metres</i>	5 storeys / 18.76 metres for lift overrun and 15.2 metres for main building	4 storeys / 17.48 metres for stair overrun and 15.18 metres for main building	7 storeys / 24.29 metres for lift overrun and 24.24 metres for main building
<i>No. of Units / Unit Mix</i>	20 units <ul style="list-style-type: none"> • 2 x 1 bed units • 7 x 2 bed units • 11 x 3 bed units 	18 units <ul style="list-style-type: none"> • 0 x 1 bed units • 18 x 2 bed units • 0 x 3 bed units 	48 units <ul style="list-style-type: none"> • 6 x 1 bed units • 42 x 2 bed units • 0 x 3 bed units
<i>Orientation</i>	West, North and South aspects	North and South aspects	West and East aspects
<i>Adaptable</i>	13 adaptable units required (15%) and 8 proposed Condition included to provide 13 units		
<i>Solar</i>	20/86 = 23.5% of Living 41/86 = 48% of POS		
<i>Natural Ventilation</i>	57/86 = 66%		

Overall, a total of 86 residential units are proposed with the following unit mix:

- 8 x 1 bedroom units or 9%
- 67 x 2 bedroom units or 78%
- 11 x 3 bedroom units or 13%

Proposed unit sizes comply with the minimum sizes prescribed by the Apartment Design Guide (ADG). The proposed units generally provide open plan kitchen, living and dining areas with backs of kitchen no more than 8 metres from a window. Each unit is provided with a private open space balcony that comply with or exceed the minimum size prescribed by the ADG. Whilst each unit is provided with internal storage areas as well as individual secure basement storage compliant with or exceeding the minimum required under the ADG, a large number of units are not provided with at least 50% of the storage within the unit. However, the proposal generally provides an appropriate amount of storage overall for each unit and in an appropriate accessible location for each unit. A total of 13 adaptable units (15%) have been conditioned to be provided and overall 20/86 units (23.5%) achieve at least 2 hours of solar access at midwinter and 57/86 units (66%) achieve natural ventilation.

Communal Open Space

The proposal includes both ground floor level and roof-top level communal open spaces totaling 770.5m² (20.6% of the site).

Built Form

The proposed built form comprises 3 buildings ranging in height between 4, 5 and 7 storeys. Buildings A and C are proposed to be built to the front boundary to provide a continuous street edge and Building B is proposed in the centre of the site.

Buildings A and B observe a minimum 6 metre setback to the northern side boundary to allow for half the separation requirements under the SEPP 65 ADG and for the provision of half the required 6 metre wide pedestrian through-site-link along the northern boundary of the site. Similarly, the buildings observe a 6 metre setback from the southern side boundary to allow for half the separation requirements under the SEPP 65 ADG with the exception of the front half of Building A which is to be built to a zero lot line to allow for a continuous street edge.

A total gross floor area (GFA) of 8,134.38m² is proposed for the development which results in a floor space ratio (FSR) of 2.14:1 for lots 1 and 2 and 2.38:1 for lot 101. The proposed GFA is below the maximum permissible GFA across all sites of 8,328.28m². The proposal involves variations to the maximum height of buildings development standard of up to 10.4% over the 17 metre height limit and 5.6% over the 23 metre height limit. The height variations do not result in any net increase in the GFA achievable on the site and are mainly a consequence of lift overruns that provide rooftop access for Buildings A and B.

Car Parking

The proposal includes a 2 level basement beneath the buildings containing a total of 160 parking spaces with an additional 24 parking spaces provided on a partly submerged ground/basement level at the centre of the site, with the following breakdown:

	Resident Spaces	Commercial Spaces	Accessible Spaces	Visitor Spaces	Total	Bicycle
<i>Basement 2</i>	78	0	8 (resi)	0	86	28
<i>Basement 1</i>	26	15	3 (comm) 4 (resi) 2 (visitor)	16	66	32
<i>Ground</i>	0	22	2 (comm)	0	24	0
Total	104	37	19	16	176	60

Access Arrangements

Pedestrian access points into the site and buildings are legible and well-defined with 2 lobbies proposed in accordance with the 2 cores proposed for the buildings. Lift access is provided for all units through the basement levels and ground floor lobbies.

Vehicular access to the development is proposed from both street frontages with the main vehicular access to the lower basement levels proposed from the Coolibah Street frontage.

Servicing

Waste and recycling is proposed to be conveyed via a chute system within each building to bin store rooms located on Level 1. Prior to pick up, bins will be transported to the ground level bin storage area located on the Coolibah Street side of the site that would allow for off-street storage of bins awaiting collection.

Consolidation

The DA seeks to consolidate the existing 3 lots into 1 lot to form the overall development site.

4 Planning Controls

4.1 The planning controls that relate to the proposed development are as follows:

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

Development of a type that is listed in Schedule 4A of the Environmental Planning and Assessment Act, 1979 is defined as 'regional development' within the meaning of SEPP (State and Regional Development) 2011. Such applications require a referral to a Sydney Planning Panel for determination. The proposed development constitutes 'Regional Development' as it has a Capital Investment Value (CIV) \$25,229,133 which exceeds the \$20 million threshold. While Council is responsible for the assessment of the DA, determination of the Application will be made by the Sydney West Central Planning Panel.

b. State Environmental Planning Policy (Infrastructure) 2007

SEPP (Infrastructure) 2007 ensures that the RMS is given the opportunity to comment on development nominated as 'traffic generating development' under Schedule 3 of the SEPP. Schedule 3 identifies development involving more than 300 dwellings or 200 car spaces or 4,000sqm of retail premises as traffic generating development. The DA proposes 84 dwellings and 176 parking spaces and accordingly was not required to be referred to the RMS for comment as a traffic generating development. However, the DA was referred to the RMS in accordance with the Infrastructure SEPP as the site has a frontage to a Classified Road and vehicular access is proposed from the Classified Road. The RMS's comments are outlined in Section 8 of this Report. In addition, a copy of any determination will be forwarded to the RMS in accordance with Clause 101 of the SEPP.

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

SEPP 55 aims to provide a state wide planning approach to the remediation of contaminated land. Where contamination is, or may be, present, the SEPP requires a proponent to investigate the site and provide the consent authority with the information to carry out its planning functions.

A Phase 2 Detailed Contamination Investigation Assessment was submitted with the application and referred to Council's Environmental Health Officer who advised that the report is acceptable and the site is suitable for the proposed development.

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

A BASIX Certificate has been lodged as a part of the DA, as well as a NatHERS (Nationwide House Energy Rating Scheme) assessor certification. The BASIX certificate indicates that the development has been designed to achieve the required water, thermal comfort and energy scores.

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

SEPP 65 and the associated Apartment Design Guide (ADG) apply to the assessment of the subject application as it includes residential flat buildings that are more than 3 storeys in height and contain more than 4 dwellings each. The DA has been accompanied by a design verification statement from a registered architect addressing the 9 'design quality principles' prescribed by the SEPP. The design verification statement has been assessed as being acceptable.

Clause 28 of the SEPP requires a consent authority to take into consideration the provisions of the ADG in the assessment of any DA. The proposed development is considered acceptable having regard to the requirements of SEPP 65 and the ADG with the exception of the communal open space, building separation, solar access, storage and adaptable dwelling requirements. The variations are discussed in further detail in Section 5 of this Report. A detailed assessment against the provisions of the ADG is provided at **Attachment 4** to this Report.

f. Holroyd Local Environmental Plan (HLEP) 2013

HLEP 2013 applies to the site. The development is generally consistent with the provisions of the LEP with the exception of the height of buildings development standard. The applicant has submitted a written request justifying the contravention of the development standard and considers that strict compliance is unreasonable and unnecessary in the circumstances of the case. The variations are discussed in further detail in Section 5 of this Report. A detailed assessment against the provisions of the HLEP is provided at **Attachment 5** to this Report.

g. Holroyd Development Control Plan (HDCP) 2013

HDCP 2013 applies to the site. The development is generally consistent with the provisions of the DCP with the exception of the loading & unloading facilities; dimensions and height clearances for through site link; adaptable dwellings; vehicular access and storey limit controls. The variations are discussed in further detail in Section 5 of this Report. A detailed assessment against the provisions of the HDCP is provided at **Attachment 6** to this Report.

5 Key Issues

5.1 Variations to HLEP 2013 development standards

The proposed variations to principal development standards requested by the Applicant under Clause 4.6 of HLEP 2013 are discussed below:

a. Height of Buildings variation:

The maximum permissible height of buildings on the site is 23 metres from the Sherwood Road boundary 20 metres into the site and 17 metres for the remainder of the site to the Coolibah Street boundary. Various parts of the proposed development exceed the maximum height of building development standard by up to 1.76 metres or 10.4% over the 17 metre height limit and 1.29 metres or 5.6% over the 23 metre height limit. The degree of variations is tabled below:

Building –	Maximum	Maximum	Extent of Variation
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Component	Height Permitted	Height Proposed	
Building A – Lift Overrun	17 metres	18.76 metres	1.76 metres / 10.4%
Building B – Stair Overrun	17 metres	17.48 metres	480mm / 2.8%
Building C – Lift Overruns	23 metres	24.29 metres	1.29 metres / 5.6%

As detailed above, the proposed building heights are varied by up to 1.76 metres or 10.4% over the 17 metre height limit and 1.29 metres or 5.6% over the 23 metre height limit. The variations arise due to the lift and stair overruns and it is noted that the height exceedance does not result in any additional floor space over what a compliant lower height development would achieve. Furthermore, the development does not pose any adverse overshadowing or amenity impacts for adjoining properties.

The Applicant has provided the following environmental planning grounds to justify the proposed variation:

“The location of the building height departure will ensure that they are not viewable from the street level and in addition, the high quality design of the proposal will contribute towards providing a shop top housing development that reinforces the streetscape and urban context along the site whilst contributing towards expanding the existing town centre and setting the tone and scale for future mixed use development within the subject area.

The exceedance to Block C is not visually apparent as it is contained at the rear and the departure is a function of the topographical cross-fall and the need to maintain a suitable finished floor level to the upper level of the building.

It is noted that the proposal will not result in any additional overshadowing impacts to adjoining properties, especially to land parcels that bound the site to the south and therefore, the non-compliance with the maximum height control is considered appropriate.”

The proposed height variation facilitates the placement of communal open space on the rooftop level of Buildings A and B that would otherwise not be proposed as access to the rooftop level would be unable to be provided without the overruns. As noted with all buildings, the additional height breaches occur as a result of overruns and do not accommodate any additional GFA than that permitted under the LEP.

The proposal is consistent with the objectives of the height of buildings control and so strict compliance with the development standard is considered to be unreasonable and unnecessary in the circumstances of the case.

The Clause 4.6 variation is considered to be well founded and the variation is supported. Council is also satisfied that the proposed development will be in the public interest because it is consistent with both the objectives of the standard and the objectives of the zone.

Having regard to the above, it is considered that a better planning outcome would be achieved as the proposal.

5.2 Variations to HDCP 2013 development controls

As noted above, **Attachment 6** provides a table that outlines the proposal's compliance with HDCP. The development is generally consistent with the requirements of the DCP with the exception of the loading & unloading facilities; dimensions and height clearances for through site link; adaptable dwellings; vehicular access and storey limit controls as discussed under the respective headings below.

a. Loading & Unloading Facilities

Loading/unloading areas are required to be provided from a rear lane, side street or right of way where possible. The application proposes loading/unloading areas within parking levels. The application was referred to Council's Traffic Engineer who raised concerns with the height clearance for a MRV not being provided (minimum 4.5 metres as per Table 4.1 of AS 2890.2). However these concerns relate to access from Sherwood Road under the first floor level of Building C. If clearance heights were to be increased at the ground floor level of Building C, this would significantly increase the height of the ground floor to ceiling heights and would create inconsistencies in the streetscape. In the interest of maintaining a better streetscape and achieving a better planning outcome for the site, conditions are included to ensure that only SRV's service the site through the Sherwood Road vehicular access.

b. Dimensions and Height Clearances for Through Site Link

A 6 metre wide and 4 metre high pedestrian connection through the site between Sherwood Road and Coolibah Street is required as per Figure 20. The proposal includes half of the proposed 6 metre wide pedestrian link as shown on the plans through the site which is acceptable. However, only a 3.2 metre height clearance is proposed under Building C. If clearance heights were to be increased, this would significantly increase the height of the ground floor to ceiling heights and would create inconsistencies in the streetscape. In the interest of maintaining a better streetscape and achieving a better planning outcome for the site, the reduced height clearance is considered acceptable. It is further noted that the lower clearance is only for a small depth into the site under Building C where the pedestrian link is increased in width with landscaped sides to improve the openness and compensate for the reduced height.

c. Adaptable Dwellings

The proposed development requires 13 adaptable units (15% of 86 units), with associated disabled car parking spaces. The plans show only 8 adaptable units and Council's Accessibility Consultant has raised concern with the proposed design. However, conditions are included to ensure compliance is achieved.

d. Vehicular Access

Buildings fronting Sherwood Road are required to provide vehicular access from the rear or side, via laneways or secondary roads. Driveway access is proposed from both Coolibah Street and Sherwood Road. The applicant was advised during Pre-DA discussions that access from Sherwood Road would be considered given that there is already a driveway into the site off Sherwood Road, and given the adverse impact upon residents that would result from

concentrating all vehicular movement through Coolibah Street. The DA was referred to the RMS who raised no objection to the driveway off Sherwood Road, subject to left in/left out only arrangement. A median would be required to be provided in the middle of the driveway which are included as conditions of consent.

e. Storey Limit

Figure 21 indicates that the 23 metre height band along Sherwood Road is limited to a 6 storey height limit. Building C has 7 storeys facing Sherwood Road but the 23 metre height complies at the front boundary. The 5th to 7th storeys are setback further than the lower levels by 3 metres so the 7th storey at the street front does not create any bulk or cause adverse impact and is therefore supportable.

Figure 21 indicates that the 17 metre height band at the rear of the site is limited to a 4 storey height limit. Building B is 4 storeys in height and complies. Building A is 5 storeys in height due to the lower level at street level creating an additional storey. The building complies with the maximum LEP height limit of 17 metres. The variation to the number of storeys is considered acceptable as the 5th storey is setback further than the levels below by 3 metres as required by Part C of DCP. The setback is proposed as open, unframed balconies for the upper level units to provide a relief to the building bulk and given that the additional storey is only for part of the building, the proposal is considered acceptable.

5.3 Variations to Apartment Design Guide (ADG)

As noted above, **Attachment 4** provides a detailed assessment against the provisions of the ADG. The development is generally consistent with the requirements of the ADG with the exception of the communal open space, building separation, solar access, storage and adaptable dwelling requirements. However, these non-compliances are considered satisfactory, as discussed below.

a. Communal Open Space:

A minimum 933.6m² of communal open space (COS) is required being 25% of the 3,734.4m² site area. The development proposes 770.5m² of COS area equating to 20.6% of the site and therefore not complying numerically.

It should be noted that the areas adjacent to retail spaces, parts of the pedestrian link and any space undercover of within a walkway have not been included as they would not be functional as COS and ultimately these areas reduce the ground level area available for COS.

While non-compliant, the amount of COS is considered acceptable given that approximately 400m² of the site is lost to the required pedestrian through-site-link and reduces the amount of site area available to be provided as on-ground COS. A rooftop COS has been proposed on the rooftop of Building B which supplements the amount of COS able to be provided at ground level.

b. Building Separation:

Building separation for the first 11.5 metre building depth of Building A along Coolibah Street is considered acceptable given that the DCP requires a nil setback along the street edge to form a consistent street wall.

Separation distances do not comply for level 5 for Buildings A and B to the northern and southern boundaries. However, the development is considered to provide appropriate separation given that the 5 storey development effectively reduces to a 4 storey development approximately 12 metres into the site from Coolibah Street. This in turn would reduce the separation distance requirements to a 4 storey building which would be 6 metres and the development would accordingly comply. The development is considered to provide sufficient separation that meets the objectives of the controls by providing future development to the site sufficient access to sunlight and separation distances for visual and acoustic privacy. The development would also not compromise any future developments on adjoining sites or require greater separation for those developments due to the level changes and interfaces remaining below 4 stories.

In relation to internal separation between Buildings A and B, amendments have been made to the development including offsetting of rooms and windows so that kitchens and bedrooms have an indirect interface with each other and in addition, 200mm deep frames are proposed to further reduce direct sightlines and avoid direct cross views between units. These measures and in particular the offsetting of windows and different rooms facing each other will ensure that the objectives of the separation controls are achieved.

c. Solar Access:

The SEPP 65 ADG requires at least 70% of units in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter. The development proposes that 20/86 units (23.5%) achieve at least 2 hours. The private open space of 41/86 units (48%) achieve at least 2 hours.

A review of the plans and site visit indicate the subject allotments are orientated east to west thereby constraining the site in terms of solar access. In this regard, the design of the proposal maximises northerly aspect apartments where allowed by site constraints.

The single aspect apartments within Building C face east and west with the western facing apartments having marginal access to direct sunlight. Within Buildings A and B, the single aspect apartments face north and south with the northern facing apartments receiving direct sunlight to living spaces whilst the southern facing apartments do not receive direct sunlight.

It is noted that whilst these apartments do not comply, they are facing away from the roadways and noise sources in the vicinity of the site which is a constraint imposed on the site due to an exposure to major roads and surrounding commercial uses.

A maximum of 15% of units in a building are permitted to receive no direct sunlight between 9am and 3pm at mid-winter. The development proposes 29/86 units (34%) would receive no solar access. Given the east to west orientation of the site, the development is unable to achieve compliance without underdeveloping the site and further maximising the northern orientation of units.

The non-compliance of the proposal is a direct result of the constraints relating to site orientation. Any strict compliance with these controls would be disproportionate to the impacts upon development and site yield and therefore inconsistent with Part 5 “Objects” of the *Environmental Planning and Assessment Act, 1979*. Therefore given the circumstances, the proposal is considered a satisfactory response to the site constraints.

d. Storage:

The ADG requires that at least 50% of the required storage for a apartment is located within the apartment. 57/86 apartments (66%) have a total storage capacity that complies and only 9/38 apartments (10%) have at least 50% of storage within the apartment. The store rooms within the parking levels are all larger than 10m³ (some are up to 30m³ for example) so the areas could be redistributed to provide each apartment with sufficient storage. A condition has been included requiring the redistribution of storage to ensure all units comply.

f. Adaptable Dwellings

The proposed development requires 13 adaptable units (15% of 86 units), with associated disabled car parking spaces. The plans show only 8 adaptable units and Council's Accessibility Consultant has raised concern with the proposed design. However, conditions are included to ensure compliance is achieved.

6 External Referrals

- 6.1 The subject Development Application was referred to the following public agencies as summarised in the table below.

Referral Agency	Comment
Roads and Maritime Services	No objection, subject to conditions.
Holroyd Police Local Area Command	No objection, subject to conditions.
Endeavour Energy	No objection, subject to conditions.
TransGrid	No objection, subject to conditions.

7 Internal Referrals

- 7.1 The subject Development Application was referred to the following internal sections of Council as summarised in the table below:

Referral	Comment
Development Engineering Section	No objection, subject to conditions.
Landscaping Section	No objection, subject to conditions.
Traffic Section	No objection, subject to conditions.
Environmental Health Unit	No objection, subject to conditions.
Waste Management Section	No objection, subject to conditions.
Community Services Section (Social Planning)	No objection, subject to conditions.
Accessibility	Some concerns, however resolvable by way of conditions.
Rates Section	No objection, subject to conditions.

8 Public Comment

- 8.1 The DA was notified to surrounding property owners and occupiers and advertised in the local newspapers for a period of 21 days from 18 May 2016 to 8 June 2016. Letters were sent to adjoining and surrounding owners and occupiers, an advertisement was placed in the local paper and a notice was placed on site. In response, Council received 2 submissions.
- 8.2 The following concerns were raised in the submissions and have been discussed within the assessment provided within this report and attachments:
- Traffic and parking;
 - Driveway access;
 - Acoustic privacy;
 - Visual privacy and overlooking;
 - Safety and security;
 - Balcony placement and amenity impacts from hotel;
 - Ongoing operational concerns for adjoining hotel; and
 - Overshadowing.
- 8.3 The concerns also raised the following concerns that are addressed below:

Concern	Comment
Concern regarding the potential for light spill from the adjoining hotel on future residents.	DA/520/2009 approved a DA for alterations and additions to the existing Hotel on the adjoining site. A Carparking Lighting Layout Plan and obtrusive lighting reports, prepared by Haron Robson Electrical Consultants and Lighting Designers, were approved as part of that consent and certified that the car park and signage lighting would not have any obtrusive impacts on neighbouring properties.
Concern regarding the potential for future residents to use the hotel car park illegally.	The development provides a compliant number of car parking spaces. The illegal use of any adjoining property would be a compliance matter.
Concern regarding the potential health risks for future residents from the telecommunication tower on the adjoining property.	There is no evidence of the possibility of health risks from a low impact Telecommunications Tower. Any issues relating to this tower and the resultant emissions are addressed under The Telecommunications Act 1997 and is not within the scope of this assessment.

- 8.4 The grounds of objection raised in the submissions have been satisfactorily addressed as a part of the DA and are not considered sufficient to warrant refusal of the DA.

9 Section 79C Consideration

- 9.1 Consideration of the matters prescribed by Section 79C of the Environmental Planning and Assessment Act is summarised below:

Head of Consideration	Comment	Comply
a. the provisions of: (i) any environmental planning instrument (EPI) (ii) any draft environmental planning instrument (EPI) (iii) any development control plan (iiia) any planning agreement (iv) the regulations	<p>The provisions of relevant EPIs and DCPs relating to the proposed development are summarised in Section 5 of this Report and have been satisfactorily addressed in Section 5.</p> <p>Whilst not considered certain or imminent, the proposal is consistent with the draft Amendment to Holroyd LEP for the Neil Street Precinct.</p> <p>There are no existing or proposed planning agreements that relate to the DA.</p>	Yes
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	An assessment of key issues relating to the proposed development is provided in Section 5 of this Report and it is considered that the likely impacts of the development, including traffic, parking and access, bulk and scale, heritage, stormwater quality, waste management, soil and groundwater quality and the like have been satisfactorily addressed.	Yes
c. the suitability of the site for the development	The subject site is zoned R4 High Density Residential pursuant to Holroyd LEP 2013. Site and environmental constraints relating to site contamination, salinity, stormwater drainage and the like have been satisfactorily addressed as a part of the DA. The site is located at a prominent gateway entry to the Merrylands Town Centre with generous height and FSR provisions rendering the site suitable for the proposed development.	Yes
d. any submissions made in accordance with this Act or the regulations	The DA was notified to adjoining and neighbouring owners and advertised in the local newspapers in accordance with the Regulations and the Holroyd DCP 2013. Submission have been addressed in Section 9 of this Report.	Yes
e. the public interest	The proposed development is for the purpose of 2 residential flat buildings under Holroyd LEP that will not pose any impacts on the amenity of adjoining properties and the locality. Accordingly, it is considered that the proposal is in the public interest.	Yes

10 Conclusion

10.1 The proposed development has been assessed against the matters for consideration listed in Section 79C of the Environmental Planning & Assessment Act 1979 and is

considered to be satisfactory. In this regard it is considered that the site is suitable for the proposed development, the likely impacts of the development have been satisfactorily addressed and that the proposal is in the public interest.

- 10.2 The proposal is consistent with the objectives of Holroyd LEP 2013 and is permissible in the B2 Local Centre zone and the proposal achieves the objectives of the zone. The proposal also generally satisfies the main essential criteria set out in SEPP 65, the Apartment Design Guide and the Holroyd DCP 2013.
- 10.3 The application proposes a satisfactory built form for the site and context; appropriately responds to site constraints; provides an accessible building design; and will have acceptable traffic, social and economic impacts subject to the imposition of suitable conditions of consent to satisfactorily control the development.

11 Recommendation

- 11.1 The Development Application be approved by the Sydney West Central Planning Panel subject to the conditions provided at **Attachment 3**.
- 11.2 The applicant and objectors be advised of the Sydney West Central Planning Panel's decision.