

## SYDNEY WEST CENTRAL PLANNING PANEL

<b>JRPP No</b>	2016SYW124
<b>DA Number</b>	DA 2016/127
<b>Local Government Area</b>	Cumberland
<b>Proposed Development</b>	Demolition of existing structures; construction of 5 mixed use buildings ranging in height between 10 and 17 storeys over 2 separate basements ranging between 2 and 5 levels accommodating a total of 562 residential units; 7,876m <sup>2</sup> of commercial floor; 742 carparking spaces; construction of a new road; and Torrens subdivision into 5 lots
<b>Street Address</b>	233-259 Merrylands Road and 52-54 McFarlane Street, Merrylands
<b>Applicant/Owner</b>	Stockland Merrylands Court Pty Ltd
<b>Number of Submissions</b>	Five
<b>Regional Development Criteria (Schedule 4A of the Act)</b>	Capital Investment Value \$238,370,000 (>\$20 million)
<b>List of All Relevant s79C(1)(a) Matters</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>• State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development</li> <li>• State Environmental Planning Policy (BASIX) 2004</li> <li>• State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure)</li> <li>• Holroyd Local Environmental Plan 2013 (HLEP 2013)</li> <li>• Holroyd Development Control Plan 2013 (HDCP 2013)</li> <li>• Section 92 of the EP&amp;A Regulation</li> </ul>
<b>Recommendation</b>	Approval
<b>Report by</b>	Eltin Miletic, Senior Development Planner, Cumberland Council
<b>Meeting date</b>	21 December 2016



**Figure 1**      **Perspective from Treves Street (Turner Architects 2016)**

# ASSESSMENT REPORT

## Contents

1	Executive Summary .....	3
2	Location .....	5
3	Site Description .....	6
4	Background .....	7
5	The Proposal.....	8
6	Planning Controls .....	11
7	Key Issues .....	13
8	External Referrals .....	24
9	Internal Referrals.....	24
10	Public Comment .....	25
11	Section 79C Consideration .....	31
12	Conclusion .....	32
13	Recommendation.....	32

## ATTACHMENTS

Attachment 1 – Development Application Plans

Attachment 2 – Proposed Conditions of Consent

Attachment 3 – Applicant’s clause 4.6 request for variations

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 Stockland Merrylands Court Pty Ltd for a shop top housing development at 233-259 Merrylands Road and 52-54 McFarlane Street, Merrylands. The DA seeks approval for the demolition of existing structures, construction of 5 buildings (Buildings A to E) ranging in height between 10 and 17 storeys accommodating 562 units and 742 car spaces over 2 separate basements. The development includes a total of 7,876sqm of commercial gross floor area (or 7,028sqm gross leasable floor area) at the first two levels of Building A and the ground floor of Buildings B to E. All vehicular access is proposed from the construction of a new laneway. A copy of the proposed DA plans is provided at Attachment 1.
- 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 \$238,370,000. While Council is responsible for the assessment of the DA, the Panel is the consent authority.
- 1.3 The proposed development also constitutes 'nominated integrated development' as approval is required from the Department of Primary Industries Office of Water under the Water Management Act 2000 for aquifer interference. The land is also affected by an existing Sydney Water drainage channel and easements for underground power that will be re-aligned in accordance with authority requirements as a part of this DA.
- 1.4 The site is zoned B4 Mixed Use pursuant to Holroyd Local Environmental Plan (HLEP) 2013. Shop top housing, defined as one or more dwellings located above ground floor retail or business premises, is permissible with development consent and consistent with the objectives of the zone.
- 1.5 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 building separation. However, the variations to building separation are considered acceptable subject to suitable conditions of consent to ensure acoustic and visual privacy is achieved.
- 1.6 The development complies with the development standards contained within HLEP 2013 with the exception of building height and Floor Space Ratio (FSR). The applicant has lodged a request under Clause 4.6 of HLEP 2013 for variation to the development standards. These variations are supported because the objectives of the standards are achieved and the proposal results in a better planning outcome with no adverse streetscape, overshadowing or amenity impacts.
- 1.7 The permissible maximum height of building varies from 41m to 53m, generally from west to east across the site. The proposed building height is varied by up to 18.1m (or 44%) over the 41m limit where proposed Building D straddles the two height zones. Buildings A and B exceed the height limit by up to 11.87m (or 29%). The variations are largely due to a desire to provide a slimmer, taller urban form generally consistent with the desired future character of the Merrylands Centre with less amenity and streetscape impacts and greater street level activation than an otherwise compliant urban form. The variations for Buildings C and E of up to 4.8m (or 12%) are generally confined to rooftop plant and parapet. The variations do not result in any additional floor space or adverse overshadowing or amenity impacts. It is also noted that Buildings A, B and E would be wholly below draft building

height controls, while only rooftop plant would encroach for Buildings C and D, under a proposed amendment to the LEP currently on public exhibition.

- 1.8 The total permissible FSR is 5:1 over the western portion of the site and 6.5:1 over the eastern portion of the site. Residential floor space is limited to 3.3:1 and 4.8:1 over the western and eastern portions, respectively. While the proposal results in a residential floor space of 3.68:1 over the western portion (or 11.4% variation), this is offset with a commensurate reduction over the eastern portion. Overall, the total FSR of 4.4:1 is well below the maximum on an aggregated basis.
- 1.9 The development is generally consistent with the requirements of the DCP with the exception of first floor commercial provision, number of storeys, rear setbacks to laneways, upper level street setbacks and laneway location. The proposed variations are considered acceptable as the proposal will maintain satisfactory solar access and visual and acoustic privacy and will not create any adverse overshadowing, amenity or streetscape impacts. The proposed laneway is generally consistent with proposed changes to the LEP and DCP, which shifts the laneway further to the west wholly within the subject site and removes the northern leg from the adjoining property at 40 McFarlane Street.
- 1.10 The DA was referred to the Department of Primary Industries Office of Water, Roads and Maritime Services (RMS), NSW Police, Sydney Water, Endeavour Energy and Transgrid for comments, all of which raised no objection to the proposal subject to conditions of consent.
- 1.11 The DA was notified to surrounding property owners and occupiers and advertised in the local newspapers for a period of 30 days from 18 May to 17 June 2016, during which time 4 submissions, including 1 petition with 2 signatories, were received by Council. Amended plans removing a pedestrian skybridge over McFarlane Street and making other minor amendments were renotified for 21 days from 4 October to 25 October 2016, during which time 1 submission was received by Council from a previous submitter. 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.
- 1.12 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, 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 suitability of the site and the public interest, and is considered satisfactory subject to the imposition of suitable conditions of consent to satisfactorily control the development.
- 1.13 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 2** to this Report.

## 2 Location

- 2.1 The subject site is located within the Merrylands Town Centre opposite Stockland Shopping Centre and approximately 350m from Merrylands train station.



**Figure 2. Location Map (Source: Six Maps NSW, 2016)**

- 2.2 The locality is characterised by existing 2 to 3 storey commercial, business and retail premises, newer mixed use development under construction and associated public car parking, community and recreational facilities.
- 2.3 The town centre and the subject site enjoy vehicular access to the surrounding regional road network of the M4 Motorway and Great Western Highway via Neil Street and Woodville Road or Merrylands Road and Cumberland Highway.

### 3 Site Description

- 3.1 The subject land is known as Lots 5 to 8, DP 736930, Lot 12, DP 1178575, Lots 9 and 10, DP 244047, Lots 22 and 25 to 29, Section A, DP 7916, Lot 10, DP 814298 and Lot 5, DP 17401, 52-54 McFarlane Street and 233-259 Merrylands Road, Merrylands. The land is an irregular L-shaped corner lot and has a frontage of 95.85m to McFarlane Street, 78.75m to Treves Street and 165.86m to Merrylands Road. The total site area is 12,418.3sqm.



**Figure 3. Aerial Photo of Site and Surrounds (Source: Six Maps NSW, 2016)**

- 3.2 The subject site currently contains existing retail and business premises and at-grade retail carparking. The land is bounded by McFarlane Street and Council owned carpark to the north, Treves Street to the west, Merrylands Road to the south and existing commercial premises to the east at 231 Merrylands Road and 40 McFarlane Street constructed to the boundary with blank walls.
- 3.3 The area surrounding the site is predominantly characterised by the existing Stockland Shopping Centre to the immediate north; 4-storey mixed-use development to the west; 9-storey mixed-use development under construction to the south; and established 2-storey commercial premises to the south and east.
- 3.4 The topography of the development site is generally flat with a slight fall from south to north. The land is affected by the 1% AEP flood event and contains an existing Sydney Water drainage culvert that drains to the open channel within the Council owned carpark.
- 3.5 It is noted that Council has recently acquired land for road purposes at the rear of Lot 389, DP604672 (40 McFarlane Street) and Lots 21C to 21E, DP334937 (227-231 Merrylands Road) under Acquisition Plan DP1210565. This provides the missing portions of land together with proposed Lot 5 under this DA to enable the western extension of Main Lane proposed by Council and the re-alignment of the drainage channel under the proposed laneway.
- 3.6 The subject site is zoned B4 Mixed Use pursuant to Holroyd Local Environmental Plan (HLEP) 2013 as shown in Figure 4 below.

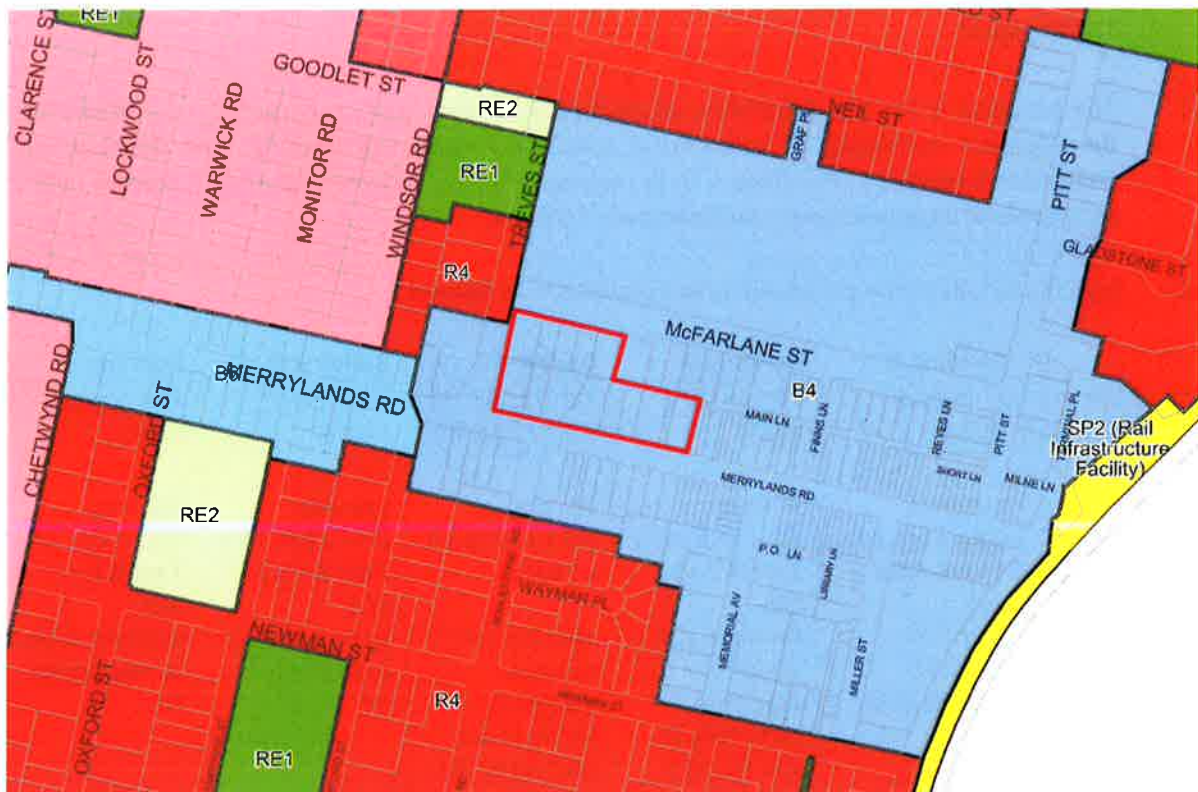


Figure 4. Zoning Plan (Source: Cumberland Council, 2016)

#### 4 Background

- 4.1 On 20 October 2015, Council resolved to undertake an independent review of the current building heights in the Merrylands Station and McFarlane Street precinct in order to allow the current maximum floor space potential to be realised whilst improving building design and planning outcomes. SJB Architects completed the Structure and Building Height Review Report, dated 16 March 2016, along with a detailed shadow analysis to support a generally higher urban form increasing in height towards Merrylands Station. This has been the subject of pre-Gateway consultation and formed the basis for the submission of a planning proposal to the Department of Planning and Environmental for Gateway determination. The Planning Proposal received gateway approval on 15 August 2016 and was recently the subject of public exhibition. Given the large area of Council owned land, a public hearing is required following public exhibition prior to finalisation.
- 4.2 Council approved Demolition at 233 Merrylands Road under DA2016/148 on 23 September 2016 to allow the Stage 1 dedication of proposed Lot 5 under this DA to enable the western extension of Main Lane proposed by Council up to and including the land acquired to the rear of 40 McFarlane Street.
- 4.3 It is noted that Stockland has proposed to enter into a voluntary planning agreement with Council for the provision of land and works for proposed laneway under this DA. Agreement has yet to be reached in relation to the portions of laneway wholly within the development site (the Stockland Lane) offered by Stockland under this DA. On this basis, the Stockland Lane will remain in private ownership until an agreement is reached post DA determination or the land is acquired by Council when required.

## 5 The Proposal

5.1 The proposal is for the demolition of existing structures and construction of a mixed use development consisting of commercial space and shop top housing. The development comprises 5 buildings (Buildings A to E) ranging in height between 10 and 17 storeys over 2 to 5 levels of basement and new laneway in 3 stages.

5.2 Specific details of the proposed development are as follows:

	<b>Building A</b>	<b>Building B</b>	<b>Building C</b>	<b>Building D</b>	<b>Building E</b>
<i>No. of Storeys / Height in metres</i>	17 storeys/ 64.2m	14 storeys/ 52.8m	Part 12, part 10 storeys/ 45.8m	16 storeys/ 59.1m	15 storeys/ 54.4m
<i>No. of Units / Unit Mix</i>	118 units (28 x 1 b/r, 84 x 2 b/r & 4 x 3 b/r)	81 units (30 x 1 b/r, 49 x 2 b/r & 2 x 3 b/r)	98 units (29 x 1 b/r & 69 x 2 b/r)	136 units (54 x 1 b/r, 77 x 2 b/r & 5 x 3 b/r)	129 units (51 x 1 b/r, 73 x 2 b/r & 5 x 3 b/r)
<i>Orientation</i>	Northern aspect to McFarlane St	Northern and Western aspects to McFarlane St and Treves St	Western and Southern aspects to Treves St and Merrylands Rd	Southern aspect to Merrylands Rd	Southern aspect to Merrylands Rd
<i>Adaptable</i>	0	33 (41%)	29 (30%)	31 (23%)	20 (16%)
<i>Solar</i>	89 (75.4%)	68 (84%)	63 (64.3%)	82 (60.3%)	93 (72.1%)
<i>Natural Ventilation</i>	35 (62.5%)	31 (59.6%)	58 (74.4%)	40 (52.6%)	40 (52.6%)

### Commercial Component

The development incorporates 7,028sqm gross leasable area (GLA) or 7,876sqm of commercial gross floor area, with 5,566sqm GLA across 19 commercial tenancies located at the ground floor levels of Buildings A to E and 1,461sqm GLA across 3 tenancies at the first floor level of Building A. The tenancies range from 48sqm to 1,243sqm in size to provide for a range of retail, restaurant and mini major end users. No approval for fitout or use is sought as a part of this DA.

### Residential Component

Overall, a total of 562 residential units are proposed with the following unit mix:

- 192 x 1 bedroom units or 34.16%
- 354 x 2 bedroom units or 62.9%
- 16 x 3 bedroom units or 2.8%

Proposed unit sizes vary from 50sqm to 59sqm for 1 bedroom units, 71sqm to 78sqm for 2 bedroom units and 95sqm to 108sqm for 3 bedroom units. The proposed units generally provide open plan kitchen, living and dining areas with backs of kitchen no more than 8m from a window. Podium level terraces range from 22sqm to 78sqm, while balcony sizes range from 8sqm to 17sqm for 1 bedroom units, 10sqm to 32sqm for 2 bedrooms and 13sqm to 43sqm for 3 bedrooms. Each unit is provided with internal storage areas as well as individual secure basement storage based on a minimum of 6 cubic metres for 1 bedroom apartments, 8 cubic metres for 2 bedrooms and 10 cubic metres for 3 bedrooms. A total of 113 adaptable units (20%) have been provided and overall 397 units (70.6%) achieve 2 hours solar access at midwinter and 204 units (60%) up to Level 9 achieve natural ventilation.

### Communal Open Space

The proposal includes both podium level and roof-top communal open space, as follows:

- Building A – 373sqm provided at Level 3 with soft and hard landscaping and seating.
- Building B & C – 1,711.7sqm provided at Level 1 and Level 10 roof-top incorporating soft and hard landscaping, tables and seating, internal communal gym facility, pergolas, BBQ facilities, shaded areas, amenities and maintenance facilities.
- Building D & E – 1,347.2sqm provided at Level 1 incorporating soft and hard landscaping, tables and seating, pergolas, BBQ facilities, amenities and storeroom.
- Total communal open space – 3,431.9sqm or 32.3% of net site area 10,622sqm.

### Built Form

The proposed built form comprises 3-storey street wall (podium) heights built to the property boundaries, with 7 to 14 storey residential towers above. The residential towers above provide variable 5m to 6m front setbacks to the street, 8m rear setbacks to the laneway opposite adjoining properties and variable 8.6m to 12m side setbacks to the eastern property boundaries. An overall FSR of 4.4:1 is proposed, which is significantly less than the potential overall floor space due to a cap on residential floor space. The proposal seeks a redistribution of residential floor space across the site under a clause 4.6 request, but no net increase. The proposal also involves up to a 44% variation to the maximum building height due to the displacement of floor space from the provision of additional laneway through the site not required under the DCP and a generally slimmer, taller built form for improved amenity, streetscape appearance and activated frontages.

The proposal forms the western edge of the Merrylands Centre core and acts as a distinct urban marker for the higher built form towards the town centre. The development has been designed so that each façade provides visual interest and variety in architectural articulation. The base for each building has a well-defined, consistent podium level throughout, utilising clear glazing with a light coloured irregular cladding treatment, 5m to 6m ground level ceiling heights and continuous awnings to activate the street frontages. The towers above are generally recessive in tone and treated with darker coloured irregular cladding, but punctuated with solid balcony elements of lighter coloured horizontal banding of variable widths.

### Car Parking

The proposal includes 2 basements containing a total of 742 parking spaces, with the following breakdown:

	Retail	Visitor	Residential	Bicycle
<i>Basement 1 (Buildings A, B &amp; C)</i>				
<i>Level 1</i>		60 (2 adaptable)	99 (29 adaptable)	65
<i>Level 2</i>			168 (33 adaptable)	71
<i>Sub-total</i>		60	267	136
<i>Basement 2 (Buildings D &amp; E)</i>				
<i>Level 1</i>	68 (1 adaptable)			
<i>Level 2</i>	32	53 (1 adaptable)		29
<i>Level 3</i>			87 (14 adaptable)	27
<i>Level 4</i>			87 (20 adaptable)	25
<i>Level 5</i>			88 (17 adaptable)	88

<i>Ground</i>				8
<i>Sub-total</i>	100	53	262	187
<b>TOTAL</b>	<b>100</b>	<b>113</b>	<b>529</b>	<b>323</b>

It is noted that the proposal seeks to provide a contribution for 43 retail car spaces offsite, being 30% of the retail car parking requirement, in accordance with Holroyd Section 94 Contributions Plan 2013.

#### Access Arrangements

Pedestrian access points are legible and well-defined with separated residential and commercial lobbies. Lift access is provided for all units via basement and ground floor lobby.

Vehicular access is proposed to the rear via the 9m wide westerly extension of Main Lane (to be delivered by Council) and a new 9m wide and variable north-south laneway connecting the Main Lane extension with McFarlane Street and Merrylands Road. The proposal involves a variation to the laneway layout identified under Holroyd DCP 2013 by extending Main lane an additional 64m to the west and shifting the north-south laneway away from the adjoining property to be wholly within the site. It is noted that this does not adversely impact any adjoining properties given:

- rear access to adjoining properties will be maintained by the dedication of proposed Lot 5 under this DA and Council's proposed extension of Main Lane,
- the removal of the 9m wide northern leg from 40 McFarlane Street (already constrained by a limited 30m wide frontage) will be more likely to achieve the desired future built form outcome for the precinct.

#### Servicing

Waste and recycling is proposed to be conveyed via chute systems within each building to Basement Level 1 for Buildings A, B and C and Basement Level 3 for Buildings D and E where waste and recycling will be stored in a residential waste storage area. Prior to pick up, waste and recycling will be transported to the ground level storage areas, which can be accessed by Councils 10.5m garbage trucks for weekly and fortnightly pickup. Turn tables have been provided at the rear of Buildings A and E to allow ingress and egress in the forward direction. Retail waste rooms are located on the ground floor of each building in back-of-house areas. The garbage service areas also serve as loading / unloading docks for bulky waste removal and retail deliveries.

#### Subdivision and Staging

The DA seeks to subdivide the land into 5 lots, with proposed Lots 1 and 2 for development and Lots 3 (stratum), 4 and 5 for road purposes.

Proposed Lot 5 will be dedicated under this DA for Council's proposed laneway extension and the Sydney Water drainage culvert will be re-aligned in the first stage of development. Stage 2 involves the construction of Buildings A, B and C with 2 levels of basement and new north-south laneway over proposed Lots 3 and 4. This 'Stockland' Lane within proposed Lots 3 and 4 will remain in private ownership until a planning agreement is negotiated post DA determination or the land is acquired by Council when required. Buildings D and E with a separate 5 level basement under Stage 3 rely on the completion of the Council laneway works, which can be undertaken either by Council or by the applicant as works-in-kind.

## **6 Planning Controls**

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

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

SEPP (State and Regional Development) 2011 confers development listed in Schedule 4A of the Environmental Planning and Assessment Act 1979 as 'regional development', requiring referral to a Sydney Planning Panel for determination. The proposed development constitutes 'Regional Development' as it has a Capital Investment Value of more than \$20M. 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 was referred to the RMS for comment in accordance with the Infrastructure SEPP. 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 104(4) 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. As a part of the DA, the applicant submitted a Phase 1 and 2 Site Contamination Report with a Remediation Action Plan supported by an interim statement from a site auditor. Implementation of the Remediation Action Plan along with a final validation report and sign-off from the site auditor will ensure that 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 certificate. 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 development applications for residential flat buildings 3 or more storeys in height and containing at least 4 dwellings. 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 6A of the SEPP states that Development Control Plans (DCPs) cannot be inconsistent with the Apartment Design Guide (ADG) and that DCP provisions with respect to the following matters are of no effect:

- visual privacy,
- solar and daylight access,
- common circulation and spaces,
- apartment size and layout,
- ceiling heights,
- private open space and balconies,
- natural ventilation, and
- storage.

The development complies with the requirements of SEPP 65 and the ADG with the exception of building separation and solar access. The non-compliance is discussed in Section 7 of this report. A detailed assessment against the provisions of the ADG is held at Attachment 4.

**f. Holroyd Local Environmental Plan (HLEP) 2013**

The site is zoned B4 Mixed Use pursuant to Holroyd Local Environmental Plan (HLEP) 2013. Shop top housing, defined as one or more dwellings located above ground floor retail or business premises, is permissible with development consent. The proposal is considered to be consistent with the relevant objectives of the zone as it will provide for a mixed commercial/residential development, facilitating active retail and business activities within the Merrylands Town Centre and in close proximity to the Merrylands Railway Station.

The development complies with the development standards contained within HLEP 2013 with the exception of building height and Floor Space Ratio (FSR). The applicant has lodged a request under Clause 4.6 of HLEP 2013 for variation to the development standards (see Attachment 3). These variations are further discussed in Section 7 of this Report. A detailed assessment against the provisions of HLEP 2013 is held at Attachment 5.

**g. Holroyd Development Control Plan (HDCP) 2013**

HDCP 2013 applies to the site. 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 rear setbacks to laneways, upper level street setbacks, unit mix and laneway location. The variations are discussed in further detail in Section 7 of this Report.

## 7 Key Issues

### 7.1 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. Building height variation

The permissible maximum height of building varies from 41m to 53m, generally from west to east across the site as shown in figure 5 below.

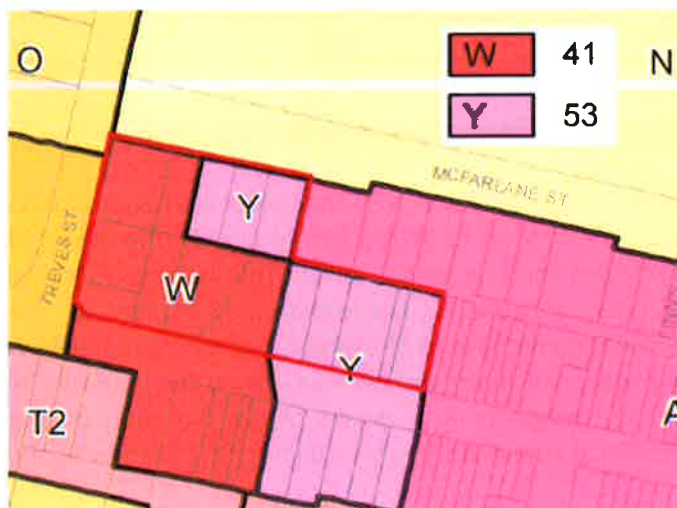
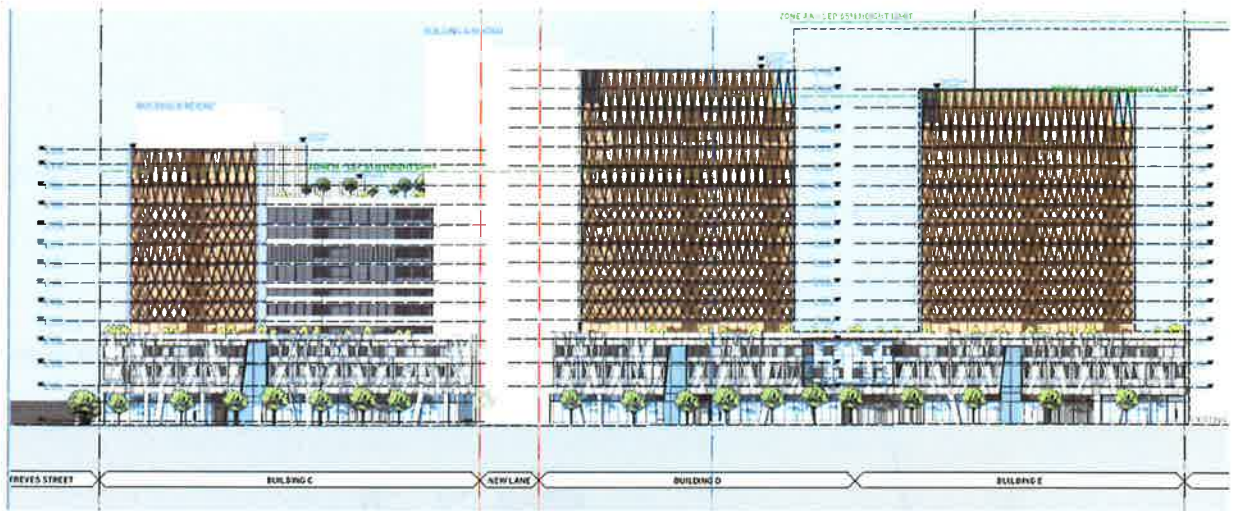


Figure 5. Height of Building Map (Source: Sutherland and Associates Planning, 2016)



Figure 6. Heights of Buildings A and B (Source: Turner Architects, 2016)



**Figure 7. Heights of Buildings C, D and E (Source: Turner Architects, 2016)**

As shown in the figures above, Buildings A and B exceed the height limit by up to 11.87m (or 29%), while the height limit is varied by up to 18.1m (or 44%) over the lower 41m limit where proposed Building D straddles the two height zones. The variations for Buildings C and E of 4.8m and 1.4m, respectively, are generally confined to rooftop plant and parapet. In addition the DCP identifies a maximum number of 16 storeys over the 53m height zone and 12 storeys over the 41m height zone, which also provides a guide to the potential built form anticipated under the Holroyd LEP height limit. In terms of the DCP limit on number of storeys, this equates to an additional part 4 storeys for Building D, 2 storeys for Building B and 1 storey for Building A.

The Applicant has indicated that the variation is a function of flooding, increased floor to ceiling heights, and the necessity to decant the allowable floor space taken away by the relocation and provision of an additional 981sqm of 9m wide laneway through the site. The Applicant has indicated that the proposal represents a superior urban design outcome with a highly activated permeable lane network through the site than would otherwise be achieved if the LEP and DCP height controls were adopted. The Applicant has provided the following environmental planning grounds to justify the proposed variation:

*The height controls applicable to the site have been designed to align with the lane location anticipated under the Development Control Plan. The proposed relocation of the lane results in a height non-compliance for Building D which straddles the two height zones.*

*The DCP also does not require the entire lane network from Merrylands Road through to McFarlane Street to be provided on the subject site and only requires a small portion of the lane at the eastern end of the site. This means that the entire western end of the site could accommodate a three storey commercial podium with no permeability and residential towers above. However, the proposed development instead seeks to ... provide the entire laneway connection through the subject site from Merrylands Road to McFarlane Street and to create a highly activated permeable lane network throughout the site. The proposed height variations are therefore also directly attributable to a displacement of floor area from the lower levels of the site as a result of the introduction of an activated laneway throughout the site which represents a significant improvement in comparison to a strictly DCP compliant scheme on the site.*

*The proposed variation to the height control allows the proposed floor space within the development to be accommodated within slimmer buildings with much greater separation as well as appropriate definition of the street corners. This facilitates a greater level of modulation in scale between the various buildings within the development as well as improved environmental performance within the development, reduced impacts on surrounding properties, and a much higher level of visual permeability throughout the site.*

*The proposed height variation facilitates higher buildings than anticipated by the height control (Buildings A, B and D) towards the northern and eastern portions of the site which anchors this part of the site within the Merrylands Centre, with the scale of the other buildings dropping away to provide a transition in scale to the west such that the proposed arrangement of heights is appropriate for the site and its context.*

*The proposed development provides an appropriate built form response for the site and will provide a clearly defined entry into Merrylands Centre from the west.*

*A solar analysis prepared by Turner Architects accompanies the subject application and demonstrates that the proposal does not result in a significant adverse impact to the surrounding properties.*

*The scale of the proposed buildings will not be perceived as jarring or antipathetic in the future streetscape and urban design context which will develop in the area.*

*As the proposal is consistent with the objectives of the height of buildings control, 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.

Council has previously accepted on merit proposed height exceedances due to roof top plant and equipment, lift overruns and roof features such as parapets, subject to no adverse amenity and overshadowing impacts to adjoining properties. Further, Council has previously supported the achievement of better planning outcomes by 'decanting' or redistributing permissible building mass across a site in order to reduce impacts, improve amenity or provide a superior urban design outcome.

In this instance, it is noteworthy that the subject site is buffered by B4 zoned land with equivalent 41m to 53m maximum building heights directly opposite on the southern side of Merrylands Road. Accordingly, it can be reasonably concluded that the potential overshadowing and amenity impacts of the proposal will be wholly contained within the desired future built form context of the Merrylands Centre B4 zoning and not on any lower density interface. On this basis, the likely overshadowing and amenity impacts of the proposal are considered acceptable.

Therefore, it is contended that a better planning outcome would be achieved as the proposal:

- Provides a slimmer, taller urban form generally consistent with the desired future character of the Merrylands Centre with less amenity and streetscape impacts.

- Creates greater street level activation than an otherwise DCP compliant urban form.
- Includes the relocation of the northern leg of laneway identified under the DCP from the adjoining property at 40 McFarlane Street. As a result, approximately 981.17sqm of additional 9m wide laneway is provided through the site that is not required by the current DCP and could otherwise be utilised as developable area.
- Improves the likely future built form outcome at 40 McFarlane Street as it would no longer be constrained by a 9m wide laneway with the associated 8m upper storey rear lane setback.
- Does not result in any additional floor area or yield.
- Does not create any adverse overshadowing or amenity impacts.

It is also noted that Buildings A, B and E would be wholly below draft building height controls, while only rooftop plant would encroach for Buildings C and D, under a proposed amendment to the LEP recently the subject of public exhibition. The proposal would result in less potential overshadowing and amenity impacts on adjoining properties compared to the likely future built form under the draft LEP Amendment.

#### b. Floor space ratio variation

The total permissible FSR is 5:1 over the western portion of the site and 6.5:1 over the eastern portion of the site as shown in the figure below.

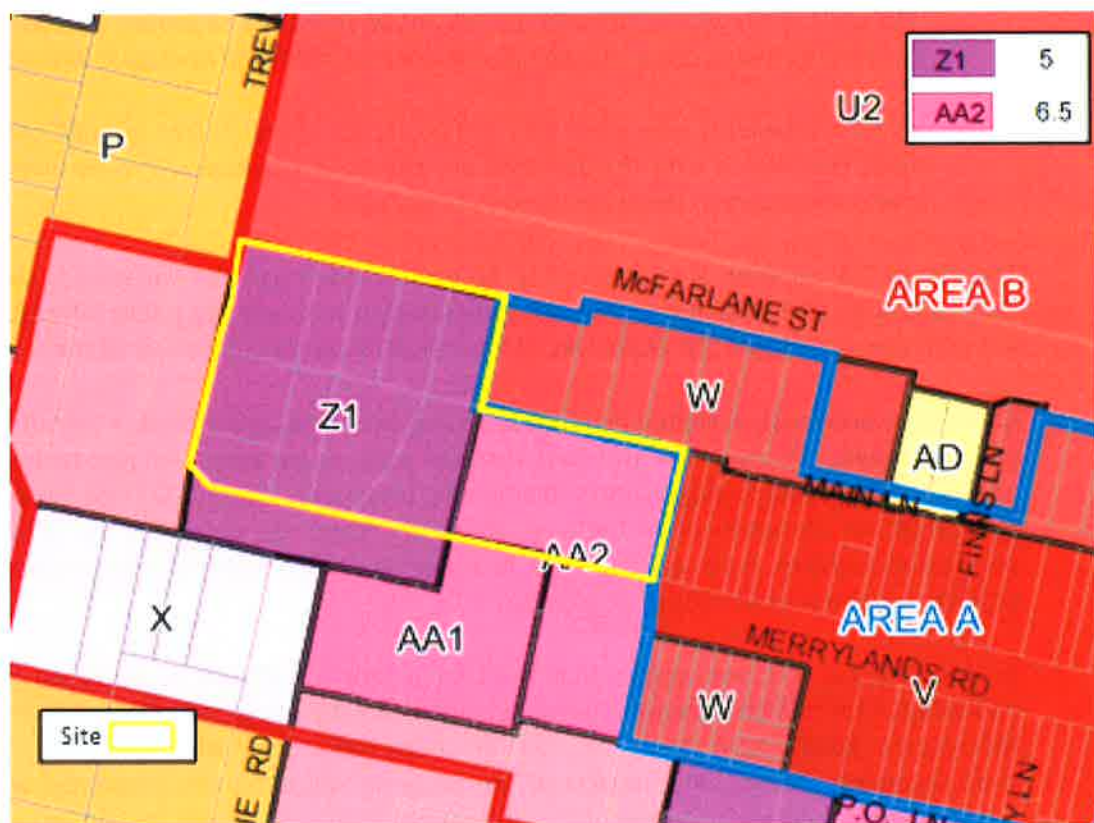


Figure 8. FSR Map (Source: Sutherland and Associates Planning, 2016)

Residential floor space is limited to 3.3:1 and 4.8:1 over the western and eastern portions, respectively. The proposal results in a residential floor space of 3.68:1 over the western portion (11.4% variation) or an additional 3,323sqm of residential gross floor area. However, this is offset with a commensurate 3,323sqm reduction over the eastern portion or an FSR of

3.89:1. Therefore, there is no variation to maximum residential floor space on an aggregated basis. Overall, the total commercial and residential FSR of 4.4:1 is well below the maximum on both an individual and aggregated basis.

The Applicant has indicated that the variation is a function of the necessity to decant the allowable floor space taken away by the relocation and provision of an additional 981sqm of 9m wide laneway through the site. The Applicant has indicated that the proposal represents a superior urban design outcome with a highly activated permeable lane network through the site than would otherwise be achieved if the LEP and DCP height controls were adopted. The Applicant has provided the following environmental planning grounds to justify the proposed variation:

*The overall development is well below the maximum FSR within the Z1 and AA2 FSR areas which apply to the site.*

*The proposed development does not exceed the total available residential gross floor area of 46,447sqm and only seeks to redistribute 3,323sqm from the AA2 area to the Z1 area.*

*The redistribution of residential floor space allows Buildings D and E to be slimmer buildings with much greater separation which results in an improved urban design outcome for the site with improved residential amenity, reduced width of shadows and a much higher level of visual permeability between buildings.*

*The redistribution of scale and density towards the northern end of the site (Buildings A and B in particular) is also consistent with Council's identified future desired character for the Merrylands town centre as expressed in the Merrylands Station and McFarlane Street Precinct Proposal, which was endorsed by Council on 3 May 2016.*

*The proposed development provides an appropriate built form response for the site and will provide a clearly defined entry into Merrylands Centre from the west.*

*A solar analysis prepared by Turner Architects accompanies the subject application and demonstrates that the proposal does not result in any adverse impacts in terms of shadow, views, visual and acoustic privacy to the surrounding properties which would warrant strict compliance.*

*The proposed variation to the floor space ratio control will facilitate an improved diversity and quantum of housing within a strategically identified town centre which will assist in meeting demand generated by changing demographics and housing needs in an existing urban area with excellent access to transport and services.*

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.

### **7.3 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 first floor commercial space, building height, rear setbacks to laneways, upper level street setbacks, unit mix and laneway location.

**a. Building Height**

As indicated above, the proposed development exceeds both the LEP height in metres and the DCP height in storeys. In response, a Clause 4.6 Variation has been submitted, which is discussed in detail within the LEP section of this report. Further it is noted that Council's Consultant Urban Designer has raised no objections to the proposed building heights and massing across the site.

**b. Setbacks**

There are 3 minor non-compliances with regard to setbacks, as follows:

- Building A varies the rear lane setback by 4m and Building B has a 2m variation. This is acceptable as it is contained within the site and overall building separation and visual and acoustic privacy is acceptable.
- Minor 1m variation to the 6m requirement for upper level setbacks for levels 9+ on Buildings B and C on Treves Street and Merrylands Road. This is acceptable as it helps emphasis the corners which is a preferred urban design outcome.
- Building E provides a part 8.6m side setback to the adjoining property, which is a 0.4m variation between 5 to 8 storeys and a 3.4m variation from 9 storeys and above. This is considered acceptable subject to a condition requiring this 8.5m section of the eastern facade to be blank wall to ensure no adverse acoustic or visual privacy impacts, noting that solar access and natural ventilation would remain compliant and a patterned metal screen would treat this façade.

Further it is noted that Council's Consultant Urban Designer has raised no objections to the proposed building setbacks subject to visual and acoustic privacy objectives being achieved.

**c. Apartment Mix**

Council's DCP allows a maximum 20% for studios and 1 bedroom units. However, the proposed development provides 192/562 (34%) as studio or 1 bedroom apartments. The Applicant has argued that the provision of studio and 1 bedroom units represents market demand for single occupier units closer to the heavy rail corridors. This variation is supported on the basis that it will contribute to housing mix in the locality.

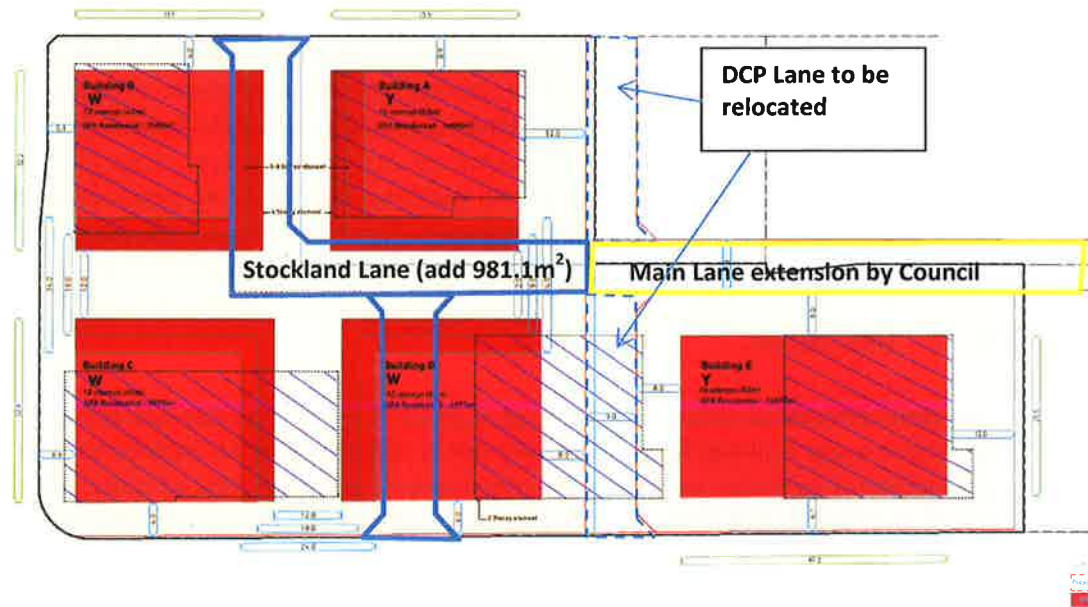
**d. Commercial Floor Space**

Council's DCP requires all ground floor and first floor levels of development to be used for commercial purposes. While Building A complies, Buildings D to E only provide ground floor commercial uses with residential above. The proposal has provided higher first and second floor ceiling heights in accordance with the Apartment Design Guide to promote flexibility for future use and conversion to commercial when the demand is generated. Given the 7,876sqm of commercial gross floor area provided across the site and noting the proposal complies with the definition of shop top housing, it is considered that the commercial floor space provision is acceptable in this instance.

**e. Laneway Layout**

As shown in Figure 9 below, the proposal involves a variation to the laneway layout identified under Holroyd DCP 2013 by extending Main lane an additional 64m to the west and shifting the north-south laneway away from the adjoining property to be wholly within

the site. Further it is noted that a total laneway width of 8m is required as per Section K-K under the DCP, but a 9m width is proposed in line with Council's engineering requirements.



**Figure 9. Overlay of DCP scheme versus proposal (Source: Turner Architects, 2016)**

It is considered that the proposed laneway variations do not adversely impact any adjoining properties given:

- rear access to adjoining properties will be maintained by the dedication of proposed Lot 5 under this DA and Council's proposed extension of Main Lane,
- the removal of the 9m wide northern leg from 38-40 McFarlane Street (already constrained by a limited 30m wide frontage) will be more likely to achieve the desired future built form outcome for the precinct.

The resultant change to the built form massing and configuration across the site is generally consistent with the desired future streetscape for the McFarlane Street and Merrylands Centre precinct under both the current and draft Holroyd LEP and DCP. In this regard, Council's Urban Design consultant has reviewed the proposal and raises no objection subject to a condition requiring the corners of ground floor commercial units RT312 (Building C) and RT114 (Building A) to be curved to allow better sightlines and improve safety and security around the dog-leg in the north-south lane. This would further reinforce the activation of the laneway and allow for increased outdoor dining space. Further, Council's Engineering and Traffic sections have reviewed the proposal and raised no objections to the alignment of the laneway.

Therefore, the proposed DCP laneway layout variation is considered acceptable. Further, it is noted that this proposal more closely accords with Council's draft LEP Amendment.

#### **7.4 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 'building separation' and 'solar access'. However, these non-compliances are considered satisfactory, as discussed below.

**a. Building Separation**

Compliance with the minimum 24m building separation requirement above 8 storeys is not achieved between Buildings D and E for a 9m section of wall and Buildings E and A for a 6m x 2m building corner. The minimum separation provided is 21m, which equates to a 3m encroachment. In addition, as noted previously, the required share of separation has not been provided from Building E to the eastern boundary in relation to an 8.5m section of the eastern façade, equating to a 3.4m variation above 8 storeys. However, the provided separations relate to small sections of the buildings only and are compliant with the visual separation requirements subject to conditions. Therefore, these variations are considered acceptable.

**b. Solar Access**

The non-compliance relates to Buildings C (64.3%) and D (60.3%) not achieving 70% solar access on a per building basis. However, this is considered to be satisfactory, as the overall development complies with the 70% requirement, less than 15% of units achieve no solar and it is noted that Buildings C and D have south facing frontages to Merrylands Road and are to the south of higher buildings fronting McFarlane Street, which makes some overshadowing unavoidable within the development.

**7.5 Stormwater Management**

Council's engineering section is currently designing the re-alignment of the Sydney Water Trunk Drainage Culvert so that it is located under the proposed laneway. This will cater for the 1 in 100 year flood event through the site and adjoining properties. Council's engineers reviewed the stormwater plans and documentation submitted with the DA and initially raised concerns with regard to the details of the proposed stormwater quantity and quality measures and flood protection. Following receipt of additional details submitted by the Applicant on 6 September 2016, Council's Engineering Section subsequently raised no objection to the proposal subject to the imposition of appropriate conditions of consent.

These conditions include:

- the Council's formal sign-off and endorsement of detailed stormwater plans and calculations demonstrating compliance with the relevant Council Stormwater Quantity requirements as a deferred commencement matter and further stormwater management details prior to construction certificate;
- the installation and maintenance of suitable erosion and sediment control measures throughout the duration of works;
- the submission of relevant certificates from suitably qualified engineers certifying the proper construction of the stormwater infrastructure and submission of maintenance manuals for the proposed stormwater infrastructure; and
- the imposition of Section 88B restrictions and covenants on title requiring the appropriate maintenance of the stormwater infrastructure.

**7.6 Environmental Management**

**a. Waste**

A Waste Management Plan (WMP) has been prepared and submitted as a part of the Application. Waste generated during construction and operation of the proposed development will be satisfactorily managed in accordance with Council's requirements.

Council's Waste Management Section has reviewed the proposal and raised no objections to the development. Therefore, a condition of consent will be included within the consent requiring compliance with the submitted WMP.

**b. Contamination**

As a part of the DA, the applicant submitted a Phase 1 and 2 Site Contamination Report with a Remedial Action Plan (RAP) was prepared by DLA Environmental Services (ref: DL3692\_S005763) dated November 2016. A Statement of Support from James Davis NSW EPA Contaminated Land Site Auditor (ref: IA 0301-1618\_03R) dated 18 November 2016 also accompanied the RAP.

The proposal involves the capping and containment in-situ of identified sources of contamination in order to prevent any risk of harm to human health or the environment, which is identified as category 1 remediation work under SEPP 55. The potential contaminants of concern relate to landfill leachate, potential LPG and hydrocarbon contamination and unknown fill materials. The implementation of the RAP along with a final validation report and sign-off from the site auditor will ensure that the works are safely carried out during construction and the site is suitable for the proposed development.

Council's Environmental Health section has reviewed the submitted reports and raised no objection to the proposal subject to the following conditions of consent:

- A Validation Report prepared by a suitably qualified consultant is required to be submitted to Council for review prior to the issue of any Occupation Certificate.
- Prior to the issuing of the Occupation Certificate a Site Audit Statement/Site Audit Report is required to be submitted to Council for review that identifies that the site is suitable for the proposed land use.

**c. Salinity**

The Salinity Potential in Western Sydney map prepared by DIPNR, indicates the Site and the Merrylands area generally is within a region of moderate salinity potential. Suitable conditions of any consent will be imposed requiring the detailed design of the development to incorporate measures to mitigate the impacts of, and on, salinity as a part of the development.

**d. Noise and Vibration**

As identified above, given the proximity of the development site to the nearby road network, an Acoustic Report prepared by Acoustic Logic was submitted to Council in support of the DA, having regard to the requirements of the SEPP Infrastructure 2007, the Department of Planning's publication entitled Development Near Rail Corridors and Busy Roads – Interim Guideline, and the Industrial Noise Policy.

The acoustic report presents an assessment of the potential noise impact from road traffic, principally road noise from Merrylands Road and Treves Street, noise from mechanical plant associated with the operation of the development, and noise from construction works.

**e. Arboricultural Impact**

An Arboricultural Impact Assessment, prepared by Birds Tree Consultancy, was prepared and submitted to Council for consideration. The site contains 78 trees some of which are exempt from Council's Tree Preservation Order. All trees within the site are recommended to be removed as they are located within the footprint of the proposed buildings and/or infrastructure. Suitable street tree planting will be provided as a part of the development along with podium landscaping. Council's Tree Management Co-ordinator raises no objection to their removal and to the replacement trees proposed as part of the landscaping documentation.

**7.7 Heritage**

The subject site is in the vicinity of 2 local heritage items under Holroyd LEP 2013:

- Electrical Sub-station at 285 Merrylands Road, Merrylands (item I-68) addressing Treves Street; and
- Merrylands School of Arts at 289 Merrylands Road, Merrylands (item I-69).

As a part of this DA, the Applicant submitted a Heritage Impact Statement prepared by Urbis, which confirms that the proposed development will not create any adverse heritage impacts. Council's heritage advisor has reviewed the proposal and raises no objections.

**7.8 Traffic and Transport**

**a. Laneway Layout**

The DCP provides an indicative future road layout for the precinct. Council's consultants are currently in the process of finalising the road design and the stormwater infrastructure for the precinct and intend on delivering the western extension of Main Lane upon the dedication of proposed Lot 5 under this DA. This will form an offset to the monetary section 94 contribution amount.

It is noted that Stockland has proposed to enter into a voluntary planning agreement with Council for the provision of land and works for proposed laneway under this DA. Agreement has yet to be reached for the portions of laneway wholly within the development site (the Stockland Lane) offered by Stockland under this DA. On this basis, the Stockland Lane will remain in private ownership until an agreement is reached post DA determination or the land is acquired by Council when required.

**b. Parking**

An assessment of the proposed development against Council's controls shows that the development provides the minimum number of car parking spaces. The proposal seeks to provide a contribution for 43 retail car spaces offsite, being 30% of the retail car parking requirement, in accordance with Holroyd Section 94 Contributions Plan 2013.

**c. Traffic impact**

It is noted that a development of this scale has the potential to have an impact on the local traffic network. As such, the Applicant prepared a traffic impact assessment report to assess

the likely traffic implications of the development, to determine whether the development is satisfactory, and recommend appropriate remedial measures if required.

The report, prepared by Arup, dated August 2016 states that, the traffic generation of the proposed development will be satisfactorily accommodated within the local road networks. Having regard to the projected traffic generation rates and the existing and future proposed local road network, the Applicant's traffic consultant concludes that there will be no unsatisfactory traffic or traffic related environmental implications.

Council's Traffic Engineer has reviewed the proposed development and submitted traffic report, and has advised that the projected traffic generation results in minimal impact to local roads and nearby intersections. Council's Traffic Section raises no objection to the development, subject to conditions.

It is further noted that the application and associated traffic report was referred to the RMS for their consideration and no objection was raised to the proposed development.

## **7.9 Urban Design**

The DA has been accompanied with a Design Verification Statement prepared by the architect for the proposal, Dan Szwaj (Registration No. 6529) of Turner Architects. The proposed built form comprises 3-storey street wall (podium) heights built to the property boundaries, with 7 to 14 storey residential towers above. The residential towers above provide variable 5m to 6m front setbacks to the street, 8m rear setbacks to the laneway opposite adjoining properties and variable 8.6m to 12m side setbacks to the eastern property boundaries. An overall FSR of 4.4:1 is proposed, which is significantly less than the potential overall floor space due to a cap on residential floor space. The proposal seeks a redistribution of residential floor space across the site under a clause 4.6 request, but no net increase. The proposal also involves up to a 44% variation to the maximum building height due to the displacement of floor space from the provision of additional laneway through the site not required under the DCP and a generally slimmer, taller built form for improved amenity, streetscape appearance and activated frontages.

The proposal forms the western edge of the Merrylands Centre core and acts as a distinct urban marker for the higher built form towards the town centre. The development has been designed so that each façade provides visual interest and variety in architectural articulation. The reconfigured laneway layout provides greater permeability and activation at the ground level. The base for each building has a well-defined, consistent podium level throughout, utilising clear glazing with a light coloured irregular cladding treatment, 5m to 6m ground level ceiling heights and continuous awnings to activate the street frontages. The towers above are generally recessive in tone and treated with darker coloured irregular cladding, but punctuated with solid balcony elements of lighter coloured horizontal banding of variable widths. The roof design is well articulated with simple forms and lift structures painted a dark recessive colour to minimise bulk. Carpark entries are limited to two only in Building A and E off the rear lane which is a good urban design outcome.

Council's consultant Urban Designer has reviewed the proposal and raised no objections subject to conditions.

## 8 External Referrals

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

Department of primary Industries Office of Water	No objection, subject to conditions
Sydney Water	No objection, subject to the following deferred commencement conditions: 1. The proponent shall make suitable arrangements with Council and Sydney Water for the adjustment and deviation of the existing Sydney Water stormwater assets to ensure no buildings are proposed over or within 1 metre of the stormwater asset footprint – see Sydney Water 'Building Over and Adjustment Guidelines' for further details. 2. All adjustment and deviation works are to be undertaken at no cost to Sydney Water.
Roads and Maritime Services	The RMS originally raised the following concerns: 1. The submitted SIDRA analysis has not taken into account cumulative traffic generated in the surrounding developments. An overall network modelling and analysis should be undertaken which include the following: <ul style="list-style-type: none"><li>• Existing situation, background growth, estimated future traffic growth in the network due to the proposed development and future surrounding developments.</li><li>• Assignment of traffic and its impact in the network, level of service at key intersections/signals, queue lengths, traffic volumes and link delays.</li><li>• The impacts of additional pedestrian movements and subsequent impacts in the nearby traffic signals.</li></ul> Following receipt of a revised Traffic Report demonstrating the required network modelling and analysis, no objections were subsequently raised to the proposed development.
Holroyd Police	No objection, subject to conditions
Endeavour Energy	No objection, subject to conditions

## 9 Internal Referrals

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

Development Engineering Section	No objection, subject to conditions
Traffic Section	No objection, subject to conditions
Landscaping Section	No objection, subject to conditions
Environmental Health Unit	No objection, subject to conditions

Waste Management Section	No objection, subject to conditions
Strategic Planning Section	No objection
Heritage Advisor	No objection
Community Services Section (Social Planning and Accessibility)	No objection
Consultant Urban Design Advisor	No objection, however advised that greater separation between buildings should be provided.

## 10 Public Comment

- 10.1 The application as initially lodged with Council, was placed on public exhibition for a period of thirty (30) days. 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 four (4) submissions, including 1 petition with 2 signatories, objecting to the proposal.

The application was subsequently amended to its current proposal and renotified for a period of twenty-one (21) days. In response, Council received one (1) submission objecting to the proposal, from a previous submitter. The concerns raised in the five submissions are addressed below:

- **Pedestrian skybridge over McFarlane Street is excessive and will create adverse visual and amenity impacts**

In response to these concerns and similar issues raised by Council, the DA was amended to remove the pedestrian skybridge.

- **The timing and delivery of the Main Lane extension needs to occur in a timely manner and not be compromised by the proposed development**

Stockland seek to dedicate proposed Lot 5 as a part of the first stage of development, prior to issue of construction certificate, which will allow the western extension of Main Lane to be delivered by Council in a timely manner. In this way, the timing and delivery of the laneway will be facilitated by the proposed development.

- **Setbacks shall be provided to comply with the shares of separation required by SEPP 65 Apartment Design Guide to ensure that the development potential of adjoining properties is not compromised**

A 12m side setback is proposed adjacent to 38-40 McFarlane Street, while a variable setback of 8.6m to 12m is proposed adjacent to 231 Merrylands Road. As noted within this report, the proposed setbacks generally comply with the requirements of the ADG and the proposal does not create any adverse amenity or overshadowing impacts.

- **Our main concern is the potential flooding impact on adjoining properties as a result of relocating the Sydney Water Drainage Channel under the proposed laneway**

Council's engineers have undertaken an assessment of the proposed development and have raised no objections in relation to flooding. Council's consultants are currently preparing the detailed design for the drainage channel and laneway works in accordance with Sydney

Water requirements to ensure that future development within the precinct has the required freeboard above the 1 in 100 year ARI event.

- **The height of the balcony balustrades are totally inadequate and the potential for accidents and self harm to become a major problem in the not too distant future is quite evident.**

The heights of the balustrades comply with the minimum requirements of the Building Code of Australia which sets a mandatory minimum height of the balustrade for safety. Accordingly, there is no need to further increase the height of the balustrade which would also result in diminished amenity by restricting cross flow ventilation and solar access within the apartments.

- **As the development exceeds the LEP 'height of buildings' standard, the development will surely foster overdevelopment and overpopulation**

The proposed height variations and associated clause 4.6 request are supported in this instance for the reasons outlined in Section 7 of this report.

Council has previously supported 'decanting', whereby the floor space is redistributed to facilitate a better urban design outcome.

If both the height and the floor space ratio (FSR) were over the maximum, then it could be described as an overdevelopment of the site. However, the proposed overall FSR of 4.4:1 is well below the maximums of 5:1 and 6.5:1. The residential gross floor area (GFA) has been calculated to meet the maximum residential floor area prescribed for the site. In this regards, whilst there is an exceedance in height in order to achieve a better urban design outcome than envisaged by the DCP, this has not resulted in an increased density.

- **A movie theatre and other non-residential uses apart from retail shops should be provided in keeping with the mixed use zone. The DCP requires non-residential uses to be provided at the first floor level**

Stockland is not obligated to provide a movie theatre and the proposal does not preclude the future provision of office space. Notwithstanding this, the floor to ceiling heights of the first floor have been increased to provide flexibility for the future conversion to office space should the demand arise. The proposal is consistent with the zone objectives and the provision of retail premises and additional housing meets the need within the area as identified within the State Government strategy document 'A Plan for Growing Sydney'.

Whilst Council's DCP requires all ground floor and first floor levels of development to be used for commercial purposes, the DCP is required to be applied flexibly in accordance with the Act where the objectives of the standard are achieved. While Building A complies, Buildings D to E only provide ground floor commercial uses with residential above. The proposal has provided higher first and second floor ceiling heights in accordance with the Apartment Design Guide to promote flexibility for future use and conversion to commercial when the demand is generated. Given the 7,876sqm of commercial gross floor area provided across the site and noting the proposal complies with the definition of shop top housing, it is considered that the commercial floor space provision is acceptable in this instance. Finally, it is noted that there is no obligation to take up the non-residential floor space which applies to the site under the HLEP 2013 within levels above the ground level.

- There is also reference to “Council-led proposals” and “The development has been designed in accordance with Council’s vision for the new town centre”. This reads as though Stockland expect these height variances to be approved by Council.
- Furthermore, even though Council has a Gateway Proposal before NSW Planning for increases in heights on this site, this has not been approved as yet – but again, this proposal reads that it’s expected the Gateway Proposal will be approved - and the Gateway matter will be put on exhibition again - and the height increases will be approved, as the previous community consultation had already resulted in Council increasing heights and density.

A detailed justification in relation to the proposed heights is provided within the applicant’s Clause 4.6 request. The height variation does not rely on the forthcoming Planning Proposal for increased heights and instead has merit in relation to the current height controls which apply to the site. The proposed height variations are the result of displaced floor area from the ground floor plane of the development as the proposal seeks to introduce a permeable and activated laneway network throughout the site which increases active ground floor frontage and introduces a fine grain to the town centre retail offering. The increase in height also allows for slimmer buildings and greater separation between buildings. The height variations facilitate a better urban design outcome and therefore in this instance strict compliance is considered to be unreasonable and unnecessary.

- **Stockland website states detailed traffic modelling has shown that surrounding roads and intersections will not be substantially affected as a result of the Merrylands Court redevelopment.**
- **What is their definition of “substantially affected”?**
- **(And I think it may be a little different to residents who currently live around the centre – or the shoppers who currently access the Mall).**
- **Will either the laneway intersections and / or the new street intersections require traffic lights?**
- **How will these new street intersections not substantially affect traffic flow on Merrylands Road and McFarlane Street that already have restricted/constricted traffic flow?**
- **I also ask how the Holroyd Section 94 Contributions Plan Town Centres Transport Study 2013, undertaken by ARUP, compares to the one undertaken by Stockland?**
- **I also ask Council to explain the vehicle trip generation rates in Table 4.4.4 (p. 47 of the Holroyd Section 94 Contributions Plan 2013) that are used to determine the expected additional vehicle trips for various developments?**
- **And are these vehicle trip generation rates relevant today when the planned configuration of the Town Centre has so changed, and Council had anticipated these changes would take 20 years to occur (as they so frequently stated during the LEP/DCP consultation periods)?**

The existing retail and commercial offerings on the site benefit from 121 existing car parking spaces and the proposal will replace these with 100 new car parking spaces onsite alongwith 43 spaces offsite via section 94 contribution.

The Applicant prepared a traffic impact assessment report prepared by Arup to assess the likely traffic implications of the development, to determine whether the development is satisfactory, and recommend appropriate remedial measures if required.

The report states that the traffic generation of the proposed development will be satisfactorily accommodated within the local road network. Having regard to the projected

traffic generation rates and the existing and future proposed local road network, the Applicant's traffic consultant concludes that there will be no unsatisfactory traffic or traffic related environmental implications. The laneway intersections will not carry a volume of traffic sufficient to meet the RMS warrants for signalisation.

Council's Traffic Engineer has reviewed the proposed development and submitted traffic report, and has advised that the projected traffic generation results in minimal impact to local roads and nearby intersections. Council's Traffic Section raises no objection to the development, subject to conditions.

It is further noted that the application and associated traffic report was referred to the RMS for their consideration and no objection was raised to the proposed development.

- **Stockland website says the laneways will create a vibrant public space, with pedestrian activity and multiple ground level shops with generous outdoor dining spaces.**
- **Council's Outdoor Dining Policy was resolved relatively recently (1/9/15), after deferral and much debate in Chambers.**
- **Does this DA meet the requirements of Council's Outdoor Dining Policy?**
- **Is there adequate footpath/pavement widths in Eat Street and Merrylands Road and the other laneway, to maintain at all times the safe movement of pedestrians, shoppers and patrons?**
- **(I understand the Outdoor Dining Policy requires footpaths to have a minimum width of 3.6m and a minimum unobstructed pedestrian corridor of 2.0m within the 3.6m corridor to allow for continuous accessible paths of travel at all times).**
- **I understand the width of the north south laneways is only 6 metres – yet p. 256 Part C of the DCP states that "All laneway shall be 8m in width"?**
- **Is 6 metres laneway width wide enough to cope with 2-way traffic, including garbage trucks and delivery trucks etc?**

The proposed development provides ample capacity to accommodate outdoor dining as well as pedestrian movement, noting that the laneway network through the site is proposed as a shareway with pedestrian priority. The North-South Laneway Section L-L in Part M of the DCP which applies to Merrylands town centre only illustrates a footpath dining width of 1.5m and the proposal is well in excess of this requirement.

The necessary width of the north-south laneway within the Merrylands is nominated in Part M of the DCP (not Part C) which nominates a carriage width of 4m which is exceeded by the proposed 6 metre wide carriageway width for the north-south lane. Council's Engineering, Traffic and Waste Management Sections have reviewed the proposal and raised no objections.

- **Car parking and bicycles**

The proposal has 7,028sqm of gross leasable retail floor area which generates a requirement for 141 retail car parking spaces based on the DCP rates of 1 space per 50 square metres. 100 of the spaces will be provided on site and 43 spaces provided off set in accordance with Council's Section 94 Contributions Plan. The skybridge has been removed.

SEPP 65 allows a minimum of 569 resident spaces to be provided and Council's DCP allows a maximum of 749 spaces to be provided. The proposal provides 642 resident car spaces and

in accordance with Clause 30(1)(a) of SEPP 65 the development application cannot be refused on the grounds of car parking on the basis that it meets the RMS minimum requirement.

It is understood that Council's future public car park will not allow permanent parking of cars by residents.

The proposal provides for the minimum required 313 bicycle parking spaces within designated areas and individual storage cages throughout the basement levels.

Further, Council's Traffic Section has reviewed the proposal and raised no objections to the proposed development.

- **I note there are 2 separate basements ranging between 2 and 5 levels of parking for residents – and I understand this is a flood prone area, also having a creek nearby.**
- **Is their adequate drainage and infrastructure in place for this depth of underground excavation in this location?**
- **Does the deep excavation avoid any adverse drainage and flooding impacts on other areas or adjacent/nearby property?**
- **Does the deep excavation obstruct or divert drainage / stormwater / floodwaters?**

The basements will be constructed in a manner which will not disturb existing drainage and flooding patterns within the area. The Department of Primary Industries Office of Water has provided General Terms of Approval for aquifer interference activity under the Water Management Act 2000, which will ensure that any interception of underground water is satisfactorily managed. Sydney Water's trunk drainage culvert will be re-aligned in accordance with Sydney Water and Council requirements to ensure that the trunk drainage requirements are accommodated within the proposed laneway configuration, rendering the site suitable for the proposed development. Council's Engineering section has reviewed the stormwater concept plans submitted with the DA and raised no objections subject to conditions.

- **I'm not sure of the terminology to use but at the drop-in session I referenced the external 'lattice work' - and all representatives seemed to know that I was talking about the concrete or metal external criss-crossing of the buildings, across the whole complex.**
- **I have also heard the term 'meshing' used – and the external decoration does seem to replicate the old security grille doors.**
- **I find this 'lattice work'/'meshing' quite ugly and one of the representatives advised it would not remain as presented – particularly as they had concerns that the criss-crossing features would impact on window and balcony views, light access etc.**

The proposed façade design is intended to generate a high level of visual interest and introduces an architectural language which differs from that which is usually evident in residential apartment buildings with a unifying pattern across the façade. This will serve to provide animation and a unique identify for the development which will contribute a higher quality of built form for Merrylands. Further, Council's independent Urban Design consultant has reviewed the proposal and raised no objections to the proposed façade treatment. It is also noted that the achievement of solar access, cross ventilation and outlook will not be adversely affected by the proposed façade design.

- I note 15 lots are to be consolidated into 5 lots, yet residential parking is split between 2, not 5 basements. How does this work with regard to property ownership, management and maintenance etc?

The proposed final subdivision will achieve the following;

- Lot 1 is proposed to have an area of 6,774 square metres and will accommodate Buildings A, B and C. (Lot 1 which also extend below Lot 3 in stratum)
- Lot 2 is proposed to have an area of 4,463 square metres and will accommodate Buildings D and E.
- Lot 3 (proposed road) is proposed to have an area of 615 square metres.
- Lot 4 (proposed road) is proposed to have an area of 754.7 square metres.
- Lot 5 allows for the proposed extension of Main Lane and immediate dedication to Council which has an area of 343 square metres.

A separate application will be lodged for future strata subdivision of the buildings, which will ensure the appropriate management and maintenance of property.

- **Probably not a concern of Council or Stockland, but I'm concerned that units are affordable for local homebuyers.**

The commercial pricing of the proposed units is not a relevant matter for consideration under S79C of the Environmental Planning and Assessment Act 1979. However, it is noted that the proposal provides a suitable variety of housing stock in order to accommodate for the anticipated population growth for the locality.

- **Not having the detailed DA plans, I obviously haven't examined all matters but list below some areas that I particularly would like to be carefully reviewed, having experienced unit living for many years, as well as living close to the Town Centre:**
- **Acoustic and visual privacy, shadowing, sunlight and daylight access**
- **Setbacks and separations**
- **Adequate number of lifts per building**
- **Apartment size**
- **Appropriate unit mix of one, two and three bedroom apartments**

Detailed explanations in relation to the following are provided in the development application documentation and within the body of this report:

- acoustic and visual privacy
- shadowing and solar access
- setbacks and separation
- number of lifts per building
- apartment size and
- apartment mix

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, 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 suitability of the site and the public interest, and is considered satisfactory subject to the imposition of suitable conditions of consent to satisfactorily control the development.

## 11 Section 79C Consideration

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

Head of Consideration	Comment	Complies
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 6 of this Report and have been satisfactorily addressed in Section 7.</p> <p>Whilst not considered certain or imminent, the proposal is consistent with the draft Amendment to Holroyd LEP currently on public exhibition.</p> <p>Whilst a draft planning agreement has been discussed in relation to this DA, an agreed offer has not been made and will be the subject of further negotiation post DA determination.</p>	No, but considered acceptable
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 7 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 identified as B4 mixed use land pursuant to Holroyd LEP 2013. Further, matters relating to site contamination, salinity, stormwater drainage and access have been satisfactorily addressed as a part of the DA, 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 for a period of 30 days, during which time 6 submissions were received by Council. The DA was re-notified for a further 21 days, during which time 1 submission from a previous submitter was received. However, on balance, it is considered that the submissions received are not sufficient to warrant refusal of the DA.	Yes
e. the public interest	The proposed development is for the purpose of mixed commercial and residential use on land identified as BA mixed use under Holroyd LEP and, accordingly, it is considered that the proposal is in the public interest.	Yes

## **12 Conclusion**

- 12.1 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 likely impacts of the development have been satisfactorily addressed and that the proposal is in the public interest. Further, the subject site is considered suitable for the proposed development.
- 12.2 The proposal is consistent with the objectives of Holroyd LEP 2013 and the B4 Mixed Use zone and is permissible in the zone with development consent. The proposal also complies with the main essential criteria set out in SEPP 65, the Apartment Design Guide and the Holroyd DCP 2013, with the exception of first floor commercial provision, number of storeys, rear setbacks to laneways, upper level street setbacks and laneway location, and is considered satisfactory with regard to relevant matters such as Built Form, Heritage, Access, Traffic Impact, Stormwater Drainage, Site Contamination, Salinity, Social and Economic Impacts and the like subject to the imposition of suitable conditions of consent to satisfactorily control the development.

## **13 Recommendation**

- a) The Development Application be approved by the Sydney West Central Planning Panel subject to the conditions held at Attachment 2.
- b) The applicant and objectors be advised of the Sydney West Central Planning Panel's decision.



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