

SYDNEY WEST CENTRAL PLANNING PANEL

Panel Reference Number	2017SWC040 DA
DA Number	DA 2016/496
Local Government Area	Cumberland
Proposed Development	Construction of a 2 x residential flat buildings (Buildings 3 and 4) over 3 levels of basement parking accommodating a total of 438 car parking spaces and 5 on-grade spaces; Building 3 being 12 storeys accommodating 178 units and Building 4 being part 6; part 8 and part 12 storeys accommodating a total of 133 units. The application includes consolidation of 2 existing lots making up the overall site of 1-11 Neil Street and re-subdivision of the consolidated lot into Torrens Title lots and Stratum lots.
Street Address	1-11 Neil Street, Merrylands
Applicant/Owner	Landmark Group Australia Pty Ltd
Number of Submissions	Three (3)
Regional Development Criteria (Schedule 4A of the Act)	Capital Investment Value \$68,220,694 (>\$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 (State and Regional Development) 2011 • State Environmental Planning Policy (Infrastructure) 2007 (SEPP Infrastructure) • Holroyd Local Environmental Plan 2013 (HLEP 2013) • Draft Holroyd Local Environmental Plan 2013 (DHLEP 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	26 April 2017



Figure 1 – Perspective from Rail Bridge Looking North-West (Source: Marchese Partners 2016)

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ATTACHMENTS

- Attachment 1 – Development Application Plans
- Attachment 2 – Applicant's Clause 4.6 request for variations
- Attachment 3 – Proposed Conditions of Consent
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- Attachment 5 – Assessment of compliance with Holroyd LEP 2013
- Attachment 6 – Assessment of compliance with Draft Holroyd LEP 2013 Amendment
- Attachment 7 – Assessment of compliance with Holroyd DCP 2013
- Attachment 8 – Public Submissions

1 Executive Summary

- 1.1 Council is in receipt of a Development Application (DA) from Landmark Group Australia Pty Ltd for a development involving 2 residential flat buildings at 1-11 Neil Street, Merrylands including land consolidation and further subdivision. The DA seeks approval for the construction of a 2 x residential flat buildings (Buildings 3 and 4) over 3 levels of basement parking accommodating a total of 438 car parking spaces and 5 on-grade spaces; Building 3 being 12 storeys accommodating 178 units and Building 4 being part 6; part 8 and part 12 storeys accommodating a total of 133 units. The application includes consolidation of 2 existing lots making up the overall site of 1-11 Neil Street and re-subdivision of the consolidated lot into Torrens Title lots and Stratum lots. Vehicular access to the basement levels of the buildings is via the construction of a proposed new road and bridge over the drainage culverts that traverse through the site. A copy of the proposed DA plans are provided as **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 \$68,220,694. While Council is responsible for the assessment of the DA, the Panel is the Consent Authority.
- 1.3 The land is affected by a watercourse traversing through the site in a north to south direction known as the A'Beckett's Creek. Accordingly, the proposed development 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 site is also affected by a drainage easement affecting existing lot 1 in the north-western corner of the site and a right of way affecting the western boundary of the site.
- 1.4 The site is zoned R4 High Density Residential pursuant to Holroyd Local Environmental Plan (HLEP) 2013. Residential flat buildings, defined as "*a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing*", is permissible with development consent and the development is 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 some of the building separation and solar access requirements. However, the building separation non-compliance is resolvable by imposition of conditions requiring privacy treatment for affected balconies and the solar access non-compliance is considered acceptable as discussed in Section 6 of this Report.
- 1.6 The development complies with the development standards contained within HLEP 2013 with the exception of building height and Floor Space Ratio (FSR).
- 1.7 The maximum permissible height of buildings on the site is 29 metres on the eastern half of the site and 26 metres on the north-western corner of the site. Buildings 3 and 4 in this application are subject to the 29 metre height limit. Building 3 proposes a maximum building height of 38.6 metres and Building 4 proposes a maximum building height of 38.25 metres. The proposed building heights are varied by up to 9.6 metres, or 33.1%, over the 29 metre limit.
- 1.8 The maximum permissible FSR for the site is 2.8:1 for the eastern half of the site and 3:1 for the north-western corner of the site.

- 1.9 The application includes consolidation of the existing 2 lots legally described as Lot 11 in DP 228782 and known as 1-7 Neil Street (herein referred to as Site 1) and Lot 1 in DP 203553 known as 9-11 Neil Street (herein referred to as Site 2). The permissible maximum FSR for Site 1 is 2.8:1 while the permissible maximum FSR for Site 2 is 3:1. The combined sites allow for a maximum combined GFA of 45,177m².
- 1.10 The subject application proposes a GFA of 23,352m² for Buildings 3 and 4 and a total combined GFA of 40,050m² for all 4 buildings on the site which equates to a FSR of 2.55:1 on the proposed consolidated site. The proposed GFA is below the maximum achievable GFA of 45,177m² achievable for the site.
- 1.11 Buildings 2, 3 and 4 occupy part of the site that has a site area measuring 10,560m² and is subject to a FSR of 2.8:1. The application proposes a GFA of 30,626m² for buildings 2, 3 and 4 which equates to a FSR of 2.9:1 on that part of the site and exceeds the maximum permitted FSR.
- 1.12 The applicant has lodged a request under Clause 4.6 of HLEP 2013 seeking variations to the height and FSR development standards. A copy of the Clause 4.6 requests is provided at **Attachment 2** to this report. These variations are supported as the objectives of the standards are achieved and the proposal results in a better planning outcome for the site and Neil Street Precinct with no adverse streetscape, overshadowing or amenity impacts.
- 1.13 The development is generally consistent with the requirements of the Holroyd Development Control Plan (HDCP) 2013 with the exception of the landscaping, dwelling mix, number of storeys, site consolidation and street wall height controls. The proposed variations are considered acceptable as the proposal is an appropriate response to the site, will provide a highly emphasised corner building that will mark the visual entry to the precinct and the development will not result in any amenity impacts for adjoining properties and future occupants of the development.
- 1.14 The DA was referred to the Department of Primary Industries Office of Water, Roads and Maritime Services (RMS), Heritage Office, NSW Police, Sydney Water, Endeavour Energy and Transgrid for comments, all of which raised no objection to the proposal subject to conditions of consent or General Terms of Approval.
- 1.15 The DA was notified to surrounding property owners and occupiers over 2 notification periods, during which time a total of 3 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.
- 1.16 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.
- 1.17 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 11, DP 228782 and Lot 1, DP 203553, 1-7 and 9-11 Neil Street, Merrylands. The land is an irregular shaped lot and has a frontage of 110.82 metres to the southern Neil Street boundary; a 100.65 metre depth along the western side boundary; a 180.5 metre width along the northern rear boundary; and a 131.15 metre depth along the eastern boundary shared with the railway corridor. The total site area is 15,763sqm. The site is illustrated in Figure 2 below with the portion of the site of the proposed residential flat buildings 3 and 4 hashed in red:

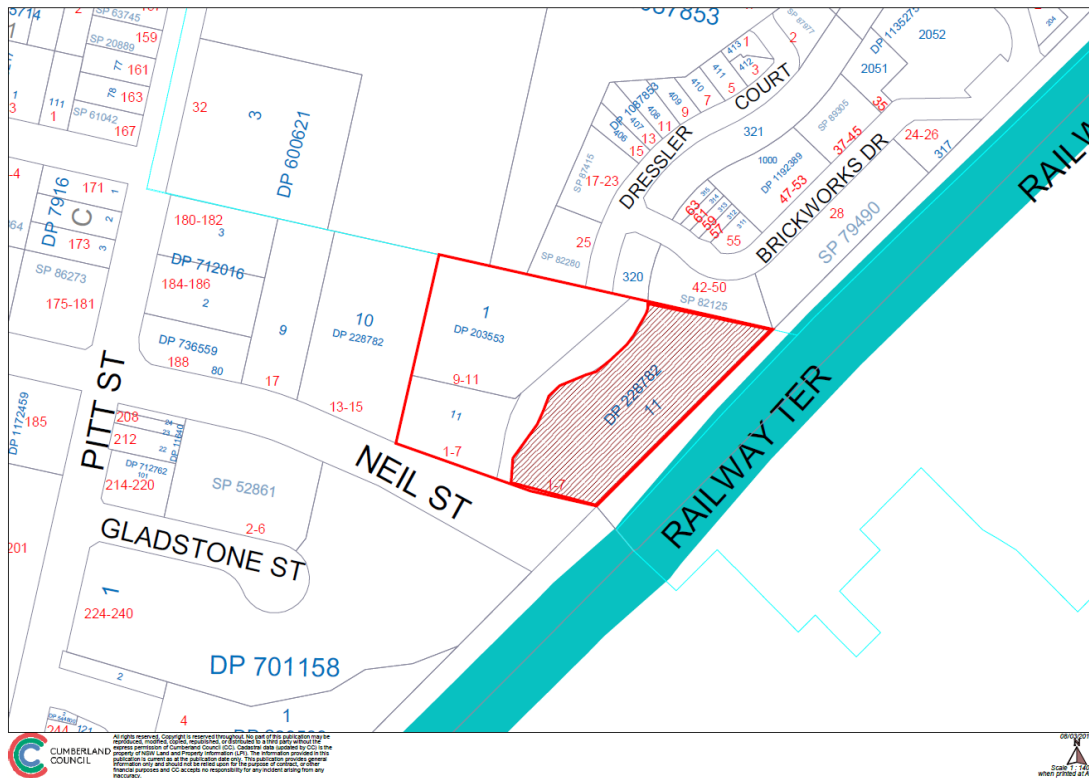


Figure 2 – Location Map (Source: Cumberland Council, 2017)

- 2.2 The subject site is currently vacant and is split by the A'Becketts Creek watercourse which traverses the site in a north to south direction and forms a natural feature and constraint for the site.
- 2.3 The topography of the site is fairly consistent with a slight fall from south to north. The land is affected by Local Overland Stormwater Overflow and contains part of the A'Becketts Creek waterway.
- 2.4 The subject site is zoned R4 High Density Residential pursuant to Holroyd Local Environmental Plan (HLEP) 2013 as shown in Figure 3 below:

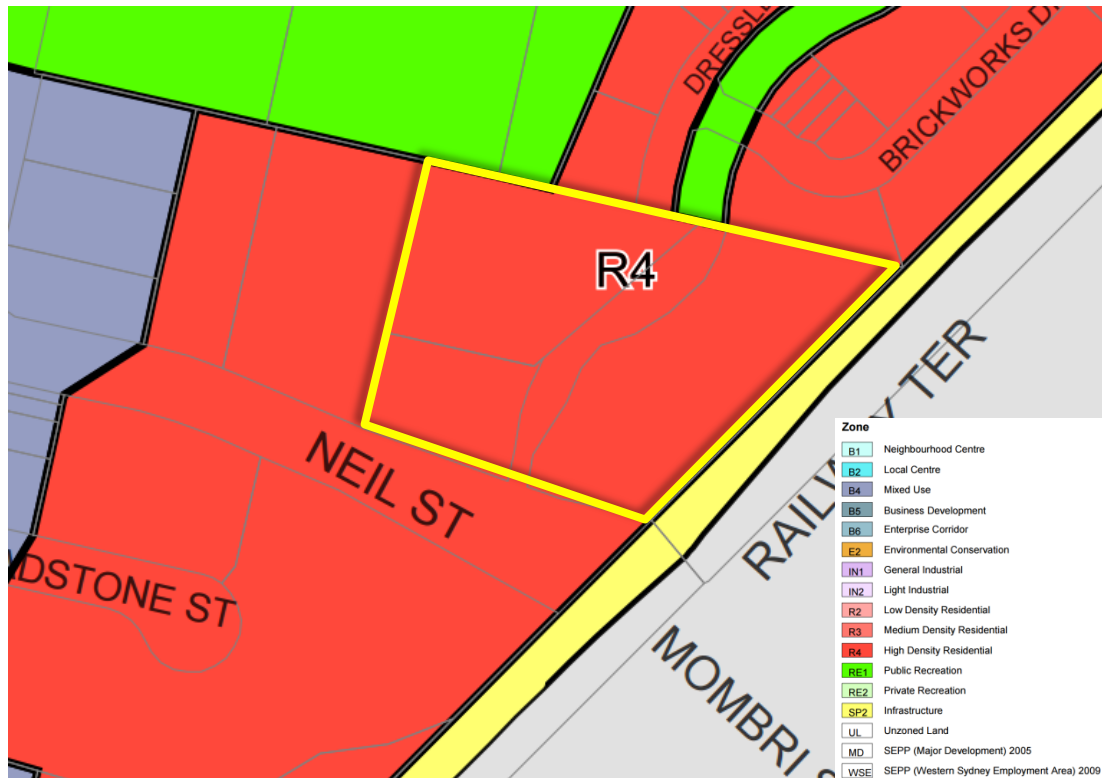


Figure 3 – Zoning Map (Source: Cumberland Council, 2017)

- 2.5 The subject site is situated on the northern side of Neil Street, Merrylands and is located within the Neil Street Precinct. The subject site is adjacent to a railway corridor that spans the eastern boundary of the site and approximately 350 metres north-east from Merrylands train station. The site is split into 2 parts by the A'Becketts Creek watercourse that traverses through the site in a north to south direction 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 2 residential flat buildings known as Buildings 3 and 4 on the portion of the site to the east of the A'Becketts Creek only, with 2 residential flat buildings already approved on the western portion of the site known as Buildings 1 and 2.
- 2.7 The locality is characterised by existing low rise former industrial premises to the west along Neil Street; mixed use and residential flat building developments approved, under construction and recently completed to the west and north; commercial and retail development to the south-west and residential to the east and south.
- 2.8 The subject site currently benefits from vehicular access directly from the Neil Street frontage. Vehicular access to the development is dependent on a proposed extension of Dressler Court at the north of the site which will connect to a new road running through the site along the western side of the A'Becketts Creek watercourse.
- 2.9 The site has access to the surrounding regional road network of the M4 Motorway and Great Western Highway via Neil Street, Mombri Street, Loftus Street, Merrylands Road and Woodville Road to the east or Merrylands Road and Cumberland Highway to the west.
- 2.10 The site is located adjacent to a heritage item to the north being the former brickworks site known as Item I53 - Goodlet & Smith (brickmaking plant and chimney, Hoffman kiln & chimney). The subject site is known as the Millmaster Feeds site and is identified as a potential Archaeological site. The DA was reviewed by Council's Heritage advisor and the Heritage Office who raised no objections to the proposal, subject to conditions.

3 Background

- 3.1 The subject site is part of a Masterplanned site incorporating 1-7 and 9-11 Neil Street, Merrylands that envisages 4 buildings on the site as illustrated in Figure 5 below:



Figure 5 – Masterplan (Source: Marchese Partners, 2016)

- 3.2 Buildings 1 and 2 have been approved by separate DA's each comprising a 9 storey residential flat building over basement car parking levels.

- 3.3 The subject application seeks consent for construction of a 12 storey building known as Building 3 and a part 6, part 8 and part 12 storey building known as Building 4.
- 3.4 On 20 October 2015, the former Holroyd City Council resolved to proceed with a Planning (PP) Proposal to amend the HLEP for the Neil Street Precinct, Merrylands. The PP seeks to amend the zoning, maximum height of buildings and floor space ratios applicable for the precinct. Relative to the subject site, the PP proposes the following amendments:
- Rezoning of part of the site to SP2 Infrastructure and Road for parts of the site containing future roads and drainage culvert;
 - Rezoning of part of the site to RE1 Public Recreation behind Building 2 to allow for a future public park;
 - Increase the maximum building height from the current 29 metres to a staggered 27 metre, 30 metre and 39 metre height limit increasing in a north to south direction; and
 - Increase the maximum FSR from the current 2.8:1 and 3:1 to 3.5:1 across the entire site.

The PP received gateway approval on 27 June 2016, has been publicly exhibited as a Draft HLEP 2013 Amendment, and is being reviewed by Council in preparation for future public exhibition.

4 The Proposal

- 4.1 The proposal is for the construction of a 2 x residential flat buildings (Buildings 3 and 4) over 3 levels of basement parking accommodating a total of 438 car parking spaces and 5 on-grade spaces; Building 3 being 12 storeys accommodating 178 units and Building 4 being part 6; part 8 and part 12 storeys accommodating a total of 133 units. The application includes consolidation of 2 existing lots making up the overall site of 1-11 Neil Street and re-subdivision of the consolidated lot into Torrens Title lots and Stratum lots.
- 4.2 Specific details of the proposed development are as follows:

	Building 3	Building 4
<i>No. of Storeys / Height in metres</i>	12 storeys / 38.6 metres	Part 6, 8 and 12 storeys / 38.25 metres
<i>No. of Units / Unit Mix</i>	178 units <ul style="list-style-type: none"> • 59 x 1 bed units • 107 x 2 bed units • 12 x 3 bed units 	133 units <ul style="list-style-type: none"> • 57 x 1 bed units • 63 x 2 bed units • 13 x 3 bed units
<i>Orientation</i>	North and North-Westerly aspect	North and North-Westerly aspect
<i>Adaptable</i>	36/178 (20%)	27/133 (20%)
<i>Solar</i>	127/178 (71.4%)	96/133 (72.2%)
<i>Natural Ventilation</i>	142/178 (79.8%)	88/133 (66.2%)

Overall, a total of 311 residential units are proposed with the following unit mix:

- 116 x 1 bedroom units or 37.3%
- 170 x 2 bedroom units or 54.7%
- 25 x 3 bedroom units or 8%

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 terrace at ground level or balcony on the levels above that

comply with or exceed the minimum size prescribed by the ADG. Each unit is provided with internal storage areas as well as individual secure basement storage compliant with or exceeding the total minimum required under the ADG. However, a large number of units are not provided with at least 50% of the storage within the unit. Given this, a condition will be imposed on any consent granted for the proposal requiring amended plans to provide at least 50% of storage space within each unit. A total of 63 adaptable units (20%) have been provided and overall 223 units (71.7%) achieve at least 2 hours of solar access at midwinter and 230 units (74%) achieve natural ventilation.

Communal Open Space

The proposal includes both ground floor level and roof-top level communal open spaces, as follows:

- Building 3 – 622m² provided on ground level with soft landscaping;
- Building 4 – 875m² provided on ground level with soft landscaping and 386m² provided at Level 6 incorporating hard landscaping, tables and seating, pergolas, BBQ facilities and storeroom.
- Total communal open space – 1,883m² or 27.8% of net site area 6,769.4m².

Built Form

The proposed built form comprises 12 storey building heights with Building 3 observing a consistent built form across all levels in a reverse L-shaped configuration spanning the south-eastern corner of the site along Neil Street and the railway corridor. Building 4 adopts a 6 storey podium base that is a similar shape to Building 3 with levels 7 to 12 narrowing to form a tower above the podium base.

Building 3 observes minimum 2.5 metre setbacks to the southern Neil Street boundary, 6 metres to the eastern boundary to the railway corridor, 18 metres to Building 4 to the north and between 1 metre (non-habitable) and 3 metres (habitable) to the western side boundary.

Building 4 observes minimum 18 metre setbacks to Building 3 to the south, 6 metres to the eastern boundary to the railway corridor, 6.1 metres to the northern rear boundary and 34.5 metres to Building 1 to the west.

An overall FSR of 2.9:1 is proposed for Buildings 2, 3 and 4, which exceeds the maximum 2.8:1 FSR achievable on this part of the site. The proposal seeks a redistribution of residential floor space across the entire proposed consolidated site under a clause 4.6 request with no net increase in the GFA proposed. The proposal also involves up to a 33.1% variation over the 29 metre height limit due to the displacement of floor space to allow for slimmer and taller built forms for improved amenity, streetscape appearance and activated frontages. The height variations do not result in any net increase in the GFA achievable on the site.

The subject site forms the eastern edge of the Neil Street precinct and acts as a distinct urban marker for the higher built form from the railway bridge towards the main Merrylands Town Centre making the site appropriate for a built form of increased height.

Car Parking

The proposal includes a single 3 level basement beneath the buildings containing a total of 438 parking spaces with an additional 5 parking spaces provided on ground level, with the following breakdown:

	Resident Spaces	Accessible Spaces	Visitor Spaces	Total	Bicycle
<i>Basement 3</i>	139 spaces	20 spaces	0 spaces	159	57
<i>Basement 2</i>	129 spaces	23 spaces	0 spaces	152	68
<i>Basement 1</i>	45 spaces	25 spaces (5 visitor)	57 spaces	129	58
<i>Ground</i>	0 spaces	0 spaces	5 spaces	5	12
Total	312 spaces	68 spaces	62 spaces	443	195

Access Arrangements

Pedestrian access points into the site and buildings are legible and well-defined with 3 lobbies proposed in accordance with the 3 cores proposed for each building. Lift access is provided for all units through the basement levels and ground floor lobbies.

Vehicular access to the development is dependent on a proposed extension of Dressler Court at the north of the site which will connect to a new road running through the site along the western side of the A'Becketts Creek drainage channel. A bridge over the channel will provide access to the proposed basements beneath the buildings which will be accessible via a shared driveway zone running in an east to west direction between the built forms.

Servicing

Waste and recycling is proposed to be conveyed via a chute system within each building to bin store rooms located in Basement Level 1. Prior to pick up, bins will be transported to the ground level bin storage area located on the side of the shared driveway in front of Building 4.

Subdivision and Staging

The DA seeks to consolidate the existing 2 lots into 1 lot and re-subdivide the land into 7 lots including Torrens Titled lots and Stratum Titled lots as follows:

Lot No.	Site Area	Type	Future Use
<i>Lot 1</i>	2,938m ²	Torrens Title	Building 1
<i>Part Lot 2</i>	1,481.5m ²	Stratum Title	Building 2
<i>Part Lot 3</i>	3,336.8m ²	Stratum Title	Building 3
<i>Part Lot 4</i>	3,432.6m ²	Stratum Title	Building 4
<i>Part Lot 5</i>	1,789.4m ²	Stratum Title	Drainage Channel
<i>Lot 6</i>	2,026.7m ²	Torrens Title	New Road
<i>Part Lot 7</i>	731m ²	Stratum Title	Open Space

Proposed Lot 6 will be dedicated to Council for the construction of a new local road that will provide vehicular access to the site as part of the extension of Dressler Court at the north of the site. Proposed Lot Pt 7 will also be dedicated to Council for the creation of a future public park. The proposed lot is Stratum Titled and will be unlimited in height and limited in depth to RL 13 metres AHD which equates to a minimum depth of 2.3 metres below ground level to the ceiling level of the basement beneath approved Building 2.

5 Planning Controls

5.1 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) \$68,220,694 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 as traffic generating development. The DA proposes 311 dwellings and 443 parking spaces and accordingly was referred to the RMS for comment in accordance with the Infrastructure SEPP. The RMS's comments are outlined in Section 7 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.

A Site Audit Statement (Site Audit Statement No: 114043_2016_01) was prepared by Phillip Mulvey of Environmental Earth Sciences which formed part of a Site Audit Report (report no: 114043_2016_01) prepared by Phillip Mulvey of Environmental Earth Sciences. The Statement and Report advise that the site is suitable for the proposed land use subject to compliance with the submitted environmental management plan which will be conditioned on any consent granted for the proposal to ensure that the land is suitable for the proposed residential use.

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 some of the building separation and solar access requirements. However, the building separation non-compliance is resolvable by imposition of conditions requiring privacy treatment for affected balconies and the solar access non-compliance is considered acceptable as discussed in Section 6 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 FSR and height of buildings development standards. The applicant has submitted a written request justifying the contravention of the development standards and considers that strict compliance is unreasonable and unnecessary in the circumstances of the case. The variations are discussed in further detail in Section 6 of this Report. A detailed assessment against the provisions of the HLEP is provided at **Attachment 5** to this Report.

g. Draft Holroyd Local Environmental Plan (HLEP) 2013

A Planning Proposal (PP) for the Neil Street Precinct received Gateway approval on 27 June 2016 and has been publicly exhibited as a Draft HLEP 2013 Amendment. Council's Strategic Planning Section is currently considering the submissions received during the exhibition period before reporting the Draft LEP Amendment back to Council for endorsement to be sent to the NSW Department of Planning and Environment for making. The Draft HLEP 2013 Amendment proposes to rezone part of the site and increase the height of buildings and FSR development standards applicable to the site. The development is generally consistent with the provisions of the Draft LEP with the exception of the height of buildings development standard. The variations are discussed in further detail in Section 6 of this Report. A detailed assessment against the provisions of the Draft HLEP 2013 Amendment is provided at **Attachment 6** to this Report.

h. 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 landscaped area, dwelling mix, site consolidation, number of storeys and street wall height controls. The variations are discussed in further detail in Section 6 of this Report. A detailed assessment against the provisions of the HDCP is provided at **Attachment 7** to this Report.

6 Key Issues

6.1 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 29 metres on the eastern half of the site and 26 metres on the western half of the site as illustrated in Figure 6 below:

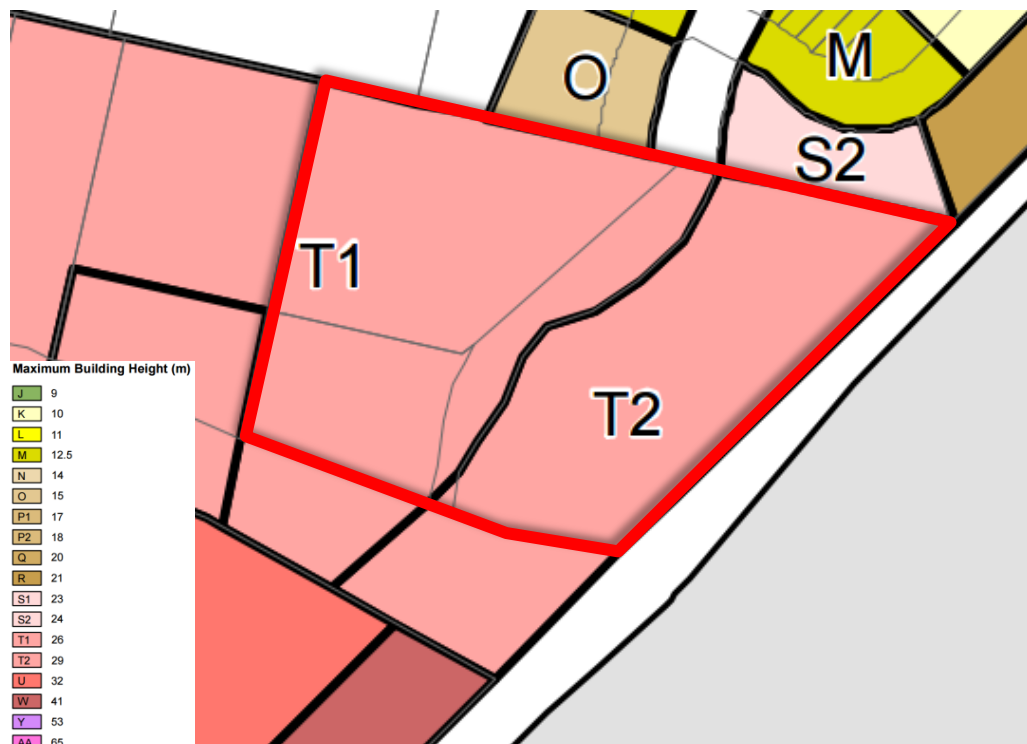


Figure 6 –Height of Buildings Map (Source: Holroyd LEP, 2013)

Buildings 3 and 4 in this application are subject to the 29 metre height limit labelled as T2 in Figure 6 above.

Building 3 proposes a maximum building height of RL 54 metres to the top of the rooftop plant screening which equates to a maximum building height of 38.6 metres above the site level of RL 15.39 metres below. Building 4 proposes a maximum building height of RL 53.6 metres to the top of the lift overrun which equates to a maximum building height of 38.25 metres above the site level of RL 15.35 metres below.

The proposed building heights are varied by up to 9.6 metres, or 33.1%, over the 29 metre limit. The variations arise due to a desire to provide slimmer and taller urban forms that are generally consistent with the desired future character of the Neil Street precinct with less amenity and streetscape impacts and greater street level activation than an otherwise compliant urban form. The variations do not result in any additional floor space over what a compliant lower rise urban form would achieve (when decanting floor space across the entire 1-11 Neil Street site) and do not pose any adverse overshadowing or amenity impacts for adjoining properties. It is also noted that the buildings are consistent with the building height

controls under the Draft HLEP 2013 Amendment that is currently being considered by Council.

The Applicant has indicated that the variations are proposed in order to provide built forms with smaller footprints that will achieve better amenity (solar access and natural ventilation). The Applicant has also indicated that the proposal represents a better urban design outcome for the site that is the visual entry to the precinct. The development achievable if the LEP and DCP height controls were to be complied with, would be a longer and shorter built form that would present as having a greater bulk and scale than that proposed.

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

“Compliance with the 29m height control is unreasonable or unnecessary in this circumstance for the following reasons:

- *Strict compliance would lead to a development of the Site that is out of context with the development in the locality and the development emerging in the Neil Street Precinct and would create a poor planning and design outcome in the longer term.*
- *To achieve compliance the buildings would have to be lowered but given that the proposal complies with the floor space control there is clearly an anomaly between the planning controls for the site especially in respect to height.*
- *Despite the non-compliance with the height limit the development still provides a transition in building height when viewed from the public domain providing diversity in the built form.*
- *The strict application of the standard does not take into account the highly accessible location of the Site and the emerging development within the Neil Street precinct with many immediately adjoining Sites having the potential to substantially increase their heights to well above 39m (i.e the Dyldam site on the opposite corner of Neil Street can achieve a height of 54m under the Draft provisions).”*

The proposed height variations are predominately attributable to a displacement of floor space from the lower levels of a shorter and longer built form that was envisaged as part of the masterplan for the site and precinct as illustrated below:



Figure 7 –Block 5 Masterplan (Source: Holroyd DCP, 2013 – Part M, Section 5.5)

The proposed variation to the height control allows the floor space within the development to be accommodated within slimmer buildings with much greater separation as well as a stronger definition of the site corner for Building 3.

The proposed development will facilitate improved environmental and amenity performance within the development, reduced impacts on surrounding properties, and a much higher level of visual permeability throughout the site. The proposal achieves a greater number of dwellings with a northerly aspect, increased natural cross flow ventilation and solar access than what would be achievable with a compliant built form in accordance with the masterplan.

The proposed height variation facilitates higher buildings than anticipated by the height control towards the eastern half of the site along the railway corridor where there is least potential for the additional height to have an impact on adjoining properties. The increased heights also emphasise this site as the visual entry to the precinct, with the scale of other buildings west of the site reducing to achieve a transition in scale to the west.

The proposed development provides an appropriate built form response for the site and will provide a clearly defined visual entry to the precinct from the eastern approach over the railway bridge.

The shadow and solar access diagrams accompany the application demonstrate that the proposal does not result in any significant adverse impacts on surrounding properties and that an appropriate number of dwellings within the development comply with the solar access requirements.

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 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.

It is noted that the subject site is buffered by land with 32-41 metre maximum building heights directly opposite on the southern side of Neil Street. 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 Town Centre and not on any lower density residential properties located to the east of the site over the railway corridor. 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 slimmer and taller urban forms generally consistent with the desired future character of the Merrylands Town Centre with less amenity and streetscape impacts;

- Creates greater street level activation than an otherwise compliant urban forms would;
- Does not result in any additional floor area or yield as a consequence of the additional height; and
- Does not create any adverse overshadowing or amenity impacts.

It is also noteworthy that Building 3 would be wholly below the 39 metre draft building height development standard under the proposed amendment to the HLEP as illustrated below:

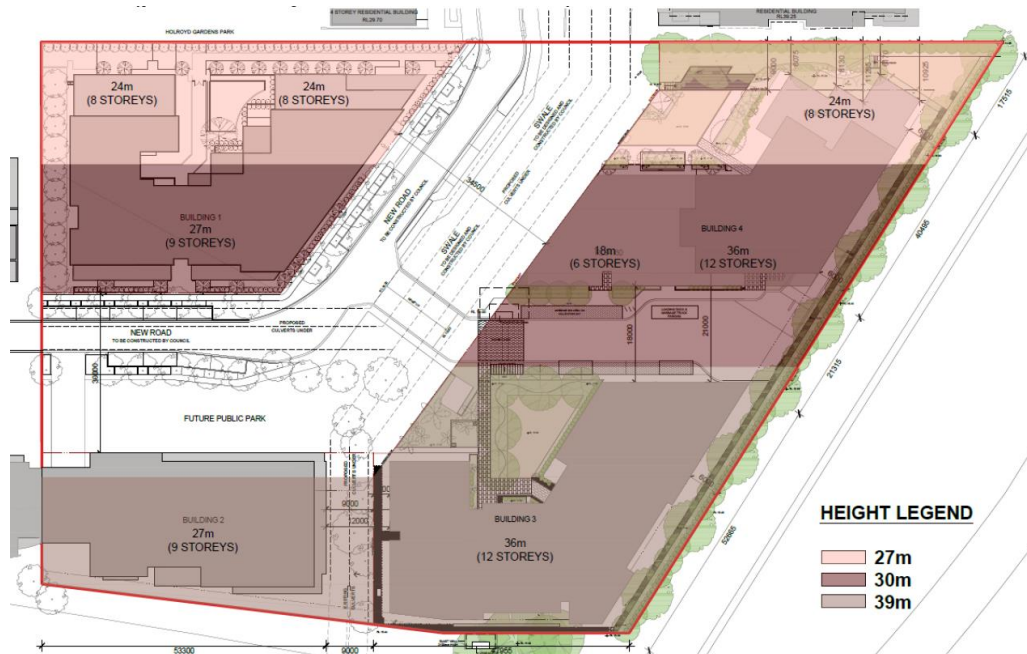


Figure 8 –Draft Height of Building Overlay (Source: Willana Associates, 2017)

Building 4 would not be wholly below the maximum draft building heights proposed, however is considered acceptable given that the northern part of the building would be 1 storey lower than permitted in order to allow for an appropriate transition to the north.

Whilst the above are noteworthy, the building heights are part of the Draft HLEP 2013 Amendment that is still being considered by Council and not considered to be certain or imminent in order to be given any determinative weight.

b. Floor space ratio variation:

The maximum permissible FSR for the site is 2.8:1 for the eastern half of the site and 3:1 for the north-western corner of the site as illustrated in Figure 9 below:

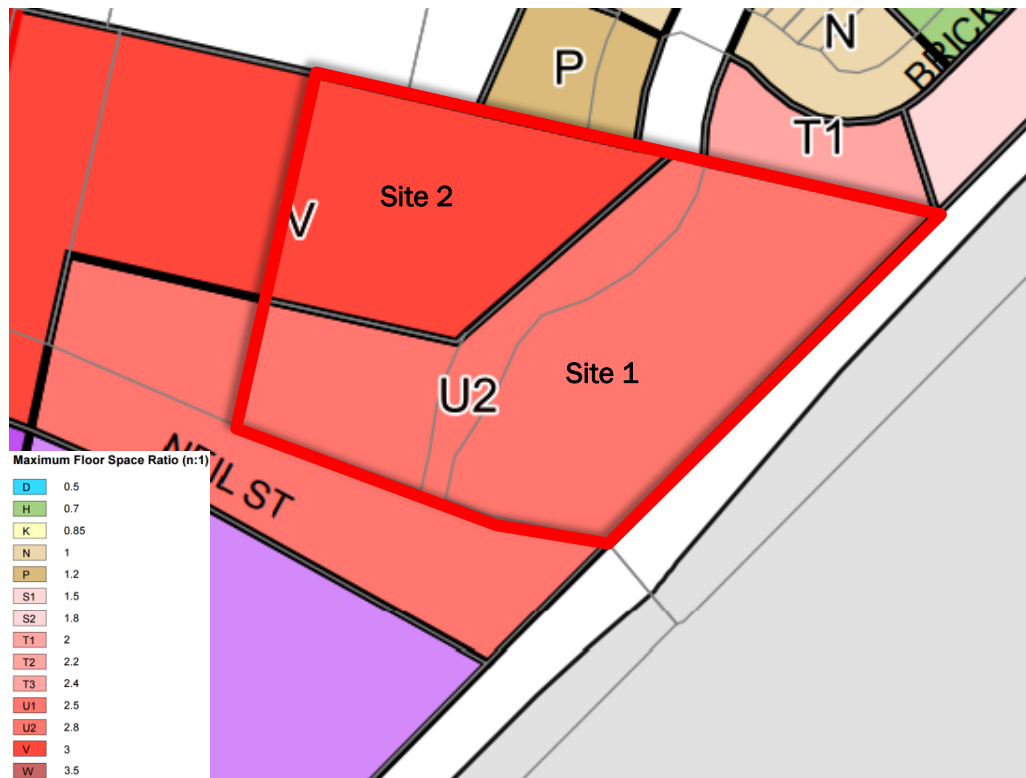


Figure 9 –FSR Map (Source: Holroyd LEP, 2013)

The combined sites allow for a maximum combined GFA of 45,177m² across the entire site.

The subject application proposes a total GFA of 23,352m² for Buildings 3 and 4 which equates to a FSR of 2.21:1 on the 10,560m² site area of Site 1 (eastern half of the site).

DA-2015/203 approved a residential flat building known as Building 2 on Site 1 with a GFA of 7,274m². The 3 buildings propose a combined GFA of 30,626m² which equates to a FSR of 2.9:1 on the 10,560m² area of Site 1 and exceeds the maximum 2.8:1 permitted for that part of the site, with a variation of 1,058m² or 3.6%.

Overall, the proposed consolidated sites have a total site area of 15,763m². Site 2 has a site area measuring 5,203m² and a residential flat building known as Building 1 has already been approved on that site with a FSR of 1.8:1 which is well below the 3:1 permitted for that part of the site. On the proposed consolidated lot, the site will include a total of 4 buildings as follows:

- Building 1 approved with a GFA of 9,424m² under DA-2016/80;
- Building 2 approved with a GFA of 7,274m² under DA-2015/203;
- Building 3 proposes a GFA of 13,592m² under the subject DA; and
- Building 4 proposes a GFA of 9,760m² under the subject DA.

Overall, all 4 buildings achieve a combined GFA of 40,050m² which equates to a FSR of 2.55:1 on the proposed consolidated site and is below the maximum GFA of 45,177m² achievable for the site.

Overall, the development remains compliant with the maximum GFA achievable over the entire site with the applicant seeking to redistribute underutilised GFA from approved Building 1 to the subject application.

The Applicant has indicated that the variation is a function of the necessity to decant the allowable floor space taken away by the loss of floor space over the parts of the site required for road and drainage channels. The Applicant has provided the following environmental planning grounds to justify the proposed variation:

"In this instance, the strict numerical compliance with the development standard for FSR is unreasonable and unnecessary. It is submitted that compliance with the FSR standard would be unreasonable or unnecessary for the following reasons:

- *The site is a prominent corner location, within the Neil Street Precinct within 300m to significant development at Merrylands Town Centre. The corner has been appropriately celebrated with a higher built form component along the Neil Street to the south and the railway corridor to the east, stepping down to a lower component to provide an appropriate transition to the west, which adjoins residential properties. This built form affords additional density without material adverse impacts and spreads the density across the site in more appropriate locations.*
- *Clause 4.4 of the HLEP 2013 provides opportunity for an additional FSR within the Merrylands Town Centre and surrounding properties. The Site is on the outer fringe of the Merrylands Town Centre however, is located within an area that can cater for greater density. In addition, the site is a corner allotment and therefore, providing the greater density within the south eastern portion of the site and celebrates the corner.*
- *The non-compliance is minor as it amounts to a 4% variation and given the large, integrated nature of the site this additional floor space will not add any visual bulk and scale to the buildings (2, 3 and 4) located along the southern side of the property.*
- *The context of the site is suitable for additional development given the services in close proximity, including :*
 - *All major services, being within close proximity to a major shopping centre district.*
 - *Walking distance to regular public transport.*
- *There will be no adverse amenity impacts on adjoining residents as a result of the additional FSR as the additional floor space is located in that part of the site that is physically separated from adjoining residences to the east by the railway corridor and the additional floor space will not adversely affect the amenity of these immediately adjoining properties.*
- *The FSR of Building 1 is well below the permissible GFA. If this building was designed to be a compliant form along this north-western corner there would be more detrimental amenity impacts to residential properties to the north in terms of additional visual bulk, scale and potential overlooking. The resultant lower GFA along this side of the site and more floor space along the southern side is a better planning outcome for the Site.*
- *Providing some additional floor space to Buildings 2, 3 and 4 results in much better internal amenity outcomes for these buildings as they will be able to achieve the standard SEPP 65 design requirements, particularly in respect to achieving the required solar access and cross ventilation for apartments.*
- *Also the southern side of the site allows for greater bulk and scale due to its corner location....."*

As discussed earlier, the redistribution of GFA across the entire site results in building height breaches however is considered to result in a better design outcome for the site than a compliant FSR and building heights would.

Given that the proposal seeks to redistribute floor space across the entire development site and will affect future lots to be created by the subdivision, a condition will be imposed to require positive covenants to be registered on the proposed lots that prevents addition of floor area on the affected lots where the floor area has been used on other lots (pursuant to Clause 4.5(9) and (10) of HLEP 2013).

The redistribution of residential floor space allows the buildings to be slimmer 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 railway corridor and southern Neil Street frontage of the site is also consistent with Council's identified future desired character for the Merrylands Town Centre.

The proposed development provides an appropriate built form for the site and will provide a clearly defined visual entry to the precinct from the eastern approach over the railway bridge.

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.

6.2 Variations to HDCP 2013 development controls

As noted above, **Attachment 7** 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 landscaped area, dwelling mix, site consolidation, number of storeys and street wall height controls as discussed under the respective headings below.

a. Landscaped Area

HDCP requires a minimum 30% of the site area to be provided as landscaped area. A total landscaped area measuring 1,468m² is proposed on ground floor level along with 509m² on the rooftop of level 6 which equates to a total of 1,977m² or 29.6% of the net site area of 6,769.4m².

Whilst non-compliant, the development is short 53.82m² from the 2,030.82m² required for the site. The proposal is considered acceptable given that the development is required to provide 695m² of road for vehicular access to the site which reduces the potential area where landscaping can be proposed. If that same area was to be reduced from the site area, the total landscaped area would equate to 32.6% of the reduced site area.

b. Apartment Mix

HDCP allows a maximum 20% for studios and 1 bedroom units in a development. However, the proposed development provides 116/311 (37.3%) as 1 bedroom apartments. The provision of a higher proportion of 1 bedroom units is considered

acceptable for the site as it will respond to market demand for single occupier and 2 person units located within close proximity to the heavy rail corridor and Merrylands Train Station. It is noted that there is a considerable number of new dwellings being proposed and constructed within the precinct and wider Merrylands Town Centre which will all contribute to the supply of a suitable housing mix for the area. The variation is supported on the basis that a higher percentage of 1 bedroom dwellings will contribute to a suitable housing mix within the wider locality.

c. Consolidation:

The application proposes consolidation of the existing lots into 1 large development site and re-subdivision of the consolidated lot into Torrens Titled and Stratum Titled Lots. The proposed subdivision is not consistent with the amalgamation pattern shown in Figure 5 of the HDCP 2013 however generally follows the pattern without crossing over the site boundaries to the adjoining site to the west. It is noted that the site immediately adjoining the site to the west at 13-15 Neil Street benefits from development consent for a redevelopment and so consolidation of the subject site with that site is not achievable. A new lot is proposed in the north-western corner of the site for Building 1 and a further 3 lots are proposed that are consistent with the building footprints of Buildings 2, 3 and 4.

d. Number of storeys variation:

As indicated above, the proposed development exceeds both the LEP height in metres and the DCP height in storeys controls. In response, a Clause 4.6 Variation has been submitted, which is discussed in detail within the LEP section of this report. The height variation is supported on the basis that taller and slimmer buildings allow for a better planning outcome with increased amenity for occupants and less amenity and streetscape impacts for adjoining and surrounding properties.

e. Street wall height variation:

The variation to the street wall height is considered acceptable on its merits, noting the lack of a street wall and upper storey setback is consistent with a recently approved 9 storey development adjoining the subject development, known as Building 2 within 1-11 Neil Street, Merrylands, Development Consent 2015/203/1.

Further it is noted that Council's Consultant Urban Designer has raised no objections to the proposed development, subject to a condition under Schedule 'A' which requires additional articulation to the form and facades of the buildings through the incorporation of different colours and materials and the composition of openings and through variations in wall surfaces.

6.3 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 some of the building separation and solar access requirements. However, these non-compliances are considered satisfactory, as discussed below.

a. Building Separation:

Compliance with the minimum 18 metre building separation requirement for levels 5-8 is not achieved between Building 4 and the adjoining property to the north. The separation proposed ranges between 10.5 metres, 15.5 metres and 18 metres

with non-compliances relating to small sections of the building being the extreme external edges of balconies, walls on angles to the building to the north or non-habitable windows. Where appropriate and achievable, privacy treatment for the balconies will be conditioned to ensure that the visual separation requirements are able to be achieved. Accordingly, the variations are considered acceptable.

b. Solar Access:

The SEPP 65 ADG allows for a maximum of 15% of units to receive no direct sunlight between 9am and 3pm at mid-winter. The development proposal results in 71/311 (22.8%) of units receiving no direct sunlight between 9:00am to 3:00pm on 21 June. While exceeding the maximum 15% permitted for the site, the site is constrained by requiring the buildings to be orientated to face the railway corridor and Neil Street frontage increasing the length of building facing south and east. The development achieves a sufficient level of solar access for units with 71.7% achieving 2 or more hours of solar access between 9:00am and 3:00pm on 21 June.

6.4 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 new road. 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 proposed stormwater and flooding details. Following receipt of additional details submitted by the Applicant, Council's Engineering Section subsequently raised no objection to the proposal subject to the imposition of appropriate conditions of consent.

6.5 Environmental Management - Salinity

The Salinity Potential in Western Sydney map prepared by the former 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.

6.6 Urban Design

The DA has been accompanied with a Design Verification Statement prepared by the architect for the proposal, Steve Zappia (Registration No. 6535) of Marchese Partners International Pty Ltd. The proposed built form comprises 12 storey residential towers with building 4 having a lower podium base of 6 storeys. The towers provide variable front setbacks to the existing Neil Street frontage and the proposed new local road that will traverse the site as a continuation of Dressler Court. The proposed buildings observe appropriate setbacks from buildings on adjoining properties.

An overall GFA of 40,050m² is proposed for the 4 buildings known as Buildings 1, 2, 3 and 4 on the proposed consolidated site which is below the maximum achievable GFA of 45,177m² for the site. The proposal seeks a redistribution of residential floor space across the site under a clause 4.6 request and will not result in any net increase of GFA across the site. The proposal also involves up to a 33.1% variation to the maximum building height due to the displacement of floor space from the lower levels to higher levels in order to provide slimmer and taller built forms for improved amenity, streetscape appearance and activated frontages.

The subject site forms the eastern edge of the Merrylands Town Centre and acts as a distinct urban marker and visual entry to the precinct that allows for a higher built form towards the railway line to signal the entrance to the Town Centre.

The development has been designed to provide a strong emphasis and horizontal emphasis through the use of clear glazing with light coloured framed components and dark recessive main building walls. The upper levels of the towers are generally recessive in tone and treated with darker coloured irregular cladding with building 3 providing a strong corner emphasis through the use of lighter coloured deep balconies.

The roof design is simple and formed from slabs with lift structures, plant and equipment not visible from the public domain to maintain minimal visual bulk at the rooftop level.

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

7 External Referrals

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

Referral Agency	Comment
WaterNSW	No objection, subject to General Terms of Approval.
Sydney Water	No objection, subject to conditions.
Roads and Maritime Services	No, objection.
Holroyd Police Local Area Command	No objection, subject to conditions.
Endeavour Energy	No objection, subject to conditions.
TransGrid	No objection, no affected assets.
Sydney Trains	No objection, subject to conditions.
Heritage Branch	No objection, subject to conditions.

8 Internal Referrals

- 8.1 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.
Strategic Planning Section	No objection.
Parks	No objection.
Heritage Advisor	No objection.
Urban Design	No objection, subject to conditions.

9 Public Comment

- 9.1 The DA was notified to surrounding property owners and occupiers and advertised in the local newspapers for a period of 30 days from 30 November 2016 and 6 January 2017. 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.

9.2 The application was notified and advertised for a further period of 30 days between 1 March and 31 March 2017, during which time 1 additional submission was received by Council.

9.3 The concerns raised in the three submissions are addressed below:

Concern	Comment
Height of buildings - This DA with 12 storeys is thus substantially non-compliant.	This matter is discussed in detail in Section 6 of this Report. The proposed height variations and associated clause 4.6 request are supported in this instance for the reasons outlined in Section 6 of this report.
Infrastructure, road and traffic impacts.	Council's Traffic Engineer has assessed the submitted plans and documentation and advised the proposal is acceptable, subject to conditions.
Scale and built form, setbacks and separations.	The provisions of the SEPP 65 ADG and HDCP have been satisfactorily addressed in Section 6 of this report.
Acoustic and visual privacy, shadowing, sunlight and daylight access.	The provisions of the SEPP 65 ADG and HDCP have been satisfactorily addressed in Section 6 of this report.
Inappropriate unit mix.	The provisions of the SEPP 65 ADG and HDCP have been satisfactorily addressed in Section 6 of this report.
Support for proposal on the basis that it will allow for progressive growth and development of the Council in terms of diversity of community living.	The comments are supported.

9.4 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.

10 Section 79C Consideration

10.1 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	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 6. Whilst not considered certain or imminent, the proposal is consistent with the draft Amendment to Holroyd LEP for the Neil Street Precinct. There are no existing or proposed planning agreements that relate to the DA.	Yes
b. the likely impacts of that development,	An assessment of key issues relating to the proposed development is provided in Section 6 of this Report and it is considered that the likely	Yes

Head of Consideration	Comment	Comply
including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	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.	
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 the visual entry to the precinct 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

11 Conclusion

- 11.1 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.
- 11.2 The proposal is consistent with the objectives of Holroyd LEP 2013 and is permissible in the R4 High Density Residential zone and the proposal achieves the objectives of the R4 zone. The proposal also generally satisfies the main essential criteria set out in SEPP 65, the Apartment Design Guide and the Holroyd DCP 2013, with the exception of the building separation and solar access requirements, landscaped area, dwelling mix, consolidation, number of storeys and street wall height controls.
- 11.3 The application proposes a satisfactory built form for the site and context; appropriately responds to heritage, site contamination, salinity and stormwater 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.

12 Recommendation

- 12.1 The Development Application be approved by the Sydney West Central Planning Panel subject to the conditions provided at **Attachment 3**.

- 12.2 The applicant and objectors be advised of the Sydney West Central Planning Panel's decision.