

<b>DATE OF DETERMINATION</b>	22 February 2018
<b>PANEL MEMBERS</b>	Mary-Lynne Taylor (Acting Chair), Paul Mitchell, Lindsay Fletcher, Paul Stein and Brian McDonald
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	None

Public meeting held at Cumberland Council on 22 February 2018, opened at 12:30 pm and closed at 1:15 pm.

#### **MATTER DETERMINED**

2017SWC096 – Cumberland – 307/2017 AT 41 Auburn Road, Auburn (AS DESCRIBED IN SCHEDULE 1)

#### **PANEL CONSIDERATION AND DECISION**

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and the matters observed at site inspections listed at item 8 in Schedule 1.

The Panel determined to refuse the development application as described in Schedule 1 pursuant to section 80 of the *Environmental Planning and Assessment Act 1979*.

The Panel adjourned during the meeting to deliberate on the matter and formulate a resolution.

The decision was unanimous.

#### **REASONS FOR THE DECISION**

The Panel agreed with the following reasons supplied by Council:

1. Failure to submit documentation demonstrating compliance with State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (pursuant to Section 79C (1)(a)(i) of the *Environmental Planning and Assessment Act 1979*), with regard to the following:-

##### Clause 28(2) – Determination of Development Applications

- 1.1 *In determining a Development Application for Consent to carry out development to which this Policy applies, a Consent Authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):*

....  
(c) *the Apartment Design Guide*

##### 3C – Public Domain Interface

1.1.1 Objective 3C-1 reads as follows:-

- *Transition between private and public domain is achieved without compromising safety and security.*

The proposal does not maintain safety and security between the public and private domain, due to the following:-

- A double door arrangement is present between the commercial area and residential area on Level 1 within Residential Tower 1.

- A double door arrangement is present between the balcony area of the Restaurant, known as Restaurant 136.58m<sup>2</sup>, and the communal open space area on Level 1.
- Access is proposed between the bar area and communal open space area on Level 1.

### 3D – Communal Open Space

#### 1.1.2 Objective 3D-2 reads as follows:-

- *Communal open space is designed to allow for a range of activities, respond to the site conditions and be attractive and inviting.*

There is an impediment for future residents within Residential Tower 1 – Level 1 to access the principal communal open space area within Level 1, which is unacceptable. Access is only afforded via the use of the lift to Level 2, only to require the person/s to then utilise the steps / separate lift within the area identified as C1 and go down to Level 1, to access the communal open space area.

#### 1.1.3 Objective 3D-3 reads as follows:-

- *Communal open space is designed to maximise safety.*

The proposal does not maintain safety within the communal open space, due to the following:-

- A section of the communal open space area on Level 2 is hidden from view from the remainder of the communal open space area.
- The communal open space area on Level 2 directly abuts a bedroom window within Unit 2.2.01.7 on Level 2.

### 3F – Visual Privacy

#### 1.1.4 Objective 3F-1, which reads as follows:-

- *Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.*

Furthermore, Design Criteria 1 requires the following minimum separation distances from buildings to side and rear boundaries:-

Building height	Habitable rooms and balconies	Non-habitable rooms
up to 12m (4 storeys)	6m	3m
up to 25m (5-8 storeys)	9m	4.5m
over 25m (9+ storeys)	12m	6m

The proposal does not comply with the minimum required building separation, which is unacceptable, as building separation is not shared equitably between neighbouring sites, and is not maintained within subject development, to the following areas:-

#### South – Residential Tower 1 – Oriented to 1, 3 & 5 – 7 Mary Street, Auburn

- Levels 1 and 2 (Storeys 3 and 4) are required to maintain a separation of 6 metres, however, a separation of 3.117 metres and 5.267 metres has been provided.
- Level 3 (Storey 5) is required to maintain a separation of 9 metres, however, a separation of 0 metres, 3.117 metres and 6.217 metres has been provided.
- Levels 4, 5 and 6 (Storeys 6, 7 and 8) are required to maintain a separation of 9 metres, however, a separation of 1.3 metres, 3.117 metres, 4.4 metres and 6.217 metres has been provided.
- Level 7 (Storey 9) is required to maintain a separation of 12 metres, however, a separation of 1.3 metres, 3.117 metres, 4.4 metres and 6.217 metres has been provided.

- Level 8 (Storey 10) is required to maintain a separation of 12 metres, however, a separation of 4.367 metres and 6.317 metres has been provided.
- Levels 9 and 10 (Storeys 11 and 12) are required to maintain a separation of 12 metres, however, a separation of 1.3 metres, 3.117 metres, 4.117 metres and 6.215 metres has been provided.

West – Residential Tower 2 – Oriented to 1, 3 & 5 – 7 Mary Street, Auburn

- Level 3 (Storey 4) is required to maintain a separation of 6 metres, however, a separation of 1.2 metres and 2.65 metres has been provided.
- Levels 4, 5, 6 and 7 (Storeys 5, 6, 7 and 8) are required to maintain a separation of 9 metres, however, a separation of 1.2 metres and 2.65 metres has been provided.
- Levels 8 to 15 inclusive (Storeys 9 to 16 inclusive) are required to maintain a separation of 12 metres, however, a separation of 1.2 metres and 2.65 metres has been provided.

South – Residential Tower 2 – Oriented to 43 & 45 Auburn Road, Auburn

- Level 3 (Storey 4) is required to maintain a separation of 6 metres, however, a separation of 0 metres, 1.2 metres and 2.65 metres has been provided.
- Levels 4 and 5 (Storeys 5 and 6) are required to maintain a separation of 9 metres, however, a separation of 3.017 metres, 4.7 metres and 6.867 metres has been provided.
- Levels 6 and 7 (Storeys 7 and 8) are required to maintain a separation of 9 metres, however, a separation of 3.017 metres, 4.017 metres, 4.7 metres and 6.867 metres has been provided.
- Levels 8 to 15 inclusive (Storeys 9 to 16 inclusive) are required to maintain a separation of 12 metres, however, a separation of 3.017 metres, 4.017 metres, 4.7 metres and 6.867 metres has been provided.

Separation Between Residential Towers 1 and 2

- Level 4 (Storey 5) is required to maintain a separation of 18 metres, however, a separation of 11.5 metres, 11.8 metres and 15.2 metres has been provided.
- Level 5 (Storey 6) is required to maintain a separation of 18 metres, however, a separation of 8.7 metres, 13.2 metres and 13.5 metres has been provided.
- Level 6 (Storey 7) is required to maintain a separation of 18 metres, however, a separation of 10.8 metres, 11.8 metres and 15.2 metres has been provided.
- Level 7 (Storey 8) is required to maintain a separation of 18 metres, however, a separation of 10.8 metres, 13.6 metres and 15.2 metres has been provided.
- Level 8 (Storey 9) is required to maintain a separation of 24 metres, however, a separation of 15.8 metres has been provided.
- Level 9 (Storey 10) is required to maintain a separation of 24 metres, however, a separation of 21.5 metres and 23.6 metres has been provided.
- Level 10 (Storey 11) is required to maintain a separation of 24 metres, however, a separation of 19.2 metres and 21.6 metres has been provided.

1.1.5 Objective 3F-2 reads as follows:-

- *Site and building design elements increase privacy without compromising access to light and air and balance outlook and*

*views from habitable rooms and private open space.*

The proposal does not maintain privacy within the development, between the following areas:-

#### Residential Tower 1

- The specialty retail tenancy on Level 1, known as Specialty Retail 110.71m<sup>2</sup>, and the communal open space area on Level 1.
- The communal open space area on Level 8 within Residential Tower 1, and the northern units associated with Residential Tower 2, due to the limited separation provided, that being 11.6 metres.
- The private open space area associated with Unit 3.2.15, and the balcony and bedroom associated with Unit 3.2.01.1 on Level 3 within Residential Tower 1.
- The private open space areas and bedrooms associated with Unit 3.1.06.2, and Unit 3.1.07.2 on Level 3 within Residential Tower 1.
- The private open space areas and bedrooms associated with Unit 3.1.06.1, and Unit 3.1.07.1 on Level 3 within Residential Tower 1.
- The private open space area associated with Unit 4.1.06.2, and the living room associated with Unit 4.2.16.2 on Level 4 within Residential Tower 1.
- The private open space area associated with Unit 4.1.06.1, and the living room associated with Unit 4.2.16.1 on Level 4 within Residential Tower 1.
- The private open space area associated with Unit 5.1.07.2, and the private open space and bedroom associated with Unit 5.1.06.2 on Level 5 within Residential Tower 1.
- The private open space area associated with Unit 5.1.07.1, and the private open space and bedroom associated with Unit 5.1.06.1 on Level 5 within Residential Tower 1.
- The private open space area associated with Unit 6.1.06.2, and the living room associated with Unit 6.2.16.2 on Level 6 within Residential Tower 1.
- The private open space area associated with Unit 6.1.06.1, and the living room associated with Unit 6.2.16.1 on Level 6 within Residential Tower 1.
- The private open space area associated with Unit 7.1.07.2, and the private open space and bedroom associated with Unit 7.1.06.2 on Level 7 within Residential Tower 1.
- The private open space area associated with Unit 7.1.07.1, and the private open space and bedroom associated with Unit 7.1.06.1 on Level 7 within Residential Tower 1.
- The private open space area associated with Unit 9.2.06B.1, and the south facing windows associated with Unit 9.2.09A.2 on Level 9 within Residential Tower 1.
- The private open space area associated with Unit 9.2.05B.1, and the south facing windows associated with Unit 9.2.09A.1 on Level 9 within Residential Tower 1.
- The private open space area associated with Unit 10.2.06B.1, and the south facing windows associated with Unit 10.2.09A.2 on Level 10 within Residential Tower 1.
- The private open space area associated with Unit 10.2.05B.1, and the south facing windows associated with Unit 10.2.09A.1 on Level 10 within Residential Tower 1.

#### Residential Tower 2

- The private open space area associated with Unit 3.2.06, and the private open space area associated with Unit 3.2.17.2 on Level 3 within Residential Tower 2.

- The private open space area associated with Unit 3.2.05, and the private open space area associated with Unit 3.2.17.1 on Level 3 within Residential Tower 2.
- The private open space areas associated with Unit 11.2.08.1, and 11.2.01.1 on Level 11 within Residential Tower 2.
- The private open space areas associated with Unit 11.2.08.2, and 11.2.01.3 on Level 11 associated with Residential Tower 2.

### 3J – Bicycle and Car Parking

- 1.1.6 Design Criteria 1 requires developments within 800 metres of a railway station within the Sydney Metropolitan Area to maintain the minimum car parking requirements for residents and visitors as set out in the *Guide to Traffic Generating Developments*.

The site is located within 800 metres of the Auburn Railway Station. A total of 268 car parking spaces are required to service the residential portion of the development. In total, 264 car parking spaces have been provided within the residential car parking levels on Basement Levels 2 and 3, which is unacceptable, as adequate parking has not been provided to service the development.

**Note:** As the car parking within Basement Level 1 is a combination of commercial and residential visitor parking spaces, adequate information has not been provided to determine the extent of parking provided to service residential visitors.

### 4A – Solar and Daylight Access

- 1.1.7 Objective 4A-1 reads as follows:-

- *To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.*

Furthermore, Design Criteria 1 requires living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area. Furthermore, Design Criteria 2 notes a maximum of 15% of apartments in a building can receive no direct sunlight between 9 am and 3 pm at mid-winter.

Adequate information has not been provided to determine if the proposed development achieves the required amount of solar access.

**Note:** Sun angles and an hourly sun path analysis (perspectives depicting the view from the sun) have not been provided, required in order to determine the extent of solar access achieved to the development. In particular, the sun angles and hourly sun path analysis would depict the impact of the existing multi-storey development at 57-59 Queen Street, Auburn on the development, and the impact of Residential Tower 1 upon Residential Tower 2 of the subject development.

- 1.1.8 Objective 4A-3 reads as follows:-

- *Design incorporates shading and glare control, particularly for warmer months.*

Shading devices have not been designed to the western façades of the development, which is unacceptable, as no relief is given to units from the summer sun.

### 4B – Natural Ventilation

- 1.1.9 Objective 4B-1 reads as follows:-

- *All habitable rooms are naturally ventilated.*

The following standard units maintain double / single door arrangements to bedrooms, with no windows, and as such, are not naturally ventilated:-

Units 1.07, 2.03, 2.03A, 2.04, 2.04A, 2.05, 2.05A, 2.05B, 2.06, 2.06A, 2.06B, and Units 2.14A.

- 1.1.10 Design Criteria 1 requires 60% of apartments to be naturally cross ventilated in the first nine storeys of the building.

The following breakdown is noted, and as such, the development does not maintain an appropriate level of natural ventilation:

- Residential Tower 1 (Core 1): 21.74%;
- Residential Tower 1 (Core 2): 16.28%; and
- Residential Tower 2: 10.81%.

**Note:** The submitted Acoustic Report recommends sleeping areas and living areas be closed in order to maintain acoustic privacy, however, it is unclear which units will be affected by the Acoustic Report recommendations.

#### 4C – Ceiling Heights

- 1.1.11 Objective 4C-1 reads as follows:-

- *Ceiling height achieves sufficient natural ventilation and daylight access.*

Furthermore, Design Criteria 1 requires the following minimum ceiling heights, as measured from the finished floor level to the finished ceiling level:-

Minimum ceiling height for apartment and mixed use buildings	
Habitable rooms	2.7m
Non-habitable	2.4m
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use

Adequate information has not been provided to determine what the proposed floor to ceiling heights are.

**Note:** The Section Plans only identify the floor to floor heights between storeys.

#### 4D – Apartment Size and Layout

- 1.1.12 Objective 4D-2 reads as follows:-

- *Environmental performance of the apartment is maximised.*

Furthermore, Design Criteria 2 requires in open plan layouts (where the living, dining and kitchen are combined); the maximum habitable room depth is 8 metres from a window.

The maximum habitable room depth of 8 metres from a window for combined living, dining and kitchen areas has not been achieved for

the following standards units, which is unacceptable, as the units will instead rely upon artificial means to heat, cool and illuminate the units:-

Units 1.01B, 1.08A, 2.03, 2.05A, 2.05B, 2.16, 2.17, and 2.17A, ranging from 8.25 metres to 9.15 metres in depth.

#### 4E – Private Open Space and Balconies

1.1.13 Objective 4E-1 reads as follows:-

- *Apartments provide appropriately sized private open space and balconies to enhance residential amenity.*

Furthermore, Design Criteria 1 requires the following minimum areas and depths for primary balconies:-

Dwelling type	Minimum area	Minimum depth
Studio apartments	4m <sup>2</sup>	-
1 bedroom apartments	8m <sup>2</sup>	2m
2 bedroom apartments	10m <sup>2</sup>	2m
3+ bedroom apartments	12m <sup>2</sup>	2.4m

The minimum balcony dimensions have not been provided for the following units, and as such, compliance is unable to be determined:-

##### Residential Tower 1: Core 1

- Units 3.1.07.2, 8.1.08A, 9.2.09A.2, 9.2.09A.1, and 10.2.09A.2.

##### Residential Tower 1: Core 2

- Units 3.2.14A, 3.2.17A, 4.2.17A, 5.2.17A, 6.2.17A, and 7.2.17A.

##### Residential Tower 2

- Units 2.1.01A.1, 4.2.06, 4.2.05, 5.2.06, 5.2.05, 6.2.06B, 6.2.05B, 12.3.02.1, 12.3.02.2, 13.3.02.1, 13.3.02.2, 14.3.02.1, 14.3.02.2, 15.3.02.1, and 15.3.02.2.

In addition, the minimum balcony areas have not been adhered to for the following units, and as such, residential amenity is compromised:-

##### Residential Tower 1: Core 1

- Units 2.2.04.1, and 2.2.03.1.

##### Residential Tower 1: Core 2

- Units 1.2.03.2, 2.2.03.2, and 2.2.04.2.

Furthermore, the minimum balcony dimensions have not been adhered to for the following units, and as such, residential amenity is compromised:-

##### Residential Tower 1: Core 1

- Units 2.3.06, 2.2.01.1, 2.2.01.2, 2.2.07, 2.2.01.3, 2.2.01.4, 3.2.01.1, 3.2.01.2, 3.1.08, 4.2.15, 4.2.01.1, 4.2.01.2, 4.1.08, 4.1.06.2, 5.2.15, 5.2.01.1, 5.2.01.2, 5.1.08, 5.1.06.2, 6.2.15, 6.2.01.1, 6.2.01.2, 6.1.08, 6.1.06.2, 7.2.15, 7.2.01.1, 7.2.01.2, 7.1.08, 7.1.06.2, 8.1.09, and 9.2.01.2.

#### Residential Tower 1: Core 2

- Units 2.2.01.5, 2.2.01.6, 3.2.01.3, 3.2.01.4, 4.2.01.3, 4.2.01.4, 4.2.01A, 4.1.06.1, 5.2.01.3, 5.2.01.4, 5.2.01A, 5.1.06.1, 6.2.01.3, 6.2.01.4, 6.2.01A, 6.1.06.1, 7.2.01.3, 7.2.01.4, 7.2.01A, and 7.1.06.1.

#### Residential Tower 2

- Units 2.2.01.7, 2.2.08, 3.2.08.1, 3.2.01.5, 3.2.01.6, 3.2.01.7, 3.2.08.2, 3.2.17.2, 3.2.17.1, 4.2.08.1, 4.2.01.5, 4.2.01.7, 4.2.08.2, 4.2.17.2, 4.2.17.1, 5.2.01.5, 5.2.01.6, 5.2.01.7, 5.2.17.2, 5.2.17.1, 6.2.08.1, 6.2.01.5, 6.2.01.7, 6.2.08.2, 6.2.17.2, 6.2.17.1, 7.2.08.1, 7.2.01.5, 7.2.01.6, 7.2.01.7, 7.2.08.2, 7.2.17.2, 7.2.17.1, 8.2.08.1, 8.2.01.4, 8.2.01.5, 8.2.01.6, 8.2.08.2, 8.2.17.2, 8.2.17.1, 9.2.08.1, 9.2.01.4, 9.2.01.5, 9.2.01.6, 9.2.08.2, 9.2.17.2, 9.2.17.1, 10.2.08.1, 10.2.01.1, 10.2.01.2, 10.2.01.3, 10.2.08.2, 10.2.17.2, 10.2.17.1, 11.2.08.1, 11.2.08.2, 11.2.17.2, 11.2.17.1, 12.2.17.2, 12.2.17.1, 13.2.17.2, 13.2.17.1, 14.2.17.2, 14.2.17.1, 15.2.17.1, and 15.2.17.1.

#### 4F – Common Circulation and Spaces

1.1.14 Objective 4F-1 reads as follows:-

- *Common circulation spaces achieve good amenity and properly service the number of apartments.*

Furthermore, Design Criteria 1 notes the maximum number of apartments off a circulation core on single level is eight. Residential Tower 2 maintains 9 to 11 units per level

#### 4H – Acoustic Privacy

1.1.15 Objective 4H-1 reads as follows:-

- *Noise transfer is minimised through the siting of buildings and building layout.*

Objective 4H-2 reads as follows:-

- *Noise impacts are mitigated within apartments through layout and acoustic treatments.*

In addition to the matters raised under 3F-2 above, related to privacy, acoustic privacy has not been maintained between the following areas:

- To the units directly above the balcony / courtyard area associated with the Board Room / Office on the Ground Level.
- Unit 1.2.04.2 and the abutting Specialty Retail, known as Specialty Retail 215.70m<sup>2</sup> on Level 1.
- To the units on Level 2 directly above the restaurants and balcony areas.

#### 4J – Noise and Pollution

1.1.16 Objective 4J-1 reads as follows:-

- *In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.*

Consideration has not been given to the ventilation of the proposed



restaurants, which will impact and reduce the amenity of the proposed residential units above.

2. Failure to submit documentation demonstrating compliance with Auburn Local Environmental Plan 2010 (pursuant to S.79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

Clause 4.3 – Height of Buildings

2.1 The maximum height of buildings applicable to the subject site is 49 metres. Adequate information has not been provided to determine the height of the development.

**Note:** The submitted Statement of Environmental Effects indicates the development complies with the height of buildings standard, apart from a lift overrun, which is limited to a height of 50.6 metres, 1.6 metres above the height of buildings standard.

However, the Elevation and Section Plans submitted with the Development Application reveals a number of protruding blade / fin walls, as well as elements of the 14 storey residential tower extending beyond the 49 metre height of building standard.

2.2 A 3D height plane has not been provided, accurately depicting the extent of the exceedance.

Clause 6.3 – Flood Planning

2.3 The subject site is affected by local overland stormwater flows. There are inconsistencies in the flood levels used in the Flood Study prepared by Hyder Consulting Pty Ltd, dated 23 April 2015. In addition, the model did not consider the storage of 3,400m<sup>3</sup> as part of the development.

2.4 Overland flow from adjacent properties has not been maintained by the proposal.

3. Failure to submit documentation demonstrating compliance with Auburn Development Control Plan (DCP) 2010, 'Part 4 – Residential Flat Buildings' (pursuant to Section 79C (1)(a)(iii) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

Clause 2.3 – Building Envelope

3.1 The tower component of any building above the podium or street wall height is to have a maximum floor plate of 850m<sup>2</sup>. Residential Tower 1 is maintained to 1118.7m<sup>2</sup> to 1243.4m<sup>2</sup>, and Residential Tower 2 is maintained to 716.1m<sup>2</sup> to 853.2m<sup>2</sup>, which is unacceptable, as the development does not maintain an appropriate level of visual privacy, due in a large part to the building footprint proposed.

Clause 6.1 – Solar Amenity

3.2 Buildings shall be designed to ensure sunlight to at least 50% of the principal area of ground level private open space of adjoining properties for at least 3 hours between 9:00am and 3:00pm on June 21. If the principal area of ground level private open space of adjoining properties does not currently receive at least this amount of sunlight, then the new building shall not further reduce solar access.

In addition, north-facing windows to living areas of neighbouring dwellings shall not have sunlight reduced to less than 3 hours between 9:00am and 3:00pm on June 21 over a portion of their surface.

Adequate information has not been provided to determine if adjoining properties are affected to the extent that the proposal reduces solar access beyond that to achieve compliance with the standards listed.

**Note:** The relationship of the development to adjoining properties has not been noted on the solar access diagrams, nor have hourly solar access diagrams, in plan and elevation form been submitted, depicting the impact of the proposed development upon adjoining properties.

In addition, the proposed development appears to affect the morning sun to the following properties:-

- 7 - 9, 11 and 13 Harrow Road, Auburn; and
- 9, 11, 13 & 15 Mary Street, Auburn.

#### Clause 8.1 – Lot Amalgamation

3.3 Adjoining parcels of land not included in the development site shall be capable of being economically developed.

The subject development landlocks / isolates the adjoining sites at 43 & 45 Auburn Road, Auburn, which has a combined site area of 403.7m<sup>2</sup> and frontage to Auburn Road of 12.19m.

No evidence of reasonable offers based on independent valuation/s have been submitted, nor have concept plans been submitted, which demonstrate that orderly and economic use and development of the adjoining sites can be achieved.

**Note:** A 5-6 storey commercial development has been depicted within 3D massing diagrams, however, by virtue of the limited building separation provided by the subject development, no residential can be accommodated on 43 & 45 Auburn Road, Auburn. Furthermore, an understanding of parking and vehicular access for a future development at 43 & 45 Auburn Road, Auburn, has not been provided.

4. Failure to submit documentation demonstrating compliance with Auburn Development Control Plan (DCP) 2010, 'Part 8 – Local Centres' (pursuant to Section 79C (1)(a)(iii) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

#### Clause 2.0 – Built Form

4.1 Residential components are to be provided with direct access to street level with entrances clearly distinguishable from entries to commercial premises. Separate residential entries, distinguished from the commercial component of the development have not been designed, which creates a safety and security concern, as residential only areas can be accessed by the general public.

4.2 Car parking provided for the residential component of the development is to be clearly delineated and provided separate to general customer parking. The residential visitor parking spaces are not separated from the commercial parking spaces, and as such, no mechanism exists to ensure adequate parking is provided to service the different uses.

#### Clause 2.2 – Articulation and Design

4.3 The towers within the development, rather than defining the Plaza, encroach onto it. The proposed built form, with no setbacks to the tower elements, fails to provide a human scale to the Village Plaza, which dominates the pedestrian experience. The very limited interface of the Plaza with adjoining streets disconnects the street environment.

4.4 The coloured glass on the lower ground and ground level facades of the Queen Street façade, in addition to the metallic copper penny (red) horizontal bands, multi-coloured vertical bands, staggered awnings and angular balconies, although adding interest to the façade, results in a very busy façade that detracts from the coherence of the overall architectural composition. Furthermore, there are too many repeated elements which has resulted in monotony.

4.5 The 124 metre long podium along Queen Street disrupts the rhythm of the

street. The elevation does not provide adequate variation to the built form, including vertical articulation, to avoid a bulky, monolithic appearance.

4.6 Generally, the elevations of the built form lack adequate variation to avoid a bulky, monolithic appearance (box like appearance).

#### Clause 2.4 – Roofs

4.7 Roof forms shall not be designed to add to the perceived height and bulk of the building. Blade / fin walls have been designed to the 14 storey residential tower, which add unnecessary height to the development.

#### Clause 2.5 – Balconies

4.8 Verandahs and balconies shall not be enclosed. The following balconies / private open space areas are enclosed to all sides, which is not considered to provide an acceptable level of amenity for future occupants:-  
Units 1.2.04.1, 1.2.03.1, 1.2.03.2, 1.2.04.2, 2.1.04, 2.2.17.2, 2.2.04A, and 2.2.03A.

#### Clause 4.3 – Awnings

4.9 Awning dimensions shall generally be:

- Minimum soffit height of 3.2m and maximum of 4m;
- Low parole [profile], with slim vertical fascia or eaves (generally not to exceed 300mm height);
- 1.2m setback from kerb to allow for clearance of street furniture, trees, and other public amenity elements; and
- In consideration of growth pattern of mature trees.

Adequate detail has not been provided to determine compliance with the following:-

- The proposed soffit height of the awnings has not been provided.
- The profile of the awning is unclear within the submitted plans.
- The setback of the awnings from the kerb line has not been provided.
- Three existing street trees are present along Harrow Road; however, it is unclear from the submitted plans if the awning structure accommodates the existing trees and their growth pattern.

4.10 Awning design must match building facades, be complementary to those of adjoining buildings and maintain continuity. Furthermore, all residential buildings are to be provided with awnings or other weather protection at their main entrance area.

Adequate information has not been provided within the floor plans to determine if the proposed awnings are continuous along the façades of the development, which is required to ensure all weather protection is afforded to persons residing in the development and the general public.

#### Clause 5.4 – Wind Mitigation

4.11 A Wind Effects Report is to be submitted with the Development Application for all buildings greater than 35m in height. For buildings over 48m in height, results of a wind tunnel test are to be included in the report.

A Wind Effects Report has been submitted with the Development Application, however, the results of the wind tunnel testing have not been submitted, which is required as the development is greater than 48 metres in height. As such it is unclear if the proposed development will satisfy nominated wind standards and maintain comfortable conditions for pedestrians.

4.12 The indicative species list submitted with the Development Application identifies the following Street trees:-

- |                                    |                   |           |
|------------------------------------|-------------------|-----------|
| ○ Platanus x hybrid                | London Plane Tree | 20m x 10m |
| ○ Lophostemon confertus            | Brush Box         | 15m x 10m |
| ○ Tristaniopsis laurina 'Luscious' | Water Gum         | 9m x 5m   |

These species do not correlate with the physical characteristics recommended by the Pedestrian and Wind Environment Statement. Furthermore, the proposed location of these tree species has not been identified on the submitted Landscape Plans.

#### Clause 11 – Public Domain

4.13 A detailed plan, showing all proposed public domain works has not been submitted.

4.14 Boundary line levels from Council have not been obtained and incorporated into the design.

4.15 The low level footpath along Mary Street has not been designed in consultation with Council's Development Engineer.

4.16 The Queen Street and Harrow Road corner does not provide adequate active footpath area.

#### Clause 14.4 – Laneways

4.17 Redevelopment within the Auburn Town Centre shall make provision for the creation of new laneways. A laneway is required between Queen Street and Mary Street, adjacent to the required Public Open Space Area, which has not been designed, which is unacceptable, as the development hinders pedestrian access and circulation within the town centre.

#### Clause 14.5 – Key Site – Five Ways

4.18 The subject site is required to be amalgamated with 43 and 45 Auburn Road, and 1, 3, and 5 - 7 Mary Street, Auburn, to achieve the desired aims and objectives of the Auburn DCP 2010. Amalgamation of the subject site with 43 and 45 Auburn Road, and 1, 3, and 5 - 7 Mary Street, Auburn has not been achieved.

No evidence of reasonable offers based on independent valuation/s have been submitted, nor have concept plans been submitted, which demonstrate that orderly and economic use and development of the adjoining sites be achieved.

**Note:** A 5-6 storey commercial development has been depicted for 43 and 45 Auburn Road, Auburn, within 3D massing diagrams, however, by virtue of the limited building separation provided by the subject development, no residential can be accommodated on 43 & 45 Auburn Road, Auburn, which is unacceptable. Furthermore, an understanding of parking and vehicular access for a future development at 43 & 45 Auburn Road, Auburn, has not been provided.

A shop top housing development has been depicted for 1, 3, and 5 – 7 Auburn Road, Auburn, with 3D massing diagrams; however, by virtue of the limited building separation provided by the subject development, the majority of the building separation is borne by 1, 3, and 5 – 7 Auburn Road, Auburn, which is unacceptable.

4.19 An open space area shall be provided on the North-East corner of the site at the intersection of Auburn Road and Queen Street with a minimum width of 26m, including a 6m reservation as a pedestrian plaza to accommodate circulation and outdoor dining area.

The public open space area at the corner of Auburn Road and Queen Street has not been designed in accordance with the standards, measuring 9.5 metres along Auburn Road and 22 metres along Queen Street.

**Note:** The limited width of the open space, in particular the frontage to Auburn Road, restricts the openness of the space, limiting the opportunity for the public realm to be expanded. The proposed width limits the opportunity to provide visual relief, as well as provide views between Auburn Road and Queen Street, while also restricting the opportunity for social interaction and outdoor dining.

4.20 The balconies of units on Level 1, which encroach on to the Village Plaza, as well as the decorative light fittings and the fountain skylight, are visual barriers which clutter the space.

4.21 The Village Square has not been reinforced as an open space focal point to the Auburn Town Centre.

4.22 The urban village landscape has not been softened using natural greenery.

4.23 Areas of public seating, including seats with armrests and companion spaces for wheelchairs beside seats, has not been provided.

4.24 Adequate detail has not been provided to determine if wind turbulence will be an issue in transporting water spray across the plaza area from the water feature.

4.25 The featured 'Lantern' elements highlight the retail mall entry rather than improve the visual amenity of the open space in the Auburn Town Centre. The lighting design does not address the streetscape along Auburn Road.

4.26 Pedestrian through-site links shall be provided to improve circulation and access to the town centre. Where possible, these linkages shall align to existing or proposed crossing points.

The proposal does not include any through-site links nor does it make provisions for the creation of through-site links in the future when the whole block is redeveloped.

**Note:** The proposed design includes pedestrian connections from Mary Street to Queen Street. However, there are no established clear sightlines or legibility, and persons are required to travel between levels to get from one point to the next. No connections are proposed linking Auburn Road and Harrow Road.

4.27 Outdoor dining shall be encouraged within the Five Ways open space and along Auburn Road and Queen Street. Due to the limited area proposed to the public open space, as compared to the requirements, the opportunity for outdoor dining is limited.

4.28 For residential uses, the maximum building dimensions, inclusive of balconies and building articulation but excluding architectural features, is 24m x 60m. The building length for Residential Tower 1 is 67.402m, which is unacceptable, as the development does not maintain an appropriate level of visual privacy, due in a large part to the building footprint proposed.

5. Failure to submit documentation demonstrating compliance with Auburn Development Control Plan (DCP) 2010, 'Part 15 – Parking and Loading' (pursuant to Section 79C (1)(a)(iii) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

Clause 3.2 – Access Driveway and Circulation Roadway Design

5.1 An additional 300mm clear has not been provided for parking spaces where one side is confined by an obstruction.

5.2 A width of 5.8 metres has not been provided for the circulation aisles with 90 degree angle parking.

5.3 The aisle width next to the 90 degree angle parking spaces have not been widened by 300mm where the aisle is confined by a wall or other obstruction.

5.4 A detailed swept path analysis has not been provided, which demonstrates cars passing on another along circulation aisles.

5.5 Adequate manoeuvring space is not available for parking spaces 100 and 135.

5.6 Adequate sight distance is not available for parking space 99.

5.7 Turn areas have not been provided at the blind aisle near parking space 101.

5.8 Adequate information has not been provided to determine if the minimum 2.2 metre clearance has been provided for the car park

5.9 The commercial parking spaces are not provided with a width of 2.6 metres.

5.10 The queuing area in front of the roller door to the residential basement parking levels is not adequate, and is not designed in accordance with AS 2890.1.

5.11 The proposed residential ramp width is not adequate to accommodate a proposed centre median and any access control devices.

#### Clause 3.1 – Bicycle Parking

5.12 Bicycle racks shall be provided in safe and convenient locations, providing 1 bicycle storage area for every 5 residential units as part of mixed use development.

In total, 245 residential units are proposed, requiring 49 bicycle parking spaces. Bicycle storage areas have been provided within the development; however, it is unclear how many bicycles can be stored within these areas, which is unacceptable, as it is unclear if the proposed development encourages the use of bicycles as a sustainable mode of transport.

#### Clause 5.1.5 – Number of Car Parking Spaces

5.13 Development in the B4 Mixed Use Zones within 1000 metres of a railway station in Town Centres (Auburn and Lidcombe) shall provide a minimum of 1 space per 60m<sup>2</sup> of commercial, and a maximum of 4 spaces per 40m<sup>2</sup> of commercial.

In total, 7,599m<sup>2</sup> of commercial is proposed, requiring 127 car parking spaces. 109 spaces have been provided within the commercial and residential car parking level on Basement Level 1, which is unacceptable, as adequate parking has not been provided to service the development.

**Note:** As the car parking within Basement Level 1 is a combination of commercial and residential visitor parking spaces, adequate information has not been provided to determine the extent of parking provided to service the commercial area.

#### Clause 7.0 – Loading Requirements

5.14 Loading/unloading facilities shall be positioned so as to not interfere with visitor/employee or resident designated parking spaces. A conflict exists between the commercial parking area and the loading bay, specifically, when vehicles are manoeuvring.

5.15 Ten loading bays for trucks and commercial vehicles shall be provided to service the development. Only 1 medium rigid loading dock and 2 service vehicle docks have been provided to service the development.

5.16 The waste collection and commercial loading areas have not been separated.

5.17 A 4.5 metre headroom height has not been provided for the loading area.

5.18 The loading area does not accommodate a heavy rigid vehicle, required to service the development.

5.19 Deliveries from the loading docks are transported through the public lifts, which is not appropriate.

6. Failure to submit documentation demonstrating compliance with Auburn Development Control Plan (DCP) 2010, 'Part 17 – Access and Mobility' (pursuant to Section 79C (1)(a)(iii) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

Clause 2.0 – Design Guidelines for Access

6.1 Access to persons with a disability has not been afforded from the commercial parking area to the Village Tavern, which is unacceptable, as equal access opportunities has not been afforded to all persons.

7. Failure to submit documentation demonstrating compliance with Auburn Development Control Plan (DCP) 2010, 'Part 17 – Stormwater and Drainage' (pursuant to Section 79C (1)(a)(iii) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

Clause 4.1 – Easements to Drain Water

7.1 A Right of Drainage, 1.525 metres wide, is present along the southern boundary (interface with 1, 3 & 5 – 7 Mary Street, Auburn); however, the easement is encroached upon by the proposed development.

Clause 5.0 – On-Site Detention

7.2 A detailed On-site Stormwater Detention (OSD) calculation sheet has not been submitted.

7.3 The OSD tank and rainwater tank have not been separated.

7.4 The OSD tank has not been located outside the commercial floor areas.

7.5 Details of stormwater disposal to Council's drainage system have not been clearly annotated on the submitted plans.

7.6 A grated drain has not been provided behind the flap valve. The OSD tank configuration does not comply with Council's standard drawing.

7.7 The spacing between the OSD tank access grates exceeds 5 metres.

7.8 A detailed Survey showing all existing footpaths, kerb and gutter and other surface levels has not been provided.

8. Failure to submit documentation demonstrating compliance with Auburn Development Control Plan (DCP) 2010, 'Part 18 – Waste' (pursuant to Section 79C (1)(a)(iii) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

8.1 The waste service requirements for the proposed development are as follows:-

- Residential Garbage: 10 x 1100L MGBs collected three times a week.
- Residential Recycling: 6 x 1100L MGBs collected three times a week.

It is unclear from the submitted plans if the bin storage rooms have the capacity to accommodate the bin arrangement listed above.

8.2 The Applicant has not demonstrated how garbage and recycling bins will be transported from the bin storage room to the loading bay for servicing, and whether there is sufficient space for the required number of bins.

8.3 The Applicant has not demonstrated the location of residential waste holding room noted within the Architectural Plans can accommodate the recommended bin arrangement above.

8.4 The Applicant has not demonstrated that a swept path for a 10.5 metre heavy rigid vehicle can manoeuvre to the loading bay on-site, and undertake collection of garbage and recycling.

8.5 The Applicant has indicated a private garbage and recycling collection service will be used, which will incur a waste availability charge. The Applicant has not considered Council providing the service.

8.6 A caged area for bulky items discarded by residents awaiting Council's collection has not been provided.

9. Failure to submit documentation demonstrating the proposal has considered the provisions of the Environmental Planning and Assessment Regulation 2000 (pursuant to Section 79C (1)(a)(iv) of the Environmental Planning and Assessment Act 1979), with regard to the following:-

Schedule 1 – Forms

9.1 The submitted Statement of Environmental Effects notes the proposal includes *'upgrades to an existing hotel, including alterations and additions'*.

No further information on this aspect of the development is given, and, an assessment of the plans submitted reveals the area in question is more appropriately defined as a Food and drink premises, either being a *Pub* or a *Small Bar*, as opposed to *Hotel or Motel Accommodation*, as no rooms or self-contained suites are proposed.

9.2 The submitted Clause 4.6 – Exceptions to Development Standards Statement does not document the full extent of exceedances proposed beyond the Height of Building standard applicable to the site.

**Note:** The Elevations and Section plans submitted with the Development Application reveals a number of protruding blade / fin walls, as well as elements of the 14 storey residential tower extending beyond the 49 metre height of building standard applicable to the site, which have not been documented within the submitted Clause 4.6 – Exceptions to Development Standards Statement.

9.3 The Survey Plan submitted with the Development Application does not denote the area of the site, or any existing easements and rights of way.

9.4 A copy of the DRAINS model has not been submitted.

9.5 The Traffic model has not addressed the following:

- Intersection counts undertaken at the intersection of Auburn Road, Civic Road and Queen Street do not include pedestrian movement counts.
- The SIDRA intersection modelling undertaken has not used actual signal phasings and green times signals operating during peak periods. Hence, base modelling results do not reflect the actual level of service and degree of saturation the traffic control signals operate.

9.6 A Phase 1 Contamination Assessment was prepared by Douglas Partners Pty Ltd, Project Number 43789, dated March 2006. Whilst the Phase 1 Contamination Assessment appears to be prepared in accordance with the NSW EPA *Guidelines for Consultants Reporting on Contaminated Sites*, the report was prepared in 2006, and is therefore over 10 years old.

9.7 A standard unit layout has not been provided for Unit 2.01A.

9.8 Adequate information has not been provided regarding the proposed numbers and location of plants.

9.9 The material schedule submitted with the Development Application does not include the material for paving.

9.10 Adequate information has not been provided to show how the basement



associated with the Village Tavern, within Basement Level 1, is accessed.


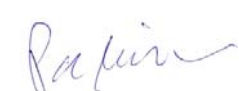
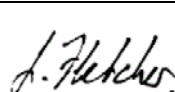
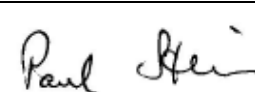

9.11 Adequate information has not been provided to determine:-

- The access arrangement to the private terrace to the east of Unit 2.2.08 on Level 2, Residential Tower 2.
- The access arrangement to the balcony area to the west of Unit 3.2.17.2 on Level 3, Residential Tower 2.
- The access arrangement to the balcony area to the east of Unit 3.2.17.1 on Level 3, Residential Tower 2.
- Which unit the terrace area to the South/West of Unit 8.1.08A on Level 8, within Residential Tower 1, is allocated, and how it is accessed.
- Which unit the terrace area to the South of Unit 3.2.18 on Level 3, within Residential Tower 1, is allocated, and how it is accessed.

10. In addition to the above reasons for refusal, the Panel was not satisfied that the applicant has satisfactorily addressed the isolation of 43-45 Auburn Road, Auburn and the consequent adverse impact on the amenity, and future development potential, of that property.
11. Based on the above deficiencies, the likely environmental impacts of the development are not considered acceptable (pursuant to Section 79C(1)(b) of the Environmental Planning and Assessment Act, 1979).
12. Based on the above deficiencies, the site is not considered suitable for the development as proposed (pursuant to Section 79C(1)(c) of the Environmental Planning and Assessment Act, 1979).
13. Based on the above deficiencies and submissions received, approval of the proposed development would not be in the public interest (pursuant to Section 79C(1)(d) & (e) of the Environmental Planning and Assessment Act, 1979).
14. The Panel did not agree to allow further time for further consultation with the council as requested by the applicant as it did not believe the changes that would be necessary would be substantially the same development.

#### CONDITIONS

Not applicable.

PANEL MEMBERS	
Mary-Lynne Taylor (Acting Chair) 	Paul Mitchell OAM 
Lindsay Fletcher 	Paul Stein AM 
Brian McDonald 	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	2017SWC096 – Cumberland – 307/2017
2	PROPOSED DEVELOPMENT	Demolition of existing structures and construction of a mixed-use development comprising 2 residential towers, 3 levels of retail / commercial uses, 3 levels of basement parking including alterations and additions to the Village Tavern on the corner of Queen Street and Harrow Road and associated stormwater and landscape works.
3	STREET ADDRESS	41 Auburn Road, Auburn

4	APPLICANT/OWNER	ABC Planning (Anthony Betros) / Auburn Shopping Village Pty Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$20 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ State Environmental Planning Policy (State and Regional Development) 2011</li> <li>○ State Environmental Planning Policy (Infrastructure) 2007</li> <li>○ State Environmental Planning Policy No 55 – Remediation of Land</li> <li>○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</li> <li>○ State Environmental Planning Policy No 64 – Advertising and Signage</li> <li>○ State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development</li> <li>○ Auburn Local Environmental Plan 2010</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Auburn Development Control Plan 2010</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Provisions of the <i>Environmental Planning and Assessment Regulation 2000</i>: Nil</li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> <li>• The public interest, including the principles of ecologically sustainable development</li> </ul>
7	MATERIAL CONSIDERED BY THE PANEL	<ul style="list-style-type: none"> <li>• Council assessment report:</li> <li>• Written submissions during public exhibition: four (4)</li> <li>• Verbal submissions at the public meeting on 21 December 2017: <ul style="list-style-type: none"> <li>○ Object – Kerrynt Stanton</li> <li>○ On behalf of the applicant – Anthony Betros, Robert Creed and Raymond Raad</li> </ul> </li> <li>• Council supplementary assessment report: 8 February 2018</li> <li>• Verbal submissions at the public meeting on 22 February 2018: <ul style="list-style-type: none"> <li>○ On behalf of the applicant – Raymond Raad and Matthew Daniel</li> </ul> </li> </ul>
8	MEETINGS AND SITE INSPECTIONS BY THE PANEL	<ul style="list-style-type: none"> <li>• Site inspection, briefing meeting and Panel meeting on 21 December 2017</li> <li>• Final briefing meeting to discuss council's recommendation, 22 February 2018, 12:20 pm. Attendees: <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Mary-Lynne Taylor (Acting Chair), Paul Mitchell, Lindsay Fletcher, Paul Stein and Brian McDonald</li> <li>○ <u>Council assessment staff</u>: Karl Okorn, Fay Ong, Michael Lawani, William Attard and Bala Sudarson</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Refusal
10	DRAFT CONDITIONS	Not supplied