

## SYDNEY WEST CENTRAL PLANNING PANEL

<b>Panel Reference No.</b>	2017SWC135
<b>DA Number</b>	DA 2014/616/2
<b>LGA</b>	Cumberland
<b>Proposed Development</b>	Section 96(2) Modification seeking to stage the approved multi dwelling housing development enabling construction and completion of the development to occur in 2 stages.
<b>Street Address</b>	Lot 4012, Driftway Drive, Pemulwuy
<b>Applicant</b>	Dreamcorp Developments Pty Ltd
<b>Owner</b>	Dreamcorp Developments Pty Ltd
<b>No. of Submissions</b>	Fifteen (15) submissions
<b>Regional Development Criteria (Sch. 4A of the Act)</b>	Capital Investment Value \$28,689,000 (>\$20 million)
<b>List of All Relevant s79C(1)(a) Matters</b>	<ul style="list-style-type: none"> <li>• State Environmental Planning Policy No. 55 – Remediation of Land</li> <li>• State Environmental Planning Policy (State and Regional Development) 2011</li> <li>• Holroyd Local Environmental Plan 2013 (HLEP 2013)</li> <li>• Holroyd Development Control Plan 2013 (HDCP 2013)</li> <li>• Section 92 of the EP&amp;A Regulation</li> </ul>
<b>Recommendation</b>	Approval, subject to conditions
<b>Report by</b>	Mark Stephenson – Consultant Planner, Cumberland Council
<b>Meeting date</b>	14 December 2017

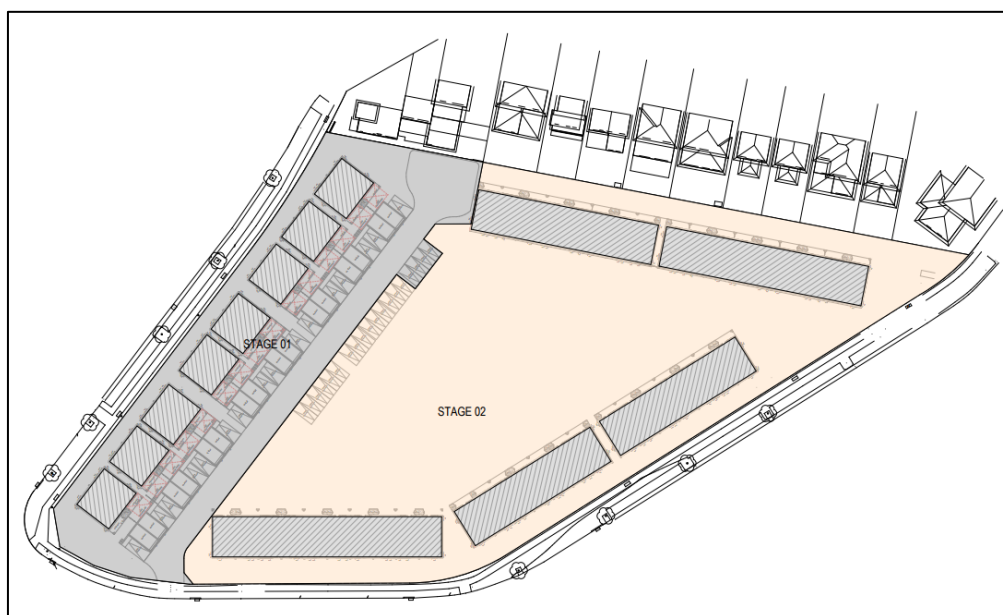


Figure 1 –Staging Plan (Source: Idraft, 2017)

## ASSESSMENT REPORT

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### ATTACHMENTS

Attachment 1 – Architectural plans

Attachment 2 – Applicant’s Statement of Environmental Effects

Attachment 3 – Draft conditions of consent

Attachment 4 – Submissions

Attachment 5 – Assessment against Section 96(2) of the EP&A Act 1979

Attachment 6 – Assessment of compliance with Holroyd LEP 2013

Attachment 7 – Assessment of compliance with Holroyd DCP 2013

## 1. EXECUTIVE SUMMARY

- 1.1 Development Application No. 2014/616/1 was granted approval on 16 March 2016 by the Joint Regional Planning Panel (JRPP) for the construction of a multi dwelling housing development comprising 57 x 3 storey dwellings, basement and grade level parking for 143 cars.
- 1.2 This application originally sought the subdivision of the site into two (2) Torrens lots to facilitate the construction of the development in two stages. However, given that proposed Lot 2 contained all of the communal open space and associated facilities, the JRPP was concerned that, should the development on Lot 2 not proceed, then the future residents of proposed Lot 1 would be disadvantaged.
- 1.3 The Modification Application (as amended) seeks to stage the approved multi dwelling housing development enabling construction and completion of the development to occur in 2 stages. When the application was first lodged with Council, it also proposed subdivision of the site into 2 Torrens lots. The proposed subdivision has now been deleted from the application.
- 1.4 This application was originally lodged with Council on 8 December 2016 as a Section 96(1A). It was subsequently forwarded to the Cumberland Independent Hearing and Assessment Panel (CIHAP) for consideration at their meeting on 8 November 2017, wherein the following was resolved:

*...the Panel does not consider the modification to fall within section 96 (1A) of the Environmental Planning and Assessment Act 1979 as being "of minimal environmental impact". Therefore the Panel does not have the power to determine it.*

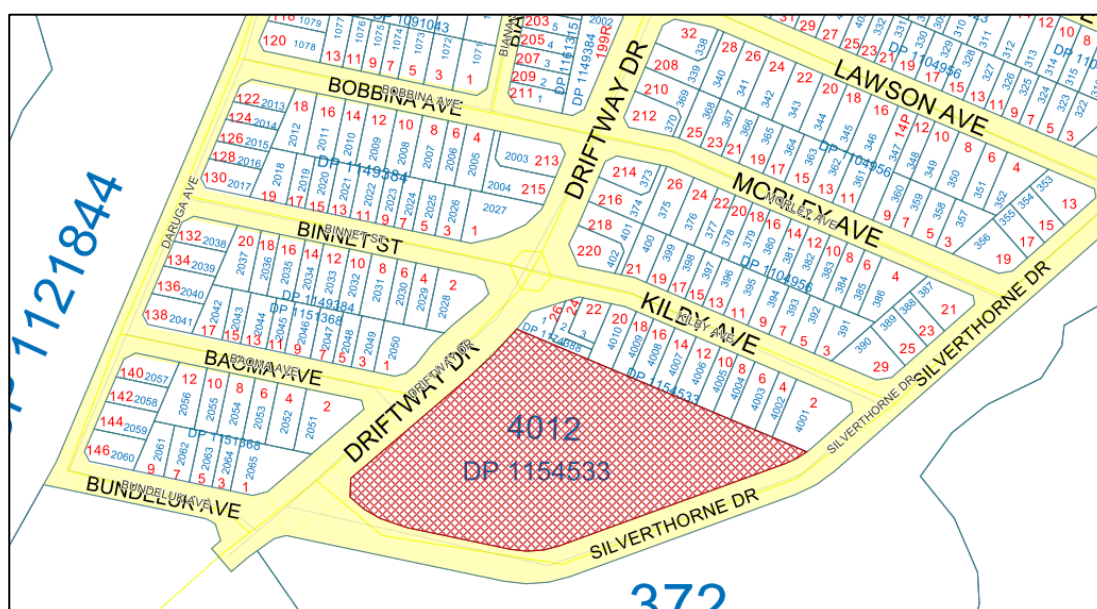
Having regard to the view formed by the CIHAP, the applicant has amended their application to a Section 96(2), thus requiring consideration and determination by the SWCPP. In addition, as indicated above, the subdivision component has also been deleted.

- 1.5 The Development Application has been assessed under the provisions of Section 79C of the *Environmental Planning and Assessment Act, 1979*; *State Environmental Planning Policy No. 55 – Remediation of Land*; *Holroyd Local Environmental Plan 2013*, and *Holroyd Development Control Plan 2010*.
- 1.6 The subject site is zoned R4 – High Density Residential under the Holroyd LEP 2013.
- 1.7 The application was publicly notified to adjoining and surrounding owners, a notice was placed in the local press and a notice placed on the site for 28 days from 21 December 2016 to 18 January 2017. The normal exhibition period was extended for a week due to the Christmas period. Fifteen (15) submissions were received in response, including thirteen (13) form letters.
- 1.8 The application has been assessed internally by Council's Landscaping and Tree Management Section and Development Engineering Section. No concerns were raised.

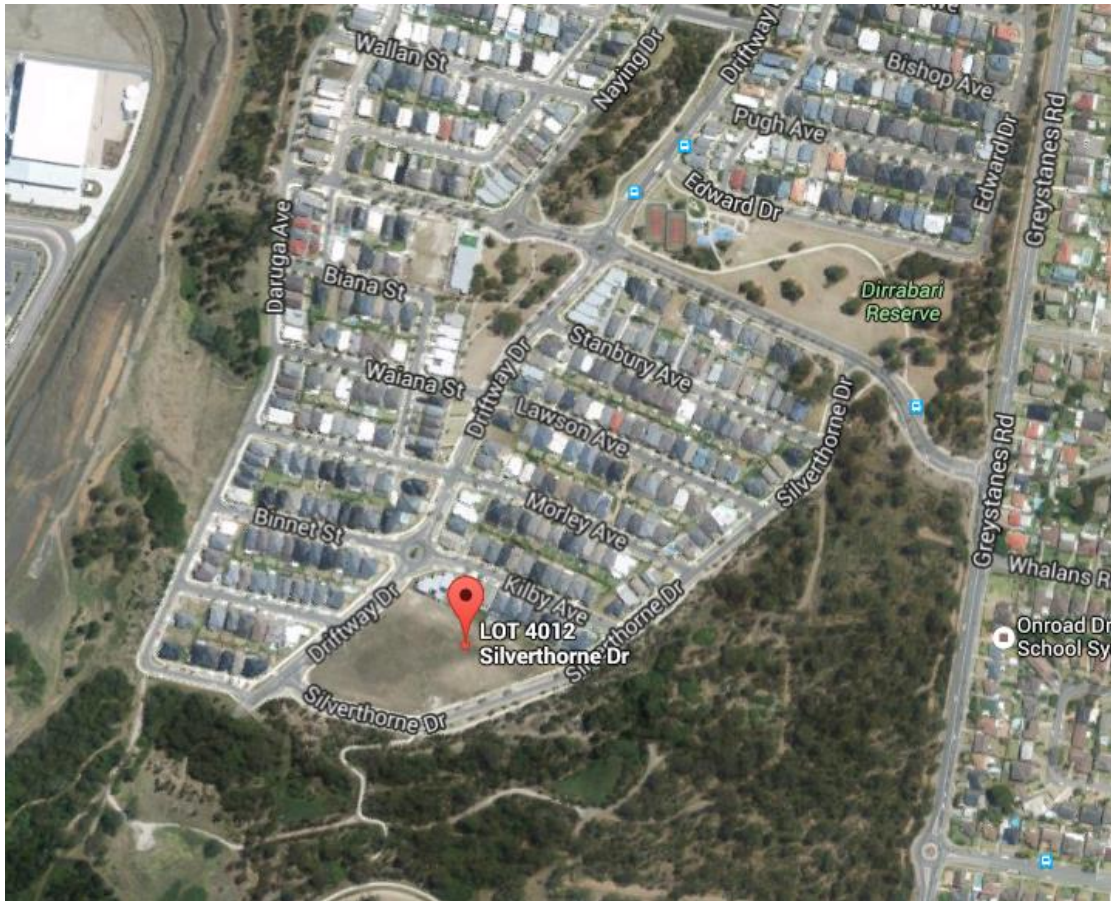
- 1.9 Based on an assessment of the application, it is considered that the proposed modification is worthy of support and is recommended for approval, subject to draft conditions contained at **Attachment 3**.

## 2 SUBJECT SITE

- 2.1 The subject site is legally described as Lot 4012, DP 1154533, and is known as Lot 4012 Driftway Drive, Pemulwuy.
- 2.2 The site has an area of 12,451sqm and is an irregular shaped lot bordered to the north by residential dwellings facing Kilby Avenue, to the west by Driftway Drive and to the south and east by Silverthorne Drive. The site is located within the southern part of the Pemulwuy Estate known as Nelson's Ridge.
- 2.3 The subject site is devoid of vegetation other than grass cover. It has a significant fall from north to south of approximately 8 metres (average gradient of 1:13).
- 2.4 The subject site is one of the last remaining super lots created under the Greystanes Estate – Residential Lands Precinct Plan, October 2002. The Precinct Plan was created under the provisions of State Environmental Planning Policy No 59—Central Western Sydney Economic and Employment Area. The site was zoned Residential under the SEPP and 'multi-unit housing' was designated for this lot within the Precinct Plan.
- 2.5 State Environmental Planning Policy No 59—Central Western Sydney Economic and Employment Area was repealed by the Holroyd Local Environmental Plan 2013. In accordance with the provisions of the Holroyd LEP, the site is zoned R4 High Density Residential.



Site Map (Source: Cumberland Council, 2017)



Locality Map (Source: Google Maps, 2016)

### 3 BACKGROUND

- 3.1 On 2 December 2013, Council approved DA 2013/91 for the Torrens subdivision of existing Lot 4012 Driftway Drive, Pemulwuy into 48 lots (47 residential and 1 for the existing substation easement), construction of 10 x 3 storey and 37 x 2 storey dwelling houses as integrated housing, new roads, landscaping, site works and utility works, in 7 stages. This development was not commenced and the consent has now lapsed.
- 3.2 On 16 March 2016, the JRPP approved DA 2014/616 for the construction of a multi dwelling housing development comprising 57 x 3 storey dwellings, basement and grade level parking for 143 cars.

DA 2014/616 also proposed the Torrens subdivision of the site into two (2) lots. The JRPP did not approve the subdivision, citing the following reasons:

1. *The Panel considers that, given the bulk of the proposed infrastructure (i.e. open space and amenities) is located on proposed Lot 2, should Lot 1 (Stage 1) be developed first, there is no guarantee that Lot 2 (Stage 2) will be constructed, and thus the provision of this infrastructure may not proceed.*
2. *The town planning report indicates that the subdivision reflects the stages of the development; however the Panel sees no need to subdivide for staged construction to occur.*



3. *Should strata subdivision occur in the future, the title arrangement and obligations could be compromised”.*

3.3 On 22 December 2016, Development Application No. 2016/592 was lodged with Council proposing the construction of 2 x 4 storey residential flat buildings over basement parking accommodating a total of 114 units and 134 car parking spaces within the area designated as Stage 2. Given the capital investment value exceeds \$20M, this application will also be referred to the Sydney West Central Planning Panel for determination.

3.4 On 8 November 2017, the Cumberland Independent Hearing and Assessment Panel (CIHAP) considered DA 2014/616/2 proposing a Section 96(1A) Modification seeking Torrens subdivision of the site into 2 lots to facilitate the construction of an approved multi dwelling housing development in two (2) stages. The minutes of the meeting are provided as follows:

***Resolved unanimously by the Cumberland Independent Hearing and Assessment Panel (CIHAP) that the Panel does not consider the modification to fall within section 96 (1A) of the Environmental Planning and Assessment Act 1979 as being “of minimal environmental impact”. Therefore the Panel does not have the power to determine it.***

3.5 On 24 November 2017, the Section 96(1A) Modification Application was amended to a S96(2) Modification Application, and in addition, the subdivision component of the application was deleted. Re-notification of the application was deemed unnecessary, as it was considered that the proposed change would not result in any impact to surrounding properties.

#### **4 The Proposal**

4.1 Council is in receipt of a Section 96(2) Modification Application seeking to stage the approved development enabling construction and completion of the multi dwelling housing development to occur in 2 stages.

It is noted that this application is not a staged development within the meaning of Section 83B of the EP&A Act.

4.2 Specific details, as provided by the applicant, are provided as follows:

**Stage 1:** Construction of a multi dwelling housing development comprising 16 x 3 storey dwellings, driveway and at grade level parking for 36 cars. Stage 1 would have the ability to commence construction and be occupied prior to the commencement of works relating to Stage 2.

**Stage 2:** Construction of a multi dwelling housing development comprising 41 x 3 storey dwellings and basement level parking for 101 cars.

The primary aims of the proposed modification are as follows:

- Stage conditions of the development consent, allowing construction of the approved multi dwelling housing development to be undertaken in stages;
- Reduce the number of visitor parking spaces servicing the proposed development; and

- Reconfigure the proposed at grade carriageway to service the intended development staging.

## 5 PLANNING CONTROLS

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

### a. EP&A Act 1979 – Section 96(2)

Section 96(2)(a) requires the consent authority to be satisfied *that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all).*

It is considered that the proposed development as modified remains essentially and materially the same as the development as originally approved. The only physical change is the deletion of 6 at-grade visitor parking spaces.

The proposed staging does not alter the proposed development, in that there are still 57 multi dwelling houses proposed to be constructed. In this regard, the development as modified is considered to be substantially the same as the development for which consent was originally granted.

A detailed assessment against the provisions of s.96(2) of the EP&A Act 1979 is provided at **Attachment 5**.

### b. 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 referral to a Sydney Planning Panel for determination. The proposed development constitutes 'Regional Development' as it has a Capital Investment Value (CIV) of \$28,689,000 (at the time of lodgement), which exceeds the \$20 million threshold.

Pursuant to Clause 21 of the SEPP, the determination of the proposed Section 96(2) Modification Application also lies with the regional panel.

### c. Holroyd Local Environmental Plan (HLEP) 2013

The site is zoned R4 High Density Residential pursuant to Holroyd Local Environmental Plan (HLEP) 2013. The proposed development is characterised as modifications to an approved multi dwelling housing development, which means *3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building*, pursuant to the Holroyd LEP 2013.

The proposed development is considered to be permitted within the R4 High Density Residential zone and is considered to meet the objectives of the zone as it will provide for the housing needs of the community within a high density residential environment.

A detailed assessment against the relevant provisions of the HELP 2013 is provided at **Attachment 6**.

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

The Holroyd DCP 2013 applies to the site. The proposed modified development is consistent with the provisions of the DCP, and is compliant with all relevant controls. A detailed assessment against the relevant provisions of the DCP is provided at **Attachment 7**.

**6 KEY ISSUES**

**6.1 Car Parking**

Whilst this modification application primarily proposes the staging of the approved multi dwelling housing development, the application also proposes to modify the approved parking arrangement, as detailed below.

It is noted that that the approved development provided the maximum number of parking spaces as required by the DCP, as opposed to the minimum. The DCP requires the following minimum car parking spaces to be provided:

- 1.2 spaces per 3 b/r dwelling for residents (57 x 1.2 = 68.4)
- 0.2 spaces per dwelling for visitors (57 x 0.2 = 11.4)
- Total required = 80 spaces

Approved under Development Consent No. 2014/616/1

- Total provided = 143 spaces (including 114 resident and 29 visitor spaces)

Proposed parking under Modification Application No. 2014/616/2

- Stage 1 – 36 spaces (including 16 covered, 16 uncovered and 4 visitor spaces)
- Stage 2 – 101 spaces (including 82 resident and 19 visitor)
- Total provided = 137 spaces

The level of parking proposed is compliant for both stages individually and in total, and is still well in excess of the minimum DCP requirement. A full breakdown of car parking is provided at Appendix C.

**6.2 Construction Nuisance**

The applicant has indicated that the proposed staging may prolong the period during which construction may occur. However, it is noted that construction timetables are generally beyond Council's control and are at the discretion of the developer. In this regard, the construction of this development, in two stages, would be similar to other larger scale developments. It will of course be subject to a Construction Management Plan, and in this regard, environmental pollution will be controlled.



## 7 REFERRALS

### 7.1 External referrals

Referral of the application to any external referral bodies was not required.

### 7.2 Internal Referrals

The Modification Application was referred to the following internal sections of Council as summarised in the table below:

Development Engineering Section	No objection, subject to conditions
Landscaping Section	No objection, subject to conditions

## 8 PUBLIC COMMENT

- 8.1 In accordance with the requirements of Part E of the Holroyd DCP 2013, the proposal was exhibited for a period of 28 days from 21 December 2016 to 18 January 2017. The normal exhibition period was extended for a week due to the Christmas period.

In response, Council received fifteen (15) letters of objection, including 13 form letters/emails. The concerns raised are detailed below with planning comments provided in response.

- i. **The residents of Pemulwuy have not been informed in relation to what is being proposed. We need to know the exact details for each stage and what type of development has been submitted.**

#### Comments:

The application proposes to modify an existing approved development for the construction of a multi dwelling housing development comprising 57 x 3 storey dwellings, basement and grade level parking for 143 cars. The application was approved by the Joint Regional Planning Panel (JRPP) at their meeting on 16 March 2016.

The proposed modification (as amended) involves the staging of the approved multi dwelling housing development to enable construction and completion of the development to occur in 2 stages.

The only physical change to the development involves the deletion of 6 at-grade visitor car parking spaces, however, the development as proposed to be modified is still provided with well in excess of the minimum car spaces required under the Holroyd Development Control Plan.

- ii. **The proposal is not as per the Pemulwuy controls.**
- iii. **The proposed 97 units will not meet infrastructure requirements such as drainage and stormwater, and other infrastructure needs of the community.**
- iv. **The development application does not meet public open space policy.**
- v. **The development will have a negative and serious impact upon the Grey Box Reserve and Wetland Ponds Wildlife.**
- vi. **The development will have a negative environmental factor (noise, environmental and overpopulation).**
- vii. **There are not enough local resources to support existing residents let alone future residents.**

- viii. The proposed 3 storey development will affect privacy and solar access for existing residents.**
- ix. There will be noise and vibration due to this massive development.**
- x. There will be a negative impact upon existing houses in Pemulwuy.**
- xi. The proposed 97 unit development will be hazardous, noisy, intrusive and environmentally inappropriate to local neighbours and to the Pemulwuy community at large.**
- xii. This development will create safety, security and pollution issues in local neighbourhood and Pemulwuy at large.**

**Comments:**

The development has already been approved by the Joint Regional Planning Panel. The issues raised were satisfactorily dealt with at this meeting and the development was considered appropriate by the Panel.

- xiii. There will not be enough car parking**

**Comments:**

The development as proposed to be modified provides well in excess of the minimum parking spaces required under the Holroyd DCP 2013.

- xiv. This development creates difficult residual spaces and awkward boundary conditions.**

Apart from the deletion of parking spaces, there is no change to the physical layout of the approved development. There are no residual spaces or residue lots proposed, and the boundary conditions remain as previously approved.

- xv. At the Panel meeting, concern was raised that the developer could build one part and then sell the other part if subdivision was allowed.**

**Comments:**

The Panel was concerned that, given the bulk of common open space infrastructure was provided in Lot 2, should the development on Lot 2 not proceed, then the future residents of Lot 1 would be disadvantaged. It is noted that the subdivision component of the proposal has now been deleted.

Notwithstanding, it is important to note that, under the Holroyd DCP 2013, multi dwelling developments are not required to provide common open space, but rather private open space.

- xvi. Splitting the development in 2 stages would prolong the construction of the development.**

**Comments:**

The timeline for construction works is at the sole discretion of the developer and the project builder.

## 9 SECTION 79C CONSIDERATION

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

Head of Consideration	Comment	Complies
a. the provisions of: (i) any environmental planning instrument (EPI)  (ii) any draft environmental planning instrument (EPI)  (iii) any development control plan  (iiia) any planning agreement  (iv) the regulations	The provisions of the relevant EPIs and DCPs relating to the proposed development are summarised in <b>Section 5</b> of this report and have been satisfactorily addressed in <b>Section 6</b> .	Yes
b. the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	An assessment of the key issues relating to the proposed development is provided in <b>Section 6</b> of this report and it is considered that the likely impacts of the development have been satisfactorily addressed.	Yes
c. the suitability of the site for the development	The subject site is identified as R4 High Density Residential land pursuant to Holroyd LEP 2013. Further, matters relating to site contamination, salinity, stormwater drainage and access were satisfactorily addressed as part of the original development application and subsequent approval.	Yes
d. any submissions made in accordance with this Act or the regulations	In accordance with the requirements of Part E of the Holroyd DCP 2013, the proposal was exhibited for a period of 28 days from 21 December 2016 to 18 January 2017. The normal exhibition period was extended for a week due to the Christmas period.  In response to the public exhibition of the application, Council received fifteen (15) letters of objection, including 13 form letters/emails.	Yes

e. the public interest	The proposed development is for the purpose of 'multi dwelling housing' on land identified as R4 High Density Residential under the 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
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## **10 CONCLUSION**

- 10.1 The proposed development has been assessed against the matters for consideration listed in Section 79C of the Environmental Planning & Assessment Act 1979 and is considered to be satisfactory. Any likely impacts of the development have been satisfactorily addressed and the proposal is considered to be in the public interest. Further, the subject site is considered suitable for the proposed development.
- 10.2 The proposed development is consistent with the objectives of Holroyd LEP 2013 and the R4 High Density Residential zone and is permissible in the zone with development consent. The proposal also complies with the Holroyd DCP 2013.

## **11 RECOMMENDATION**

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