

SYDNEY CENTRAL CITY PLANNING PANEL

TO: Sydney Central City Planning Panel – 15 November 2018

REPORT: SCCPP Report

SUBJECT: 32 Joseph Street and 1 Vaughan Street, Lidcombe

FILE No: DA-285/2017 (Panel Reference: 2017SWC143 DA)

Application lodged	30 June 2017
Applicant	32 Joseph Street Pty Ltd
Owner	Mr S Maamary and Mrs I Maamary and Mrs Y Mikhiel and Mr L C Savage
Application No.	DA-285/2017
Description of Land	Lot 4 DP 217872, Lot 108 DP 220296, Lot 109 DP 220296, Lot 110 DP 220296, Lot 111 DP 220296, Lot 112 DP 220296, 32 Joseph Street, LIDCOMBE NSW 2141
Proposed Development	Demolition of existing buildings and construction of a mixed-use development containing 2 ground floor commercial tenancies, 93 residential units, 4 basement level parking, reconfiguration /relocation of stormwater culvert and easement including strata subdivision
Site Area	1612.60m ²
Zoning	Zone B4 - Mixed Use
Disclosure of political donations and gifts	Nil disclosure
Heritage	No (within the vicinity of heritage items)
Issues	Non-compliance with ALEP – Height Minor non-compliance with ALEP – FSR Minor non-compliance with SEPP 65 ADG and Auburn DCP 2010

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SUMMARY

1. Development Application No. DA-285/2017 was received on 30 June 2017 for the demolition of existing buildings and construction of a mixed-use development containing 2 ground floor commercial tenancies, 94 residential units, 3 basement level parking, reconfiguration/relocation of stormwater culvert and easement including strata subdivision at 32 Joseph Street and 1 Vaughan Street, Lidcombe.
2. The application was publicly notified to occupants and owners of the adjoining properties for a period of 14 days between 18 July 2017 to 1 August 2017. No submissions were received as a result of this notification.
3. Following Council's initial assessment with the application, amended plans and supporting documents were received on 17 November 2017 addressing issues raised by Council including the addition of a fourth basement level.
4. The notable variations are as follows:

Control	Required	Provided	%age variation
Height (ALEP)	36m	38.13m (RL53.10)	5.92%
FSR (ALEP)	5.0:1 (8146.5m ²)	5.01:1 (8165.8m ²)	0.23% (19.3m ²)
Communal open space (COS) (ADG)	25% (407.3m ²) and 50% direct solar access 2 hours in mid-winter	11.68% (190.3m ²) and 30%	53.3% and 40%
Deep soil zone (ADG)	7% (114m ²)	2.9% (48.1m ²)	57.8%
Car Parking (ADG) (DCP)	98	97	1.02%
Solar access (ADG)	70% of apts 2 hours between 9am to 3pm	81% between 8.30am and 3.30pm	N/A
		47% between 9am to 3pm	32.8%
		15% of apts with no direct sunlight	26.6%
Natural Ventilation (ADG)	60%	61% with solar chimney	N/A
		35% without solar chimney	41.6%
Building Separation (ADG)	4 storeys – 12m 5-8 storeys – 18m 9+ storeys – 24m	Levels 1-9 North: nil	100%
		Levels 8 & 9 East: 11.5m 12m req (shared)	41.6%
		Levels 1-9 South: nil 6m-12m (shared)	100%
Commercial ceiling height	3.3m	3m	10%
Habitable room depth	8m	8.3m	3.75%

5. Other non-compliances are as follows:
 - Setbacks (ADCP); and

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- Overshadowing (ADG and ADCP).

The application is recommended for deferred commencement approval subject to the conditions as provided in the attached schedule. The application is referred to the Panel as the proposal has a Capital Investment Value of more than \$20 million. Based on clause 24(3) State Environmental Planning Policy (State and Regional Development) 2011 Transitional provisions-certain other existing development applications, the development application has not been determined when this Policy was amended, therefore the development does not cease to be a regionally significant development despite having CIV of less than \$30 million.

REPORT

SUBJECT SITE AND SURROUNDING AREA

The proposed redevelopment of the subject site comprises of six (6) allotments and is legally described as Lot 4 DP 217872, Lot 108 DP 220296, Lot 109 DP 220296, Lot 110 DP 220296, Lot 111 DP 220296, Lot 112 DP 220296, and is known as 32 Joseph Street and 1 Vaughan Street, Lidcombe.

The site is zoned B4 mixed use development and is situated on the western side of Joseph Street and northern side of Vaughan Street.

The land is irregular in shape with a combined frontage width of 37.605m to Joseph Street and 42.93m to Vaughan Street, creating a total combined land area of 1629.3m². The land has a moderate slope from the middle part towards all boundaries. The site adjoins to Lot 6 DP 217872 on the south western corner, which is Council's land. An existing laneway/right of way adjoins the western boundary, which provides access to some commercial properties facing Joseph and Bridge Streets.

The subject site is located within the 'Lidcombe Town Centre' in one of the key sites being Precinct 5 – Bridge Street as identified in section 15.0 of the Local Centres chapter of the Auburn Development Control Plan (ADCP) 2010. The site is located within 150m walking distance from the Lidcombe train station and 250m walking distance from the commuter's car park.

All six allotments are currently occupied by a petrol station with a small vehicle service centre. The site is currently deficient of any vegetation with the exception of a small garden bed on the corner of Joseph and Vaughan Streets.

A major drainage culvert (part of Joseph Street branch trunk drainage) passes through the site. Significant overland flow path affects the site on the Vaughan Street boundary.

Surrounding developments in the immediate vicinity are currently characterised by two storey mix commercial/retail land uses, high density residential and mixed use developments of various size and scale. It is evident that once the area completes transition, the area will be characterised predominantly by commercial and mixed use developments given the context and current zoning of the locality.

Adjoining developments to the north and to the east consist of a two storey commercial/retail use. Two heritage listed items located within the vicinity of the site, including Lidcombe War Memorial statue, Wellington Park to the south-east, and Lidcombe Post Office to the north-east. Existing laneway/right of way and at grade car park adjoins the western boundary, and beyond that is McDonald's restaurant. A 10 storey mixed use development was approved under DA-347/2014

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on land to the immediate south at 2-8 Vaughan Street and 1 Kerrs Road, which is yet to be constructed. The following Figures depict the subject site and its locality.



Figure 1 – Locality Plan of subject site



Figure 2 – Aerial view of subject site



Figure 2 – Street view of the Joseph Street frontage of the subject site

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Figure 3A – Street view of the Vaughan Street frontage of the subject site

DESCRIPTION OF THE PROPOSED DEVELOPMENT

Council has received a development application for the construction of a shop top housing development. Specifically, the development application proposes:

- Demolition of existing dwellings and associated building structures on 32 Joseph Street and 1 Vaughan Street, Lidcombe.
- Construction of an 11 storey building with a maximum building height of 38.13m and a maximum Floor Space Ratio of 5.01:1.
- The building proposed includes 2 commercial tenancies, 97 car parking spaces, and 94 apartments (to be reduced to 93).
- Vehicular access from Joseph Street.

The development application has the following components:

Basement

- Basement Level 4 will comprise of 31 residential car spaces and 1 car wash bay along with lift/stair access and unallocated storage spaces.
- Basement Level 3 will comprise of 26 residential car spaces (5 nominated as accessible) along with lift/stair access and unallocated storage spaces.
- Basement Level 2 will comprise of 14 residential and 11 residential visitor car spaces (5 nominated as accessible) along with lift/stair access and unallocated storage spaces.
- Basement Level 1 will comprise of 8 residential visitor car spaces, 6 commercial spaces (2 nominated as accessible), 1 service bay, along with lift/stair access, plant rooms and unallocated storage spaces.

Ground Floor

- Ground floor level will comprise of 2 commercial tenancies with a combined GFA of 259.4sqm. Commercial tenancies are located on a raised platform from street level.
- Residential lobby with two lift cores.
- Commercial lift core from basement level.
- Bicycle storage and amenities.
- Plant rooms and kiosk substation.
- Separate commercial and residential garbage areas.
- Loading area (accessible from rear laneway)

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Floors One to Ten

- Floors one to ten comprise a mix of residential units and includes 94 apartments in the following configuration:
 - 36 X 1 bedroom units;
 - 56 X 2 bedroom units (to be reduced to 55 units resulting in total 93 units); and
 - 2 X 3 bedroom units.

Other important features include:

- Provision of communal open space on Level 10 podium comprising 190.3m² including a Terrace area and communal room.
- Provision of solar chimneys to better facilitate ventilation of internal apartments.

The proposed development has a total GFA of 8165.8m² and a FSR of 5.01:1, in accordance with the submitted documentation. As per the ALEP 2010 definition, the excess GFA results from inclusion of lobby adjoining the public amenities to the northern side that is equivalent to 19.3m².

APPLICANTS SUPPORTING STATEMENT

The application has been provided Statement of Environmental Effects dated June 2017 prepared by H-Square Global Project Services Pty Ltd in support of the application.

INTERNAL REFERRALS

Development Engineer

The development application was referred to Council's Development Engineer for comment. The development proposal is satisfactory and can be supported subject to deferred commencement conditions to address encroachment on the laneway/right of way, Council's land, and drainage easement, relocation of power pole, compliance of flood report, realignment of Council's pipe, downstream easement consent, and compliance with car parking spaces required for the development.

Environment and Health

The development application was referred to Council's Environment Health Officer for comment who has reviewed the relevant environmental reports and advised that, the development proposal is satisfactory and therefore can be supported subject to recommended conditions of consent to address the implementation of the Remedial Action Plan recommendations and provision of an updated Acoustic Assessment Report.

Waste Management

The development application was referred to Council's Waste Management Officer for comment who has advised that the development proposal provides for satisfactory residential and commercial waste management and therefore can be supported subject to recommended conditions of consent.

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Heritage

The development application was referred to Council's Heritage Officer for comment who has endorsed the recommendations of heritage impact statement provided with the application, which states that the development is unlikely to have any significant impact on heritage items in the vicinity.

EXTERNAL REFERRALS

RMS

The development application was referred to RMS on 7 August 2017. RMS responded on 13 September 2017. No objection has been raised subject to the imposition of conditions of consent dealing with traffic impact and provision of bicycle parking facilities.

Ausgrid

The development application was referred to Ausgrid on 31 August 2017. Ausgrid responded on 26 September 2017. No objection has been raised subject to the imposition of conditions of consent dealing with provision of electricity.

PLANNING COMMENTS

The provisions of any Environmental Planning Instruments (EP& A Act s4.15 (1)(a)(i))

State Environmental Planning Policies

The proposed development is affected by the following State Environmental Planning Policies:

(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) of \$22,456,088, which exceeds the \$20 million threshold. Based on clause 24(3) Transitional provisions-certain other existing development applications, the development application has not been determined when this Policy was amended, therefore the development does not cease to be a regionally significant development despite having CIV of less than \$30 million. While Council is responsible for the assessment of the DA, determination of the Application will be made by the Sydney Central City Planning Panel.

(b) **State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)**

Clause 7 of SEPP 55 requires Council to be satisfied that the site is suitable or can be made suitable to accommodate the proposed development. The matters listed within Clause 7 have been considered in the assessment of the development application as per the following table:

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Figure 3 – SEPP 55 Compliance Table

Matter for Consideration	Yes/No
Does the application involve re-development of the site or a change of land use?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
In the development going to be used for a sensitive land use (e.g.: residential, educational, recreational, childcare or hospital)?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does information available to you indicate that an activity listed below has ever been approved, or occurred at the site? acid/alkali plant and formulation, agricultural/horticultural activities, airports, asbestos production and disposal, chemicals manufacture and formulation, defence works, drum re-conditioning works, dry cleaning establishments, electrical manufacturing (transformers), electroplating and heat treatment premises, engine works, explosive industry, gas works, iron and steel works, landfill sites, metal treatment, mining and extractive industries, oil production and storage, paint formulation and manufacture, pesticide manufacture and formulation, power stations, railway yards, scrap yards, service stations, sheep and cattle dips, smelting and refining, tanning and associated trades, waste storage and treatment, wood preservation	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the site listed on Council's Contaminated Land database?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the site subject to EPA clean-up order or other EPA restrictions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has the site been the subject of known pollution incidents or illegal dumping?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the site adjoin any contaminated land/previously contaminated land?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has the appropriate level of investigation been carried out in respect of contamination matters for Council to be satisfied that the site is suitable to accommodate the proposed development or can be made suitable to accommodate the proposed development?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>A Remediation Action Plan prepared by Benviron group (ref: E1191-2) dated 30 October 2017 was prepared in accordance with the NSW EPA <i>Guidelines for Consultants Reporting on Contaminated Sites</i> and the <i>National Protection of the Environment (Assessment of Site Contamination) Measure (2013 Amendment)</i>.</p> <p>The Health Investigation Limits and Ecological Investigation Limits were determined by the author of the RAP. The author notes that a further assessment of ground water and vapour intrusion are required. Therefore an additional 9 borehole/groundwater monitoring wells will be installed. As a result of the additional assessment wells, the author notes that the RAP may require revision to address the additional investigation results.</p> <p>For this site the preferred remediation option is to excavate and dispose of contaminants off-site. The remediation goals are referred to in Section 7.0 of the report. Following the completion of the RAP a Validation Report will be required to be prepared.</p> <p>Council's Environmental Health Officer has reviewed and assessed the submitted RAP and has raised no objection to the content of the RAP or the preparation of the Validation Report subject to the recommendations being adopted, implemented and adhered to. Conditions of consent shall be applied to any approval for the subject site.</p>	

(c) **Statement Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development**

SEPP 65 applies to the development as the building is 3 storeys or more and contains more than 4 dwellings. A design verification statement addressing the design quality principles

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prescribed by SEPP 65 was prepared by Trevor de Waal, Reg. Number 4940 to support the application. The statement addresses each of the 9 principles and an assessment of this is provided below. Council's assessing officer's comments in relation to the submission are outlined below.

SEPP 65 sets 9 design quality principles. The development has adequately addressed the principles in the following way:

Figure 4 – SEPP 65 Design Quality Principles Table

ADG design quality principle	Response
1. Context and neighborhood character	<p>The area is in transition in which the current urban form is being replaced with residential and mixed use developments are likely to continue for the foreseeable future.</p> <p>Immediately to the south a 10 storey high mixed use development was approved at 2-8 Vaughan Street and 1 Kerrs Road, which is yet to be constructed.</p> <p>There are a number of developments occurring within the town centre of Lidcombe which is changing the dynamics of the town centre. This is an ongoing process that will continue for some time.</p> <p>The proposal continues the changes that are occurring within or close to the Lidcombe Town Centre.</p>
2. Built form and scale	<p>The development application is seeking consent for an 11 storey mixed use building over a 4 level basement car park.</p> <p>The building will present a strong façade to Joseph and Vaughan Streets.</p> <p>Similar floor plates are used for each residential floor. The ground level contains 2 commercial tenancies.</p> <p>Communal room and open space on Level 10 and with street level landscape strips integrated on the building design will assist in softening the built form.</p>
3. Density	<p>The site is zoned for mixed use development and is located in the Lidcombe Town Centre and the maximum allowable density on site is 5:1.</p> <p>The proposed development has an FSR of 5.01:1, which is a 0.23% exceedance to the permitted FSR that is equivalent of 19.3m² of GFA. Council's calculation identified minor exceedance, which has resulted from different interpretation of the GFA definition. The proposal is however supported subject to compliance with the maximum FSR for the site to allow an appropriate density for the subject site. One of the 2 bedroom apartments on Level 10 is recommended to be deleted to reduce the GFA. This will also ensure a compliant residential parking is provided as well an improved communal open space.</p>
4. Sustainability	<p>A BASIX Certificate and relevant reports have been submitted with the development application. The certificates require sustainable development features to be installed into the development.</p> <p>The proposal will incorporate features relating to ESD in the design and construction of the development inclusive of water efficient fixtures and energy saving devices.</p> <p>Solar chimney to ventilate the laundry room and bathroom is proposed to assist compliance with the majority of the proposed units having single aspect.</p>
5. Landscape	<p>Given that the subject site is located in a town centre, deep soil zones are not considered to be practical due to requirements for basement parking</p>

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	<p>and desired built forms requiring nil street setbacks to create a defined street edge.</p> <p>A total of 11.68% of the site area (190.3m²) is provided as communal open space (COS) on Level 10. Deletion of unit 10:01 will provide additional area required for COS.</p> <p>Additional street level landscape strips are integrated with the building design on the Joseph and Vaughan Street frontages.</p>
6. Amenity	<p>The proposal will deliver sufficient amenity to residents of the building. The proposal achieves compliance with the ADG in this regard which contains many amenity controls.</p> <p>The building design incorporates access and circulation, apartment layouts, floor area, ceiling height, private open space, common open space, energy efficiency rating, adaptability and diversity, safety, security and site facilities. The proposal is considered to generally comply with the ADG and ADCP 2010 which contains numerous amenity controls.</p> <p>Suitable access is provided to all parts of the building, through the efficient use of lift to access all levels.</p> <p>The development is considered to provide an appropriate level of amenity for future residents.</p>
7. Safety	<p>Suitable and secure access is provided to all parts of the building, through the efficient use of lift to access all levels.</p>
8. Housing diversity and social interaction	<p>The apartment mix is considered to be satisfactory. The specifics of the building are:-</p> <p>36 x 1 bedroom apartments. 56 x 2 bedroom apartments. 2 x 3 bedroom apartments.</p> <p>One of the 2 bedroom apartments on Level 10 is recommended to be deleted to reduce the GFA, and to improve solar access and area size provided for COS. This will result in the following apartment mix:</p> <p>36 x 1 bedroom apartments. 55 x 2 bedroom apartments. 2 x 3 bedroom apartments.</p> <p>The number of adaptable units proposed is considered satisfactory. Suitable condition is to be included to ensure the provision of associated accessible car spaces.</p>
9. Aesthetics	<p>The mixed use building has an attractive contemporary appearance and utilises building elements that provide individuality to the development without compromising the streetscape or detracting from the appearance of existing surrounding development.</p> <p>The building responds well in this regard with its provision of good aesthetics through the use of high quality materials, attention to detail in its internal spaces and how it addresses the street frontages.</p> <p>The building provides an appropriate response to the existing and likely future character of the locality.</p>

Integral to SEPP 65 is the Apartment Design Guide (ADG), which sets benchmarks for the appearance, acceptable impacts and residential amenity of the development.

Following a detailed assessment of the proposal against the provisions of SEPP 65 and the ADG, it is considered the proposal is generally compliant with the exception of the variations discussed below:

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- 3B - Orientation

ADG 3B-2 states that overshadowing to the neighbouring properties is minimised during mid-winter.

Due to the orientation of the site, overshadowing to the property on the south will be unavoidable. A 10 storey mixed used development was approved at 2-8 Vaughan Street and 1 Kerrs Road, which is yet to be constructed. The road way separating both developments is approximately 20m and it is considered to result in acceptable outcome. Refer to further discussion under ADCP.

- 3D - Communal Open Space (COS)

The application is seeking variation to the COS design criteria requirement for a minimum area of 25%, and that the developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).

Communal open spaces (190.3m²) are provided on the 10th floor level, which is the equivalent of 11.68% of the total site area. This includes communal room and open space on Level 10 for use by residents. The proposed south facing COS with clear glazed pergola would not achieve the minimum requirement, which is 50% direct sunlight to the principal usable part for a minimum 2 hours between 9am and 3pm during mid-winter. Between 1pm and 3pm, the usable part of COS will receive approximately 30% due to overshadowing from the adjoining unit 10:01 to the north. By deleting this unit, the communal open space on Level 10 performance will be improved for solar access in winter.

Furthermore, the size of COS is recommended to be increased accordingly resulting in a COS area of 270.3m² representing 16.6%.

- 3E - Deep Soil Zones

The application is seeking variation to the design criteria for minimum deep soil zones area of 7%.

The proposal provides 48.1m² (2.9%) of deep soil area within natural deep soil. This is considered to be acceptable due to the proposed basement car park and site constraints. Given the location of the site within the Lidcombe Town Centre, it is difficult to achieve the required deep soil area. Sufficient soil depth is proposed in these areas to support the variety of planters in the area including street trees, shrubs, ground cover and turf.

- 3F – Visual Privacy

The application is seeking variation to the building separation as follows.

Northern side: the proposed nil setback on Levels 1 - 9 along the northern boundary blank wall, with the exception of west facing POS 2.7m setback for the unit at the rear, is considered acceptable.

Eastern side: setbacks of 1.5m -1.9m, with the exception of the POS of units on the south eastern corner that is built to the boundaries. Building separation on Levels 8 and 9 to the adjoining site yet to be developed at 31 - 33 Joseph Street, does not comply for its share of 12m and has a shortfall of 0.5m. Minor non-compliance is considered acceptable as the subject site is located within a town centre.

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Southern side: setbacks of 1.5m -1.9m, with the exception of the POS of units on the south eastern corner that is built to the boundaries. Non-compliance is considered acceptable as the subject site is located within a town centre.

- 3J – Car Parking

In accordance with the ADG, the site is within 800m of a railway station and as such the RMS parking guidelines for Metro Sub-Regional Centres are to be utilised. The RMS guidelines nominate that 94 residential spaces (including visitors) are acceptable in this instance. However only 90 car spaces will be provided, which results in 4 car spaces shortfall. Under ADCP 2010, commercial component of 259.4m² is required to provide min. 5 and max. 7 spaces. The development proposes 6 commercial car spaces and 1 service bay. Total car parking proposed on site (commercial, service bay, residential and visitors) is 97 spaces.

As discussed elsewhere in this report, the development results in exceedance of FSR and non-compliances with COS area that are not supported. The assessment recommends the deletion of a 2 bedroom unit (10:01) to ensure FSR compliance and to improve performance of COS, which will result in 93 required residential car parking spaces, including visitors. Minimum commercial car spaces required will be 5. This equates to total required of 98 car spaces. However, only 97 car spaces (commercial, residential and visitors) will be provided on site. S7.11 contribution as part of the condition is to be applied for the shortfall of 1 commercial car space for the proposed development.

It is recommended that the following car spaces be allocated to the development.

- 74 residential car spaces (including 10 accessible car spaces);
- 19 residential visitor car spaces; and
- 4 commercial car spaces.

- 4A – Solar and Daylight Access

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 and in the Newcastle and Wollongong local government areas. The proposal will provide solar access to 76 units (81%) that achieve 2 hours between 8.30am and 3.30pm, which does not comply. Only 44 units (47%) will achieve 2 hours solar access between 9am and 3pm. A maximum of 19% (18 units) of apartments in the building will receive no direct sunlight between 9 am and 3 pm at mid-winter. Due to the site orientation, non-compliance with the design criteria is considered acceptable in this instance. Compliance is achieved with an extended time to receive the minimum 2 hours of direct sunlight at mid-winter. The proposed design satisfies the Solar and Daylight Access objective in optimising the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.

- 4B – Natural Ventilation

All habitable rooms are adequately ventilated with design solution proposed, such as solar chimney, to assist natural ventilation of internal building areas or rooms for the single aspect apartments, such as bathrooms and laundries. The proposal will result in 57 units (61%) naturally ventilated with solar chimney, and 33 units (35%) naturally ventilated without solar chimney. Compliance is achieved with design solution that is endorsed by the ADG 4B-2.

- 4C-1 – Ceiling Heights

The application is seeking variation to the ceiling height of ground floor commercial level by 0.3m, which is considered acceptable due to flood affectation on site.

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A detailed SEPP65 and Apartment Design Guide compliance table is presented at **Attachment 5**.

(d) **Infrastructure State Environmental Planning Policy (Infrastructure) 2007**

The provisions of the Infrastructure SEPP (ISEPP) 2007 have been considered in the assessment of the development application.

Clause 45 - Development likely to affect an electricity transmission or distribution network

The subject development proposes increased residential accommodation and commercial tenancies and has proposed a new electrical substation as part of the subject application. This is considered to appropriately address Clause 45 of the ISEPP. The proposed substation is appropriately enclosed from the laneway at the rear and is considered to be an appropriate urban design solution to screen the substation at the rear.

Clause 85 – 87 of the ISEPP are not applicable to the subject site.

Clause 101,102 and 104 of the ISEPP are not applicable to the subject site

(e) **State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

BASIX certificate 795522M dated 27 June 2017 and prepared by Zoran Cvetkovski was submitted with the application. The proposal achieves the target scores for energy, water and thermal comfort and relevant commitments are shown on the architectural plans. This certificate relies on pre July 2017 targets which do not apply to the subject proposal. A condition is included in the draft notice of determination to require the provision of a revised BASIX certificate prior to the issue of operative consent.

Regional Environmental Plans

The proposed development is affected by the following Regional Environmental Plan:

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The site is located within the area within the Sydney Harbour Catchment and SREP (Sydney Harbour Catchment) 2005 is applicable to the development application. The development application raises no issues as consistency with the requirements and objectives of the *Auburn Development Control Plan 2010*.

Local Environmental Plans

Auburn Local Environmental Plan (ALEP) 2010

The provision of the ALEP 2010 is applicable to the development proposal. The application seeks Council's approval to construct a new 11 storey mixed use development over 4 levels of basement car parking and includes ancillary landscaping, drainage and associated site works. The site is located within the Lidcombe Town Centre. Whilst a more comprehensive assessment of the ALEP 2010 compliance table is attached to the end of this report in **Attachment 6**, a summary of major controls is discussed as below:

Figure 5 – Auburn LEP 2010 Compliance Table

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DEVELOPMENT STANDARD	COMPLIANCE	DISCUSSION
4.1 Minimum subdivision lot size	N/A	
4.3 Height of Buildings Maximum 36m	Yes	The development proposes a height of 38.13m (RL53.10). Clause 4.6 variation request submitted.
4.4 Floor Space Ratio 5.0:1 (Total)	No	The development results in a total FSR of 5.01:1, which is equivalent to GFA of 19.3m ² . Clause 4.6 variation request that reflects amended proposal has not been submitted. FSR exceedance is not supported. Unit 10:01 is recommended for deletion to reduce GFA to comply.
4.6 Exceptions to development standards	Yes	Height exceedance. Refer to discussion below.
5.1A Land Reservation Acquisition	N/A	
5.10 Heritage Conservation	N/A	The site is not containing any heritage items. However, it is located within the vicinity of 2 heritage items.
6.1 Acid Sulphate Soils	Yes	Class 5, subject to condition.

Clause 4.6 – Variation to Building Height

The maximum building height permitted on the site is 36m. The proposed building has an overall height of 38.13m (RL53.10) to the top of solar chimney representing variation of 5.92%.

Clause 4.6 allows the consent authority to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. The consent authority may grant the exception as the Secretary's concurrence can be assumed where clause 4.6 is adopted as per the Department of Planning Circular PS 18-003, dated 21 February 2018.

The applicant has submitted a written request to vary the development standard for building height. Based on various case laws established by the Land and Environment Court of NSW such as *Four2five P/L v Ashfield Council* [2015] NSWLEC 9, *Randwick City Council v Micaul Holdings P/L* [2016] NSW LEC7 and *Zhang and anor v Council of the City of Ryde* [2016] NSWLEC 1179, a 3 part assessment framework for a variation request proposed under clause 4.6 has been considered and an assessment of the proposed variance, following the 3 part test is discussed in detail below. The three (3) preconditions which must be satisfied before the application can proceed are as follows:

1. *Is the proposed development consistent with the objectives of the zone?*

Applicant's justification:

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TABLE 4: RESPONSE TO OBJECTIVES OF ZONE

Objectives of B4 Zone	Response/Comment
To provide a mixture of compatible land uses.	The proposed minor variation to height standard will not conflict with this objective. The proposed minor height variation does not result in any impact to the planned density for the site. The envisaged development will provide a mixture of compatible land uses.
To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.	The proposed variation to height standard will not conflict with this objective. The envisaged development will provide a mixture of compatible land uses, shop-top housing and business premises within proximity to public transport and recreational pursuits.
To encourage high density residential development.	The proposed variation to the height standard will not conflict with this objective as, the proposed development is a mix-use shop-top housing development and complies with the applicable maximum FSR of 5:1.
To encourage appropriate businesses that contribute to economic growth.	The envisaged development will provide a mixture of compatible land uses, shop-top housing and business premises which will contribute to economic vibrancy and growth. Therefore, the proposed minor variation in height is not in conflict with the objectives
To achieve an accessible, attractive and safe public domain.	The proposed development and minor variation to the height standard reinforces this objective by providing an improved streetscape, views of the public domain, resulting in better passive surveillance and public domain.

Planner's comments:

Whilst residential flat building is a permitted land use, the locality is undergoing a transition particularly to support the increasing demand of housing within close proximity of public transport hub and major commercial centre. The proposed development is considered to be consistent with the objectives of the B4 Mixed Use zone.

2. Is the proposed development consistent with the objectives of the development standard which is not met?

Applicant's justification:

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The objectives of the standard are set out in Section 7 of this report. A response to the objectives are provided below:

- (a) to establish a maximum height of buildings to enable appropriate development density to be achieved, and
- (b) to ensure that the height of buildings is compatible with the character of the locality."

No more density is proposed for site than envisioned under the LEP, noting that compliance with the maximum FSR is achieved. The proposed development purely seeks to achieve a better planning and architectural, amenity and urban design outcome.

The objectives are achieved in a different way than envisioned under LEP, with some minor variations to building height across the development site which are adjusted as follows:

- Lift Overrun
 - Providing the Lift overrun within the centre of the building envelope, ensuring that it is well away from the edges of the building which results in not being visible from the surrounding streets and not cause any overshadowing impacts.
 - If the lift overrun were to be reduced in height to comply with the height control, it could no longer serve the upper floor of the building which would have NCC and DDA impacts with regards to loss of disabled access to these apartments.
- Solar Chimney
 - The proposed Solar Chimneys do not cause any overshadowing impacts as they are located away from the edges of the building, which is important to ensure a consistent visual perspective from the streetscape.
- Roof Hob
 - The Hob has been setback from all building edges and the Hob does not cause any significant visual impacts or any overshadowing impacts.
 - The Hob is a necessary feature of the flat roof to collect and contain stormwater and to maximize the amount of stormwater that can be recycled for landscape irrigation.

The minor variations to the height control as detailed earlier do not result in any additional overshadowing impacts or loss of views from surrounding sites. There is no adverse visual impact on the proposed building design and the proposed development does not adversely impact the streetscape or skyline.

Planner's comments:

The objectives of the building height standard are to enable appropriate development density to be achieved and to ensure that the height of the building is compatible with the character of the locality as outlined above.

The height non-compliance assists with the provision of improved internal amenity of the units and access to Level 10 and communal roof top recreation area that would receive adequate direct sunlight to its principal area. The height breach has no appreciable impact on the scale of the development.

3. *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? And;*

Applicant's justification:

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The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

The zoning of the land is appropriate for the site.

We note that Council, advised that we should address a "Wehbe test" additional to "compliance with the objectives of the standard" to demonstrate that compliance with the standard is unreasonable or unnecessary in the circumstances (refer to Four2Five).

Consistent with subsequent case law (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC90), in addition to demonstration that Wehbe way "1" is satisfied, it is not necessary to find other Wehbe "ways" to demonstrate "unreasonable and unnecessary" but rather, to find other additional reasons rather than simply relying on Wehbe way "1".

Strict compliance with the standard is considered to be unreasonable and unnecessary in the circumstances of this case for the following additional reasons:

- No Additional Density
 - The minor additional height above the height standard to select portions of the building within the site will not result in any additional GFA/density. Therefore, the height variations are not attributed to any additional density on the site but rather a direct response to the specific site attributes and to achieve a better planning outcome.
- Better Residential Amenity
 - Based on the above, we contend that the proposed variations in height, results in a better outcome for residential amenity in terms of solar access and views/outlook.

For the reasons as set out above, compliance with the standard can be demonstrated to be unreasonable and unnecessary in the circumstances of this case.

Are there sufficient environmental planning grounds to justify contravening the standard and therefore is the applicant's written justification well founded?

Applicant's justification:

The particular circumstances of this case distinguishes it from others for the following key reasons:

- As addressed earlier in this report and in the documentation prepared by Kann Finch for the DA, the massing achieves a better streetscape and amenity outcome for the public domain, as well as a better residential amenity outcome.
- The SEE that has been prepared for DA provides a holistic environmental planning assessment of the proposed development and demonstrates that subject to adopting a range of reasonable mitigation measures, there are sufficient environmental planning grounds to support the development. In particular, the SEE demonstrates that the contravention of the height standard enables the planned density for the site under the LEP to be achieved in a building and apartments therein with higher levels of amenity achieved than a strictly height compliant development.

The above points are environmental planning grounds that warrant the exceedance, which are not "generic", but rather, specific to the site and circumstances of the development.

Planner's comments:

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Council Officers are satisfied that the proposed variation has been appropriately justified and can be supported in this instance. It should be noted that the supported height breach is limited to overall building height of RL53.10, or height breach by 2.13m (5.92%), as discussed above, will enable the provision of lift access to the top floor and natural ventilation for the single aspect apartments on all levels of the proposed shop top housing from solar chimney. The structures protruding at the roof level will be set back from the roof edge to ensure that they will not be visible from the adjacent streets and properties. The proposal would not compromise the land use intensity and built form transitioning effect sought by the local environmental planning framework and not result in any unreasonable visual and overshadowing impacts. In this instance, given the reasons justified by the applicant's response to clause 4.6, strict compliance with the building height provision is considered to be unreasonable or unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the standard.

Conclusion:

The applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6 (3), and the proposed development as stated above will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. It is the view of Council Officers that justification provided is satisfactory and having considered the application on its merit, the exception to the maximum building height development standard is considered acceptable in this instance.

The provisions of any draft Environmental Planning Instruments (EP& A Act s4.15 (1)(a)(ii))

The proposed development is not affected by any relevant Draft Environmental Planning Instruments.

The provisions of any Development Control Plans (EP& A Act s4.15 (1)(a)(iii))

Auburn Development Control Plan (ADCP) 2010

The relevant objectives and requirements of the ADCP 2010 have been considered in the assessment of the development application. In general, the proposed development is considered to perform satisfactorily having regard to the ADCP 2010.

The table provided at the end of this report under **Attachment 6** is a comprehensive summary of compliance to demonstrate the overall design of the development proposal's consistency with the relevant planning controls that are applicable to the site with respect to the ADCP 2010. However, a summary of the proposal against relevant sections of the DCP and specifically non-compliances are listed below:

Figure 6 – Auburn DCP 2010 Compliance Table

Local Centres

Requirement	Comments
2.1 Number of storeys D1 The minimum finished floor level (FFL) to finished ceiling level (FCL) shall be as follows: • 3300mm for all commercial/retail levels;	Non-compliance with ground floor ceiling height of 3m for commercial component is considered acceptable due to flooding affectation on site requiring an increased ground floor level.
3.2 Setbacks D1 New development or additions to existing development shall adopt setbacks as	The subject site is located within the B4 Mixed Use zone and built to boundary setbacks are allowed for sites located within the

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<p>shown in Figure 7 (refer to section 15.2 Setbacks for Lidcombe Town Centre. External walls – 1500mm for two storeys.</p>	<p>Lidcombe Town Centre including activation of the streets. Whilst the development is not built to the boundary, as discussed earlier in the report, the non-compliances are considered acceptable as the streets are activated by the commercial uses on the ground floor.</p> <p>Proposed nil setbacks to the northern boundary is appropriate and complies with Lidcombe Town Centre requirements. Except for units POS on the prominent corner is built to the boundary, the external walls of the overall development will maintain 1.5m setbacks from the front boundaries.</p> <p>Further, the proposed front boundary setbacks on the Joseph Street and Vaughan Street elevations is considered acceptable because it encloses the streetscape and greatly enhances the visual outlook of Joseph and Vaughan Streets and provides a built form which is entirely consistent with the desired future character for the Lidcombe Town Centre.</p>
<p>8.6 Solar amenity D1 Shadow diagrams shall accompany development applications for buildings which demonstrate that the proposal will not reduce sunlight to less than 3 hours between 9.00 am and 3.00 pm on 21 June for:</p> <ul style="list-style-type: none"> • public places or open space; • 50% of private open space areas; • 40% of school playground areas; or • windows of adjoining residences. 	<p>The adjoining property to the south, being 2 – 8 Vaughan Street and 1 Kerrs Road which was approved for a 10 storey mixed use development with residential units above commercial tenancies that is not yet constructed, is separated by a 20m road encasement. The residential units incorporate north facing balconies, which will be cast in shadow. However, at least 2 hours of sunlight access will be maintained as the result of the block pattern and the proposed 11 storey building orientation.</p> <p>Overshadowing of the neighbouring development is unavoidable in this instance.</p> <p>The development has been designed to incorporate articulated spaces on the western and southern elevations to maximise solar penetration to the adjoining developments. This will be more evident when the remaining sites within the area are developed. It should also be noted that the adjoining development at 2 – 8 Vaughan Street and 1 Kerrs Road has been approved as a 9 storey RFB with 2 separate towers with 10m building separation and has been setback a further 4m from the northern boundary for Level 2 and above. The design will assist the provision of solar access to the north facing POS of the entire Building A between 11am to 3pm, part of Building B between 1pm to 2pm, and entire Building B from 3pm onwards.</p> <p>As the area is undergoing transition to higher density mixed use development, the impact upon the adjoining premises is considered unavoidable given the applicable zoning, heights and associated floor space ratios.</p>

Residential Flat Buildings

Requirement	Comments
<p>2.2 Site coverage Development controls D1 The built upon area shall not exceed 50% of the total site area.</p>	<p>The built upon area exceeds 50% of the total site area. The building occupies 64.5% of the site on the ground floor level. It is not feasible to achieve compliance with the stated provision due to the zoning, location of the site within the Lidcombe Town Centre, and the applicable planning controls that allows a high floor space ratio. It is considered appropriate to permit a variation to the stated provision in this instance.</p>
<p>2.4 Building depth Development controls</p>	<p>The “L” shaped development proposes a maximum depth of 38.9m (from north to south). As discussed under compliance</p>

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<p>D1 The maximum depth of a residential flat building shall be 24m (inclusive of balconies and building articulation but excluding architectural features).</p>	<p>table for SEPP 65, the development is appropriately articulated to respond to the shape of the allotment and is provided with solar chimney to comply with natural ventilation requirement. Therefore, a technical variation is supported in this regard as it is not considered to adversely affect the residential amenity of the affected units.</p>
<p>3.1 Deep soil zone Development controls D1 A minimum of 30% of the site area shall be a deep soil zone.</p>	<p>The development provides 48.1sqm (2.9%) of the site as deep soil zone, which is considered acceptable in this instance as the development site is located within the Lidcombe Town Centre. The area is a relatively dense urban area which restricts the provision of deep soil zones. Suitable stormwater management measures are proposed and soft landscaping accommodating shrubs and small trees form an integral part of the ground floor level, Level 1, and Level 10 communal open space area.</p>
<p>Objectives 4.1 Basements Performance criteria P1 Basements allow for areas of deep soil planting.</p>	<p>The basement, drainage culvert pipe and existing laneway/right of way at the rear occupy most area of the site which prohibits the provision of any deep soil zones. The design is considered acceptable in this instance as the development site is located within the Lidcombe Town Centre. The area is a relatively dense urban area which restricts the provision of deep soil zone. Suitable stormwater management measures are proposed and soft landscaping and planter boxes accommodating shrubs and small trees form an integral part of landscaping on the ground floor level, Level 1 and Level 10 communal open space area.</p>
<p>6.1 Solar amenity Development controls D1 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. D2 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. D3 New buildings and additions shall be designed to maximise direct sunlight to north-facing living areas and all private open space areas. D4 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. D5 Where the proposed residential flat building is on an adjacent northern boundary or located within an area undergoing transition, compliance with D1, D2, D3 and D4 development controls may not be achievable.</p>	<p>The adjoining property to the south separated by a 20m road encasement, being 2 – 8 Vaughan Street and 1 Kerrs Road, has residential units above commercial tenancies. The residential units incorporate north facing POS which will be cast in shadow. However, at least 2 hours of sunlight access will be maintained as the result of the block pattern and the proposed 11 storey building orientation.</p> <p>Overshadowing of the neighbouring development is unavoidable in this instance.</p> <p>The development has been designed to incorporate articulated spaces on the western and southern elevations to maximise solar penetration to the adjoining developments. This will be more evident when the remaining sites within the area are developed. It should also be noted that the adjoining development at 2 – 8 Vaughan Street and 1 Kerrs Road has been approved as a 9 storey RFB with 2 separate towers with 10m building separation and has been setback a further 4m from the northern boundary for Level 2 and above. The design will assist the provision of solar access to the north facing POS of the entire Building A between 11am to 3pm, part of Building B between 1pm to 2pm, and entire Building B from 3pm onwards.</p> <p>As the area is undergoing transition to higher density mixed use development, the impact upon the adjoining premises is considered unavoidable given the applicable zoning, heights and associated floor space ratios.</p>

4.15(1)(a)(iia) - any planning agreement that has been entered into under part 7.4, or any draft planning agreement that a developer has offered to enter into under part 7.4, and

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There is no draft planning agreement associated with the subject Development Application.

The provisions of the Regulations (EP& A Act s4.15 (1)(a)(iv))

The proposed development raises no concerns as to the relevant matters arising from the EP&A Regulations 2000.

The Likely Environmental, Social or Economic Impacts (EP& A Act s4.15 (1)(b))

It is considered that the proposed development will have no significant adverse environmental, social or economic impacts in the locality.

The proposed development will contribute to the livelihood of the Lidcombe town centre.

The suitability of the site for the development (EP&A Act s4.15 (1)(c))

The subject site and locality is affected by culvert pipe, flooding and right of way, which are likely to have a significant adverse impact on the proposed development. Accordingly, the site can be said to be suitable to accommodate the proposal, subject to suitable mitigation measures. The proposed development has been assessed in regard to its environmental consequences and having regard to this assessment, it is considered that the development is suitable in the context of the site and surrounding locality.

Submissions made in accordance with the Act or Regulation (EP&A Act s4.15 (1)(d))

Advertised (newspaper) ☒ Mail ☒ Sign ☒ Not Required ☐

In accordance with Council's Notification requirements contained within the Holroyd DCP 2013, the proposal was publicly exhibited for a period of 14 days between 18 July 2017 to 1 August 2017. No submissions were received as a result of the notification.

The public interest (EP& A Act s4.15(1)(e))

The public interest is served by permitting the orderly and economic development of land, in a manner that is sensitive to the surrounding environment and has regard to the reasonable amenity expectations of surrounding land users. In view of the foregoing analysis it is considered that the development, if carried out subject to the conditions set out in the recommendation below, will have no significant adverse impacts on the public interest.

SECTION 7.11 (FORMERLY S94) CONTRIBUTION TOWARDS PROVISION OR IMPROVEMENT OF AMENITIES OR SERVICES

The development would require the payment of contributions in accordance with Council Section 7.11 Contributions Plans. It is recommended that conditions be imposed on any consent requiring the payment of these contributions prior to the issue of any construction certificate for the development. The Section 7.11 Contributions will be based upon the following criteria:-

Residential: Total 93 units and credit for existing 6 lots

- 36 x 1 bedroom apartments
- 55 x 2 bedroom apartments
- 2 x 3 bedroom apartments

Commercial

Stormwater Works

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Shortfall of one (1) commercial car space

As from 31 October 2018, the contribution amount (residential plus commercial) is **\$574,833.95**. The specified amounts are subjected to the CPI.

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

The NSW Government introduced The Local Government and Planning Legislation Amendment (Political Donations) Act 2008 (NSW). This disclosure requirement is for all members of the public relating to political donations and gifts. The law introduces disclosure requirements for individuals or entities with a relevant financial interest as part of the lodgement of various types of development proposals and requests to initiate environmental planning instruments or development control plans. The applicant and notification process did not result in any disclosure of Political Donations and Gifts.

CONCLUSION

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and this report has been prepared for the information of the SCCPP.

The proposed development is appropriately located within the B4 – Mixed Use zone under the relevant provisions of *Auburn Local Environmental Plan 2010*. The proposal is generally consistent with all statutory and non-statutory controls applying to the development. Minor non-compliances with Council's controls have been discussed in the body of this report. The development is considered to perform adequately in terms of its relationship to its surrounding built and natural environment, particularly having regard to impacts on adjoining properties.

For these reasons, it is considered that the proposal is satisfactory having regard to the matters of consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, and the development is recommended to the Joint Regional Planning Panel for deferred commencement approval.

RECOMMENDATION

Development Application No. 285/2017 for the demolition of existing buildings and construction of a mixed-use development containing 2 ground floor commercial tenancies, 93 residential units, 4 basement level parking, reconfiguration/relocation of stormwater culvert and easement including strata subdivision on land at 32 Joseph Street and 1 Vaughan Street, Lidcombe be approved via deferred commencement.

ATTACHMENTS

Attachment 1 – Notice of Determination

Attachment 2 – Architectural Plans

Attachment 3 – Clause 4.6 Variation request

Attachment 4 – Remediation Action Plan

Attachment 5 – SEPP 65 and ADG Assessment Table

Attachment 6 – ALEP 2010 and ADCP 2010 Assessment Table

Attachment 7 – FSR Calculation Sheet