

SYDNEY CENTRAL CITY PLANNING PANEL

TO: Sydney Central City Planning Panel – 15 November 2018

REPORT: SCCPP Report

SUBJECT: 244-252 Pitt Street, Merrylands

FILE No: DA 2017/558 (Panel Reference No. 2018SWC014 DA)

Application lodged	21 December 2017
Applicant	iDraft Group NSW
Owner	Hillview Merrylands Pty Ltd and Kayview Pty Ltd
Application No.	DA 2017/558
Description of Land	Lot Y DP 416975, Lot 901 DP 592065, Lot 121 DP531896 and Lot 2 DP 544800 Nos. 244 – 252 Pitt Street, Merrylands.
Proposed Development	Demolition of existing structures, consolidation of 4 lots into 1 lot and construction of a 18 storey mixed use development over 5 levels of basement parking accommodating 3 levels of commercial floor, 161 residential units above and 315 parking spaces
Site Area	2,369 m ²
Zoning	B4 - Mixed Use under the Holroyd LEP 2013
Disclosure of political donations and gifts	Nil disclosure
Heritage	No
Issues	Exceedance of maximum building height, compliance with the ADG controls, splay corner, flooding, matters raised in submissions

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SUMMARY

1. *Development Application No. 2017/558 was received on 21 December 2017 for the demolition of existing structures, consolidation of 5 lots into 1 lot and construction of a 18 storey mixed use development over 5 levels of basement parking accommodating 3 levels of commercial floor, 161 residential units above and 317 parking spaces at 244 – 252 Pitt Street, Merrylands.*
2. *The application was publicly notified to occupants and owners of the adjoining properties for a period of 21 days between 29 January 2018 and 21 February 2018.*
3. *Development Application No. 2017/558, as amended, was received on 24 July 2018 for the demolition of existing structures, consolidation of 4 lots into 1 lot and construction of a 18 storey mixed use development over 5 levels of basement parking accommodating 3 levels of commercial floor, 161 residential units above and 315 parking spaces.*
4. *The notable variations are as follows:*

Control	Required	Provided	% variation
Deep soil areas (ADG)	166m ²	Nil	100%
Building height (LEP)	53m	61m	15%
Splay corner (DCP)	4m x 4m (unlimited above and below ground)	4m x 4m (only on basement L1 and ground floor level)	N/A

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 \$30 million.

REPORT

SUBJECT SITE AND SURROUNDING AREA

The consolidated site has an area of 2,369m², with frontage to Pitt Street to the west and Terminal Place which curves around the north and east of the site. The site has a width of approximately 37m (east to west) and a length of approximately 66m (north to south). The site is illustrated in Figure 1 below:

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Figure 1 – Locality Plan of subject site



Figure 2 – Aerial view of subject site



The site is located on the eastern fringe of the Merrylands business district and is diagonally opposite the Stocklands shopping centre. The site is immediately adjacent to the Merrylands Railway Station and bus interchange.

Land adjoining to the south is occupied by a single storey commercial building and arcade. Land to the north is a former furniture store and has approval for the construction of a mixed use development containing 3 separate towers ranging in height between 4 and 20 storeys comprising 365 residential units over 4 levels of basement parking.

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The subject site is currently occupied by a series of single and double storey commercial premises and associated car parking areas accessed off Terminal Place. The existing premises are occupied by a range of commercial and retail activities, a restaurant and a specialist medical centre.

The site is generally level, with approximately 500mm of fall from the site's Pitt Street frontage to Terminal Place.

Vegetation of the site is limited to 4 eucalypt trees on the north eastern corner of the land, and some perimeter landscape planting in the car park areas. All vegetation is proposed to be removed as part of the proposed development.

An existing padmount substation is situated at the northern end of the site fronting Terminal Place and is protected by an easement. The substation will be incorporated into the design of the building behind a perforated mesh screen.

Figure 3 – Street view of the Pitt Street frontage of the subject site



Figure 3A – Street view of the Terminal Place frontage of the subject site



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DESCRIPTION OF THE PROPOSED DEVELOPMENT

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

- The demolition of all structures on the subject site with the exception of the padmount substation;
- The consolidation of the lots into one;
- The construction of a shop top housing development comprising:
 - A podium of 3 levels of commercial premises;
 - A public arcade linking McFarlane Street and Pitt Street to Terminal Place and the Merrylands transport interchange;
 - 2 x 15 storey residential towers linked by an access gallery at each level;
 - 161 apartments; and
 - Basement car parking for 315 vehicles and 100 bicycles.

The proposed development has a total GFA of 17,472.42m² and an FSR of 7.38:1.

The arcade will function as an overland flow path in times of flooding as the site is flood affected. The arcade would likely come into use as a flow path during a 1 in 20 year or greater storm event and has been designed with flood resistant materials and protection to plant and equipment.

Council is currently preparing designs for flood mitigation works to be carried out in the catchment. Once carried out, those works should resolve or alleviate flood impacts on the building.

The commercial component

The commercial component of the development comprises 7 retail tenancies at ground floor and 24 commercial premises distributed over Levels 1 & 2. Retail tenancies on the ground floor range in size from 84m² to 187m² and have frontages to either Pitt Street or Terminal Place, with 3 tenancies provided with additional frontage to the public arcade.

The first and second floor commercial tenancies range in size from 84m² to 167m².

The retail and commercial podium has a floor area of 3,762.15m² which provides an FSR of 1.59:1.

105 car parking spaces (including 7 accessible parking spaces) are allocated to the retail and commercial tenancies, as well as commercial visitors on Basement Levels 1 and 2.

A commercial waste room is provided at Basement Level 1.

The residential component

The development proposes 161 apartments with the following mix.

Bedrooms	Number	Percentage
1	30	19%
2	111	69%
3	19	12%
TOTAL	161	100%

A total residential floor area of 13,710.27m² is provided which results in an FSR of 5.79:1.

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Communal open space is provided on top of the podium level as well as the roof.

The development provides 177 car spaces for residents and 33 spaces for resident visitors, including 30 accessible parking spaces.

A residential waste collection area is provided in Basement Level 1, including the storage of bulky waste and recyclable items.

HISTORY

Date	Action
4/6/2014, 10/2/2016 & 12/4/2017	Pre Development Application Advisory meetings held with Council.
21/12/2017	The Development Application was lodged.
18/1/2018	The Development Application was referred to Council's DA Review team (DART) and internal and external departments for review.
31/1/2018 to 21/2/2018	<p>Application placed on public notification for 21 days.</p> <p>The notification generated 1 submission in respect of the proposal which raised the following concerns:</p> <ul style="list-style-type: none"> • Cumulative impact of similar scale developments in the locality. • Impacts on traffic and parking in the Merrylands town centre. • Overdevelopment from the increased heights and floor space ratios. • Unsatisfactory traffic report conclusion. • Inadequate provision has been made for on-site parking. Overflow parking will impact on the railway station car park and Stocklands, as well as local streets. • The scale and built form of the development, along with the building separation, will impact on the amenity and well-being of the residents, including solar access, ventilation, acoustic and visual privacy. • Inadequate measures to protect the apartments from noise from the railway line. • The unit mix does not reflect the demographics.
28/5/2018	<p>Application was deferred for the following reasons:</p> <ul style="list-style-type: none"> • FSR; • Building height; • Wind report; • ADG compliance; • Urban design; • Traffic and parking; • Waste services; and • Flooding.
24/7/2018	Amended plans and additional information were submitted for assessment, including reduction of car parking spaces to 315 and provision of splay corner on the basement L1 and ground floor levels. Public notification for amended plans is not required, as they are to address matters previously raised by public submission and preliminary assessment.
9/8/2018 –	JRPP briefing was carried out on 12 July 2018. Additional information was

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28/8/2018	received by Council on 24 July 2018.
11/9/2018	Application referred to SCCPP for determination following completion of assessment.

APPLICANTS SUPPORTING STATEMENT

The application has been supported by the following reports:

DOCUMENT	PREPARED BY	DATED
Plans		
Architectural Plans	iDraft Architects	28 August 2018
Draft Plan of Consolidation	Wayne Davis Surveyor	19 December 2017
Landscape Concept Plan	Vision Dynamics	18 July 2018
Evacuation Plans	iDraft Architects	28 August 2018
Reports		
Access Verification Statement	Bio-Building Design	18 December 2017
BASIX Certificate	Taylor Smith Consulting	16 December 2017
BCA Assessment	Building Code Professionals	28 November 2017
Capital Investment Value Report	Construction Consultants	14 December 2017
Flood Study Report	Multipro Consultants	November 2017
Hazardous Materials Assessment	Trace Environmental	9 October 2017
Acoustic Assessment	Acoustic Logic	18 December 2017
Photographic Record	iDraft Group Pty Ltd	Undated
Preliminary Site Investigation	Trace Environmental	26 September 2017
SEPP 65 Design Verification	Olsson and Associates Architects	December 2017
Solar Access and Cross Ventilation Study	Steve King Consultant	22 November 2017
Statement of Environmental Effects	DMPS	December 2017
Traffic and Parking Assessment	Multipro Consultants	July 2018
Site Waste Minimisation and Management Plan	Multipro Consultants	11 July 2018
Pedestrian Wind Environment Study	Windtech	22 August 2018
Revised Clause 4.6 Variation	DMPS	23 July 2018
Stormwater Management Plan	Multipro Consultants	8 August 2018

CONTACT WITH RELEVANT PARTIES

The assessment of the Development Application and preparation of this report has been undertaken by an external planning consultant in conjunction with Council's Development Assessment officer.

A site inspection was carried out by the consulting planner on 13 March 2018.

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INTERNAL REFERRALS

Development Engineer

The development application was referred to Council's Development Engineer for comment who has advised that the development proposal is satisfactory and therefore can be supported subject to recommended conditions of consent including deferred commencement conditions dealing with the following matters:

- Relocation of existing sewer line;
- Amended car parking design;
- Amended plans to demonstrate the required 4m x 4m splay to the corner of Pitt Street and Terminal Place;
- The treatment of the arcade so that it may function as an overland flow path and withstand the impacts of flooding; and
- The provision of on-site detention of stormwater under the podium level.

Building Surveyor

The development application was referred to Council's Building Surveyor for comment who has advised that the development proposal is satisfactory and therefore can be supported subject to recommended conditions of consent.

Environment and Health

The development application was referred to Council's Environment and Health Officer for comment who has reviewed the relevant environmental reports, the development proposal is satisfactory and therefore can be supported subject to recommended conditions of consent to address:

- Remediation and validation works shall be carried out in accordance with the approved Remediation Action Plan prepared by EI Australia (Report E24021.E06_Rev0) dated 23 October 2018. After completion of the remedial works, a copy of the Validation Report shall be submitted to Council prior to the commencement of construction works. The Occupation Certificate shall not be issued until Council reviews and approves the final Validation Report;
- Acoustic compliance;
- Erosion and sedimentation control; and
- The fitout of food premises.

Urban Design

The development application was referred to Council's Urban Design Consultant for comment who has advised that the development proposal is satisfactory with regard to design and compliance with the ADG requirements and therefore can be supported subject to recommended conditions of consent. CPTED principles have been satisfied in the design of the building, subject to the conditions imposed by the NSW Police. Refer to external referrals section below.

Waste Management

The development application was referred to Council's Waste Management Officer for comment who has advised that the development proposal is satisfactory with the provision of sufficient

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access for a small rigid waste collection vehicle by Council and therefore can be supported subject to recommended conditions of consent.

Traffic Engineer

The development application was referred to Council's Traffic Engineer for comment who has advised that the development proposal is satisfactory subject to the recommended conditions of consent, including deferred commencement conditions stated in the Development Engineer referral above, signposting and linemarking of car parking spaces and implementation of appropriate traffic management within the car park.

EXTERNAL REFERRALS

Endeavour Energy

The development application was referred to Transgrid on 29 January 2018.

Endeavour Energy responded on behalf of Transgrid on 6 March 2018. No objection has been raised by Endeavour Energy subject to the imposition of conditions of consent dealing with:

- Connection of the development to the network and ensuring adequate capacity of supply;
- Management of the easement protecting the padmount substation; and
- The carrying out of demolition works and protecting existing infrastructure.

Roads and Maritime Services (RMS)

The development application was referred to RMS on 29 January 2018. The site however is not considered as a traffic generating development given that Pitt Street is not a classified road.

No response has been received to date and it is therefore assumed that the RMS do not raise any objection to the proposed development.

Police

The development application was referred to the Crime Prevention Officer of the Cumberland Area Command on 29 January 2018.

The Police responded on 27 August 2018 and do not raise any objection to the proposed development, subject to imposition of conditions about:

- Location of CCTV and lightings;
- Signage provision for territorial reinforcement;
- Establishment of maintenance policy (graffiti management plan); and
- Access control (letter box, car park, etc).

Sydney Trains

Sydney Trains reviewed the proposed development under Clause 85 of State Environmental Planning Policy (Infrastructure) 2007 and raised no objection to the development subject on a letter dated 9 May 2018 to the imposition of conditions about:

- Acoustic compliance;

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- Preparation of an electrolysis risk report prior to approval of the Construction Certificate;
- Submission of a geotechnical report addressing the impact of demolition and excavation on the rail infrastructure;
- The use of non-reflective materials; and
- The use of cranes in proximity to the rail corridor.

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 \$ 49.5 million which exceeds the \$30 million threshold. 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:

Figure 4 – 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

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Matter for Consideration	Yes/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 Detailed Site Investigation was completed by EI Australia (Report: E24021.E02_Rev1) dated 23 October 2018. The report made the following recommendations:</p> <ul style="list-style-type: none"> • A Remediation Action Plan will need to be completed in order to adequately remediate the identified asbestos in BH103 and assess any potential risks posed by the detected concentrations of VOCs present in the groundwater; • Any material being removed from the site (including virgin excavated natural materials (VENM)) should be classified for off-site disposal in accordance with the EPA (2014) Waste Classification Guidelines; • Any material being imported to the site should be assessed for the intended use or be classified as VENM; and • Preparation of a validation report by a suitably qualified environmental consultant, certifying the suitability of soils and groundwater for the proposed use. <p>A subsequent Remediation Action Plan was prepared by EI Australia (Report E24021.E06_Rev0) dated 23 October 2018.</p> <p>Council's Environmental Health section has reviewed the report and considered that the report has been prepared in accordance with the NSW EPA Guidelines for Consultants Reporting on Contaminated Sites and the National Protection of the Environment (Assessment of Site Contamination) Measure (2013 Amendment).</p> <p>Council's Environmental Health section further advised that there is no objection to the content of the RAP and the consultant has considered the provisions of SEPP 55 – Remediation of Lands. Therefore the following condition should be considered:</p> <p><i>Remediation and validation works shall be carried out in accordance with the approved Remediation Action Plan prepared by EI Australia (Report E24021.E06_Rev0) dated 23 October 2018. The applicant shall inform Council in writing of any proposed variation to the remediation works. Council shall approve these variations in writing prior to the commencement of works. Please note that variations to the approved remediation works may require the submission to Council of a Section 96 Application or further Development Application pursuant to the Environmental Planning and Assessment Act 1979.</i></p> <p><i>After completion of the remedial works, a copy of the Validation Report shall be submitted to Council prior to the commencement of construction works. The Occupation Certificate shall not be issued until Council reviews and approves the final Validation Report. The validation report shall be prepared in accordance with the EPA guidelines, Consulting Reporting on Contaminated Sites, and shall:</i></p> <ul style="list-style-type: none"> • Describe and document all works performed; • Include results of validation testing and monitoring; • Include validation results of any fill imported on to the site; • Show how all agreed clean-up criteria and relevant regulations have been 	

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Matter for Consideration	Yes/No
<p><i>complied with; and</i></p> <ul style="list-style-type: none"> <i>Include clear justification as to the suitability of the site for the proposed use and the potential for off-site migration of any residual contaminants.</i> <p>The above conditions are recommended to be imposed on any consent granted.</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 quality principles prescribed by SEPP 65 was prepared by an architect. 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 5 – SEPP 65 Design Quality Principles Table

ADG design quality principle	Response
1. Context and neighborhood character	<p>The proposal reflects the desired character of the precinct which is undergoing transition to shop top housing.</p> <p>The proposal is considered to satisfy the objectives of the LEP in terms of height, as well as being a permissible land use. The context of the building is appropriate for its location given the future desired character defined by the Holroyd LEP.</p>
2. Built form and scale	<p>The design generally achieves an appropriate built form for the site and the building's purpose, in terms of building alignments, proportions, type and the manipulation of building elements to ensure reasonable spatial separation is established between existing neighbouring residential buildings.</p> <p>The scale and form of the building in itself is considered suitable within the future desired character of its locality.</p>
3. Density	<p>The proposal has a density that generally corresponds with the future desired character of the area, in terms of floor space yield, number of units and potential number of new residents.</p> <p>The proposed density is considered to respond to the availability of infrastructure, public transport, community facilities and environmental quality.</p>
4. Sustainability	<p>A BASIX Certificate has been submitted and the building meets the required energy and water efficiency targets.</p>
5. Landscape	<p>A landscape plan was submitted with the proposal. The landscaping options are considered to be adequate. The proposed landscaping on top of the podium and on the rooftop will provide suitable visual amenity for the future building's occupants.</p> <p>While no landscaping is proposed for the streetscape, this is in keeping with the CBD location of the site.</p>

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6. Amenity	Generally, the proposal is considered to be satisfactory in this regard, optimising internal amenity through appropriate room dimensions and shapes, access to sunlight, natural ventilation; visual and acoustic privacy, storage, indoor and outdoor space. Generally, the proposal is considered acceptable regarding outlook, efficient layouts and service areas which are consistent with the ADG requirements.
7. Safety	The proposal is considered to be satisfactory in terms of natural surveillance while maintaining internal privacy. The building architecturally addresses both streets and activates those frontages.
8. Housing diversity and social interaction	It is considered that the proposal is well designed in terms of apartment size and housing choice and responds to the social context to suit the existing and future social mix. 20 x 1 bedroom units and 13 x 2 bedroom units have been nominated as adaptable units resulting in a total of 21% of units being provided as adaptable dwellings.
9. Aesthetics	The proposed development is considered to be appropriate in terms of the composition of building elements, textures, materials and colours. The proposed building is considered to respond to the environment and context, contributing in an appropriate manner to the desired future character of the area.

Integral to SEPP 65 is the Apartment Design Guide (ADG), which sets benchmarks for the appearance, acceptable impacts and residential amenity of the development. A comprehensive assessment against the SEPP 65 – Apartment Design Guide (ADG) is attached to this report in **Attachment 7**. The proposal seeks variation in the provision of deep soil zones. That variation is discussed below:

- Control 3E1 – Deep Soil Zones**

Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of air and water quality.

Deep soil zones are to meet the following minimum requirements:

Site area	Minimum dimensions	% of site area
Greater than 1500m ²	6m	7%

It can be difficult to provide deep soil zones in commercial areas where buildings are expected to be built to the street alignment, particularly when the subject site has 3 street frontages.

As the site does not provide residential uses at the ground level, alternative forms of planting will be provided. The proposal makes adequate provision for open space on top of the podium as well as the rooftop. That communal open space equals 32% of the site area which exceeds the 25% minimum.

Given that the existing site currently does not provide for deep soil planting other than narrow, fragmented perimeter landscaping strips, under the circumstances, the lack of deep soil areas is not considered to result in an adverse outcome for the site or the precinct.

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(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 involves basement excavation in proximity to a padmount substation. Further, the padmount substation is to be incorporated into the design of the development and will be protected by an easement. The padmount substation will be screened from the public domain with a perforated mesh screening, which is consistent with screens provided on the balconies of units above. The proposed screening is considered to be an appropriate urban design solution to screen the substation from the public domain.

Comments were received from Endeavour Energy on 6 March 2018 and are summarised above in the discussion of External Referrals.

Clause 85 – Development adjacent to railway corridors

The application is subject to clause 85 of the ISEPP as the site is adjacent to a rail corridor. Comments were received from Sydney Trains on 9 May 2018 and are summarised above in the discussion of External Referrals.

Clause 86 – Excavation in, above, below or adjacent to rail corridors

The application is not subject to clause 86 of the ISEPP as the proposed redevelopment of the site does not involve excavation to a depth of at least 2m below ground level (existing), on land within, below or above a rail corridor, or within 25m (measured horizontally) of a rail corridor.

Clause 87 – Impact of rail noise or vibration on non-rail development

The application is subject to clause 87 of the ISEPP as the site is adjacent to a rail corridor.

An acoustic report has been prepared addressing any issues of rail noise and recommends appropriate construction standard such as the thickness of glazing and exterior cladding. Comments were received from Sydney Trains on 9 May 2018 and are summarised above in the discussion of External Referrals.

(e) Statement Environmental Planning Policy No 19 - Bushland in Urban Areas

The proposal does not propose to disturb bushland zoned or reserved for public open space/The subject site does not adjoin land zoned or reserved for public open space.

(e) State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The proposal involves the removal of 4 eucalypt trees. This does not exceed the biodiversity offsets scheme threshold. Therefore, the proposed vegetation removal is considered acceptable.

(f) State Environmental Planning Policy (Coastal Management) 2018

The subject site is not identified as a coastal wetland or land identified as “proximity area for coastal wetlands” or land identified as such by the Coastal Vulnerability Area Map.

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

BASIX Certificate 888564M issued on 16 December 2017 has been submitted to Council with the Development Application and is considered satisfactory.

(h) State Environmental Planning Policy No 64—Advertising and Signage

Advertising signage is not proposed as part of the development. Separate consent for advertising signage other than for signage constituting exempt development, will need to be sought in conjunction with each commercial activity.

(i) State Environmental Planning Policy (State and Regional Development) 2011

The proposed development is *regionally significant development* under Schedule 7 of SEPP (State and Regional Development) as it has a capital investment value greater than \$30 million.

Regional Environmental Plans

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

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

The subject site is identified as being located within the area affected by the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The proposed development raises no issues as no impact on the catchment is envisaged.

(Note: - the subject site is not identified in the relevant map as 'land within the 'Foreshores and Waterways Area' or 'Wetland Protection zone', is not a 'Strategic Foreshore Site' and does not contain any heritage items. Hence the majority of the SREP is not directly relevant to the proposed development).

Local Environmental Plans

Holroyd LEP 2013

The provision of the Holroyd LEP 2013 is applicable to the development proposal. It is noted that the development achieves compliance with the key statutory requirements of the Holroyd LEP 2013 and the objectives of the **B4 Mixed Use** zone applicable to the subject land.

The proposed development is defined as "*shop top housing*" and is permissible in the B4 Mixed Use zone with consent.

The relevant matters to be considered under the Holroyd LEP 2013 for the proposed development are summarised below.

Figure 6 –Holroyd LEP 2013 Compliance Table

DEVELOPMENT STANDARD	COMPLIANCE	DISCUSSION
4.1 Minimum subdivision lot size	N/A	
4.3 Height of Buildings	No	The development proposes a height of 61m (RL 78.05m AHD).

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Maximum 53m		
4.4 Floor Space Ratio 7.5:1 (Total) 5.8:1 (Residential)	Yes	The development results in a total FSR of 7.38:1 with a residential FSR of 5.79:1.
4.6 Exceptions to development standards	Yes	See detailed discussion below.
5.1A Land Reservation Acquisition	N/A	
5.10 Heritage Conservation	N/A	The site is not affected by heritage. Merrylands Railway Station contains buildings which are listed as an item of environmental heritage in Schedule 5 of the Holroyd LEP. The proposed development does not impact on those buildings.
6.1 Acid Sulphate Soils	N/A	The land is not mapped as being affected by acid sulphate soils.
6.10 Ground floor development in Zones B2 and B4	Yes	The development satisfies this clause by providing active uses at the street level to encourage the presence and movement of people.

Clause 4.6 – Variation to Building Height

The applicant has submitted a clause 4.6 variation within the Statement of Environment Effects to justify the contravention of the maximum Height of Building. The general guideline required for consideration in assessing an exception to vary a development standard is discussed in detail below.

Figure 7 – Clause 4.6 Variation

1. ***Is the planning control a development standard?***

Yes. Clause 4.3 of the Holroyd LEP 2013 establishes a numerical development standard for the maximum height of buildings.

2. ***What is the underlying object or purpose of the standard?***

The objectives of Clause 4.3 are:

- (a) to minimise the visual impact of development and ensure sufficient solar access and privacy for neighbouring properties,
- (b) to ensure development is consistent with the landform,
- (c) to provide appropriate scales and intensities of development through height controls.

3. ***Is compliance with the development standard consistent with the aims of the Policy, and in particular does compliance with the development standard tend to hinder the***

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attainment of the objects specified in section 1.3 of the EPA&Act?

The variation does not hinder the attainment of the relevant objectives of the Holroyd LEP 2013, particularly:

- (d) to concentrate intensive land uses, increased housing density and trip-generating activities in close proximity to centres and major public transport nodes in order to retain the low-density character of other areas*

The variation is not antipathetic to the relevant objectives of the B4 Mixed use zone, as follows:

- *To 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.*
- *To facilitate a vibrant, mixed-use centre with active retail, commercial and other non-residential uses at street level.*
- *To encourage the development and expansion of business activities that will strengthen the economic and employment role of the Merrylands town centre.*

The variation to the height limit is not antipathetic to the objectives of Clause 4.3 of the Holroyd LEP as the variation does not result in an adverse visual impact and does not result in solar access or privacy impacts. Further, the development remains consistent with the topography of the land.

The relevant objectives specified in Section 1.3 of the Act are:

- (c) to promote the orderly and economic use and development of land, and*
- (g) to promote good design and amenity of the built environment,*

The variation to the standard does not hinder the attainment of the above objectives and does not prevent adjoining land from similarly meeting those objectives.

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

Given that the proposed changes to the building height development standard are certain, if not imminent, it is unreasonable and unnecessary to strictly apply the development standard in these circumstances, particularly as the proposed development is lower in height than the approved development at Nos. 224 – 240 Pitt Street and 4 Terminal Place which is 20 storeys.

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

The Applicants Clause 4.6 justification is well founded and makes the following key points:

- a. The increase to the maximum height under the Planning Proposal is 65m. That change is considered to be certain and imminent. The proposed development is 4m in height less than the proposed maximum building height.

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- b. The proposal is not as tall as the development to the north which is approved for 20 storeys.
- c. The development is consistent with the maximum FSR for the site. Whilst a similar GFA could be achieved by a building that would be compliant with the prescribed maximum building height, such a development would exhibit lesser setbacks and greater bulk.
- d. The proposed development results in a better planning outcome, with more slender tower elements promoting a greater number of units being able to achieve solar access and natural cross ventilation.

The variation does not result in any other non-compliance or variation of a development standard.

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

(a) Draft State Environmental Planning Policy (Environment)

The draft SEPP relates to the protection and management of our natural environment with the aim of simplifying the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property. The changes proposed include consolidating the following seven existing SEPPs:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011
- State Environmental Planning Policy No. 50 – Canal Estate Development
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.

The draft policy will repeal the above existing SEPPs and certain provisions will be transferred directly to the new SEPP, amended and transferred, or repealed due to overlaps with other areas of the NSW planning system.

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 is the only relevant instrument of those to be repealed by the draft SEPP and has previously been discussed in this report.

(b) Planning Proposal to amend Holroyd Local Environmental Plan (LEP) 2013 for the Merrylands Station & McFarlane Street Precinct within the Merrylands City Centre.

Council has prepared a Planning Proposal to amend the Holroyd LEP 2013 for the Merrylands Station & McFarlane Street Precinct within the Merrylands City Centre.

The Planning Proposal is expected to be gazetted in or around September-October 2018.

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The proposed development is satisfactory under the controls proposed under the Planning Proposal.

The objective of the Planning Proposal is to provide greater flexibility in which to deliver the current floor space potential for developable sites within the Merrylands City Centre. The planning controls proposed to be amended are the maximum building height and the maximum FSR. Design excellence provisions are also introduced to encourage new developments to contribute to the urban and public domain character.

A Gateway Determination was issued on 15 August 2016 for the Planning Proposal to proceed.

The Planning Proposal increases the maximum height of buildings for the site from 53m to 65m. The building height proposed by the development application is 61m, which complies with the proposed maximum building height.

The site will become subject to the Design Excellence provisions of Clause 6.11 of the Holroyd LEP 2013. Currently, the site is not included in a Design Excellence area. The proposed development satisfies the objectives of Clause 6.11 by exhibiting a high standard of architectural merit and urban design as well as improving the quality and amenity of the public domain.

The Planning Proposal also decreases the maximum FSR from 7.5:1 to 7.0:1. The total FSR proposed by the development application is 7.38:1, which satisfies the current FSR but exceeds the proposed FSR.

The exceedance can be supported under Clause 6.11(6) of the Holroyd LEP 2013 which deals with Design Excellence and allows for an exceedance in the FSR as follows:

- (6) *Despite clause 4.4, the floor space ratio for a building to which this clause applies may exceed the floor space ratio shown for the land on the Floor Space Ratio Map by an amount, to be determined by the consent authority:*
- (a) of up to 0.5:1, and**
 - (b) if at least 4,400 square metres of floor space above the ground floor of the building is used for the purposes of commercial premises or a health services facility—of up to 0.5:1, and*
 - (c) if at least 4,000 square metres of floor space within the building is used for the purposes of a supermarket—of up to 1:1.*

By virtue of the site being in a proposed Design Excellence Area, the maximum FSR for the site that could be achieved on the land by this proposal is 7.5:1. The proposed FSR of 7.38:1 is therefore compliant with the suite of controls proposed under the Planning Proposal.

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

The proposed development is satisfactory when considered against the objectives and provisions of the Holroyd DCP 2013. Key matters under the Holroyd DCP are discussed below.

Figure 8 – Holroyd DCP 2013 Compliance Table

Clause	Control	Proposed	Complies
Part A – General Controls			
2.4	Vehicular crossings, splay corners, kerb and gutter		
	Optimise the opportunities for active street frontages and streetscape design by:	There is one 6.5m wide vehicle access	Yes

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	<ul style="list-style-type: none"> making vehicle access points as narrow as possible consolidating vehicle access within sites under single body corporate ownership locating car park entry and access from secondary streets and lanes. 	point provided to Terminal Place with adequate sight distance. No access is provided to Pitt Street which enables the frontage to Pitt Street to remain activated by commercial uses.	
	<p>Where not already provided, splay corners are to be dedicated in road reserves at intersections as follows:</p> <ul style="list-style-type: none"> Commercial subdivision 4m x 4m 	4m x 4m Splay provided to corner of Pitt Street and Terminal Place at ground level and basement L1 only. Splay has not been provided beyond those levels, above or below ground.	No, subject to deferred commencement condition
3.5	Access, manoeuvring and layout		
	Design car parking areas to expedite vehicle circulation by adopting a simple layout and by minimising congestion points and the possibility of conflicting vehicle movements.	The layout provides for logical circulation and avoids conflict points.	Yes
10	Safety and Security		
	Incorporate and/or enhance opportunities for effective natural surveillance by providing clear sight lines between public and private places, installation of effective lighting, and the appropriate landscaping of public areas.	Surveillance of public domain and private spaces is provided.	Yes
PART C – COMMERCIAL, SHOP TOP HOUSING AND MIXED-USE DEVELOPMENT CONTROLS			
1	Building envelope		
	Residential dwellings are not permitted at ground floor within Zone B2 Local Centre and Zone B4 Mixed Use.	No residential development is proposed on the ground floor.	Yes
3.2	Façade Design and Building Materials		
	Provide a street address to each building.	Façade treatment wraps around all 3 frontages	Yes
	Facade proportions and vertical and horizontal emphasis shall be appropriate to the scale of development and its interaction with the streetscape. Vertical emphasis shall be incorporated above awnings.	Façade proportions maintain a human scale.	Yes
	Express vertical elements within the façade rather than floor levels.	The buildings maintain vertical elements to avoid expressing the floors only.	Yes
	Blank walls and large expanses of one material shall be avoided.	No blank expanses are provided.	Yes

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	The ground floor level must have active uses facing streets and public open spaces.	Retail uses front Pitt Street and Terminus Street. The residential entry fronts the north.	Yes
PART M – MERRYLANDS CENTRE			
2	Urban Design Strategies		
	Strengthen the economic and employment role of Merrylands.	The proposed development provides for new commercial and retail opportunities.	Yes
	Provide for an active and vibrant centre	The proposal is a high quality design that will help to activate the street frontages of Pitt Street and Terminus Street.	Yes
	Ensure buildings are designed to maximise appropriate amenity outcomes for the centre.	The proposed development is satisfactory with regard to amenity issues and Safer by Design principles	Yes
4.1	Site Amalgamation and minimum frontage		
	Sites must not be left such that they are physically unable to reasonably develop a three storey building in accordance with the controls in Sections 4 and 5 of this Part.	The adjoining site to the south is not isolated as a result of the proposed development.	Yes

As indicated in the compliance table above, the proposed development generally complies with the provisions of Council's Holroyd DCP 2013, with the exception of splay corner, and is considered acceptable from an environmental planning view point, subject to deferred commencement condition relating to the provision of the required splay corner.

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

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 Merrylands town centre, including providing activity in the town centre after hours.

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

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The site is considered suitable for the proposed development. There are no known constraints which would render the site unsuitable for the proposed development.

With regard to overland flow on the western boundary, the proposed arcade would likely come into use as a flow path during a 1 in 20 year or greater storm event and has been designed with flood resistant materials and protection to plant and equipment.

With regard to site contamination, Detailed Site Investigation and Remediation Plan have been prepared, which satisfy the provisions of SEPP 55 subject to validation works as discussed above.

Accordingly, the site can be said to be suitable to accommodate the proposal. 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 21 days between 29 January 2018 and 21 February 2018. The notification generated one submission in respect of the proposal with no submissions disclosing a political donation or gift. The issues raised in the public submissions are summarised and commented on as follows:

Figure 9 – Submissions summary table

Issue	Comment
Cumulative impact of similar scale developments in the locality.	It is acknowledged that the planning controls for the town centre provide for shop top housing of a height and density similar to the subject proposed development. Such developments are sensibly located in a town centre location with proximity to public transport. Issues about traffic, parking and built form are addressed below.
Impacts on traffic and parking in the Merrylands town centre.	The proposed development is satisfactory with regard to its provision of off street parking. The Traffic Report submitted with the development application finds that the development would not have an adverse impact on traffic within the town centre.
Increased heights and floor space ratios will reinforce overdevelopment of the town centre.	The FSR is compliant with the provisions of the Holroyd LEP. While the building height exceeds the current maximum, it meets the proposed height limits under the Planning Proposal to amend the planning controls for Merrylands Station and McFarlane Street precincts. The proposal is not considered to be an overdevelopment of the site. Future development applications in the town centre should be considered on their own merits to determine whether they result in an overdevelopment.

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The Traffic Report notes the intersection of Pitt Street and Neill Street fails to operate at a satisfactory level during the PM peaks yet concludes that the proposed development will have no adverse impact on the road network in the vicinity of the site.	There are plans to construct a link road between Terminal Place and Neill Street. This will provide direct access between the public transport interchange and the Neill Street overpass and will alleviate traffic in Pitt Street and improve performance of the intersection of Pitt Street and Neill Street.
The Traffic Report has not examined that trains on the T2 line are overcrowded.	The findings of the traffic report are sound and do not rely on public transport usage to determine maximum traffic generation.
Inadequate provision has been made for on-site parking. Overflow parking will impact on the railway station car park and Stocklands, as well as local streets.	<p>The proposed development makes adequate provision for car parking for both the commercial and residential components of the development.</p> <p>The parking complies with the requirements of the RMS Guide to Traffic Generating Development as well as the Holroyd DCP.</p>
The scale and built form of the development, along with the building separation, will impact on the amenity and well-being of the residents, including solar access, ventilation, acoustic and visual privacy.	<p>The design of the building is well considered, particularly the presentation of the podium level and the activation of the street fronts. The residential towers are well designed and meet the requirements of the Apartment Design Guide as well as the Holroyd DCP 2013, including setbacks and building separation.</p> <p>Visual and acoustic privacy is satisfactory, as is solar access and ventilation to the proposed units and overshadowing of surrounding developments.</p>
Inadequate measures to protect the apartments from noise from the railway line.	An acoustic report has been provided. The findings of that report are adequate and once implemented, will sufficiently protect the apartments from noise from the railway line.
The unit mix does not reflect the demographics of the area noting 36% of residents live in households of 4 or more and only 19% live in single person households.	While these figures reflect the current demographics across the Cumberland LGA, it does not reflect the changing demand for apartment living, particularly within town centre locations. The proposed development provides 30 x 1, 111 x 2 and 19 x 3 bedroom apartments, which is considered to be an appropriate mix of apartments, which provides accommodation for a diverse market.

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.

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

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Act reads as follows:

- (1) *If a consent authority is satisfied that development for which development consent is sought will or is likely to require the provision of or increase the demand for public amenities and public services within the area, the consent authority may grant the development consent subject to a condition requiring:*
- (a) *the dedication of land free of cost, or*
(b) *the payment of a monetary contribution, or both.*
- (2) *A condition referred to in subsection (1) may be imposed only to require a reasonable dedication or contribution for the provision, extension or augmentation of the public amenities and public services concerned.'*

Comments:

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.

In accordance with the currently indexed rates for the Merrylands Centre contribution area, the following contributions apply:

- 30 x 1 bedroom dwelling - $\$9,093 \times 30 = \$272,790$
- 112 x 2 bedroom dwellings - $\$15,378 \times 112 = \$1,722,336$
- 19 x 3 bedroom dwellings - $\$20,000 \times 19 = \$380,000$
- Commercial – $3762.15\text{m}^2 \times \$209 = \$786,289.35$
- Credit applies for existing commercial – $2453\text{m}^2 \times \$209 = \$512,677$

Section 7.11 contributions for Merrylands Centre Car Park is not applied in this instance, as the proposal will comply with the provision of the 20% minimum and the 80% maximum of Holroyd DCP 2013 parking rates in B4 Mixed Use zone within the Merrylands Centre, in which, in effect will not require the provision of any off-site car parking spaces.

As at 31 October 2018, the fee payable is **\$3,674,092.35**. This figure is subject to indexation as per the relevant plan. The draft determination at attachment 1 includes a condition requiring payment of the contributions prior to the issue of a construction certificate.

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.

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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, Holroyd LEP and Holroyd DCP and is considered to be satisfactory for approval subject to conditions.

The proposed development is appropriately located within the B4 Mixed Use zone under the relevant provisions of Holroyd LEP 2013. The proposal is consistent with all statutory and non-statutory controls applying to the development.

Having regard to the assessment of the proposal from a merit perspective, the Panel should be satisfied that the development has been responsibly designed and provides for acceptable levels of amenity for future residents.

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 may be approved subject to conditions.

RECOMMENDATION

1. **That Development Application No. 2017/558 for the demolition of the existing structures, consolidation of 4 lots into 1 and construction of a 18 storey mixed use development over 5 levels of basement parking accommodating 3 levels of commercial floor, 161 residential units above and 315 parking spaces on land at 244 – 252 Pitt Street, Merrylands be approved via deferred commencement.**
2. **Persons whom have lodged a submission in respect to the application be notified of the determination of the application.**

ATTACHMENTS

1. Draft Notice of Determination
2. Internal Architectural Plans
3. External Architectural Plans
4. Amended Clause 4.6 Variation for Building Height
5. Submission received from notification period x 1
6. Locality Map
7. SEPP 65 Compliance Table
8. HLEP 2013 Compliance Table
9. HDCP 2013 Compliance Table