

SYDNEY CENTRAL CITY PLANNING PANEL

TO: Sydney Central City Planning Panel – Submitted for Electronic Determination
SUBJECT: 2, 4 & 6 Kerrs Road, and 46 Joseph Road, Lidcombe
FILE No: DA-525/2017

Application lodged	13 December 2017	
Applicant	Moma Architects	
Owners	Kerrs Rd Developments Pty Ltd / H & K Energetic Investment Pty Ltd	
Application No.	DA-525/2017	
Description of Land	2, 4 & 6 Kerrs Road, and 46 Joseph Street, Lidcombe	
Proposed Development	Demolition of existing structures and construction of a 10 storey mixed use development comprising 72 apartments with ground floor retail over four levels of basement car parking	
Site Area	1,194.5m ²	
Zoning	B4 Mixed Use	
Disclosure of political donations and gifts	Nil disclosure	
Heritage	<p>The subject site is not heritage listed, nor is it located within a heritage conservation area.</p> <p>The subject site is located within the vicinity of 2 heritage items, which are as follows:-</p> <ul style="list-style-type: none"> • 35-47 Joseph Street, Lidcombe – <i>Fenton House</i>; and • Wellington Park (corner of James Street and Joseph Street, Lidcombe), <i>Lidcombe War Memorial Statue</i>. 	
Principal Development Standards	<u>Floor Space Ratio</u>	<u>Height of Buildings</u>
	Permissible: 5:1 Proposed: 5:1	Permissible: 32m Proposed: 32.6m
Issues	<ul style="list-style-type: none"> • Building separation • Ceiling Heights • Height of Buildings 	



Figure 1 – Perspective from Joseph Street, looking West (Source: MoMa Architects, 2018)

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1.0 SUMMARY

- 1.1 Council is in receipt of a Development Application from MoMa Architects seeking approval for *demolition of existing structures and construction of a 10 storey mixed use development comprising 72 apartments with ground floor retail over four levels of basement car parking* at 2, 4 & 6 Kerrs Road, and 46 Joseph Street, Lidcombe. The Development Application Architectural Plans are provided as **Attachment 1** to this report.
- 1.2 The site is affected by flooding, and is listed within the medium and low flood risk regions associated with Haslems Creek and Lower Duck River. The development has been assessed by Council's Development Engineer to be acceptable, subject to deferred commencement conditions to resolve flood levels.
- 1.3 The Development Application was publicly notified for a period of 14 days from 16 January 2018 to 30 January 2018. In response, no submissions were received.
- 1.4 The site is zoned B4 – Mixed Use, pursuant to the Auburn Local Environmental Plan (ALEP) 2010. A *Shop Top Housing* development, is permissible with development consent in the B4 – Mixed Use zone.
- 1.5 The proposal is consistent with the aims and objectives of State Environmental Planning Policy (State and Regional Development) 2011, State Environmental Planning Policy No. 55 (Remediation of Land), State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development, State Environmental Planning Policy (Infrastructure) 2007, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, Sydney Environmental Plan (Sydney Harbour Catchment) 2005, Auburn Local Environmental Plan (ALEP) 2010, Draft SEPP (Environment), and Auburn Development Control Plan (ADCP) 2010.
- 1.6 The Development Application was referred for comments externally to AusGrid and the NSW Police Force, and internally to Council's Development Engineer, and Environmental Health Officer, to which the application is supported.
- 1.7 The proposed development has been assessed against the relevant matters for consideration pursuant to Section 4.15 of the Environmental Planning and Assessment Act, 1979, including likely impacts, the suitability of the site for the development, and the public interest, and the proposed development is considered appropriate.
- 1.8 The variations sought via the subject modification application are as follows:

Control	Required	Provided	% Variation
Building separation	Min. 9m	6m	33.3%
Ceiling heights	Min. 3.3m (First Floor)	2.73m	17.27%
Height of Buildings	Max. 32m	32.6m	1.875%

- 1.9 The application is being reported to the Sydney Central City Planning Panel (SCCPP) for determination, as, at the time of lodgement, the development constituted 'Regional Development' within the meaning of State Environmental Planning Policy (State and Regional Development) 2011, as the development exceeded the \$20 million threshold with a Capital Investment Value (CIV) of \$23,414,219.

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- 1.10 In light of the above, it is recommended that the Sydney Central City Planning Panel **Approve** the Development Application, subject to the Draft Notice of Determination provided at **Attachment 3** to this report.

2.0 SUBJECT SITE AND SURROUNDING AREA

- 2.1 The subject site is known as 2, 4 & 6 Kerrs Road, and 46 Joseph Street, Lidcombe, and is legally described as Lots A and B, DP 326128, and Lots 18 and 19, Section 2, DP 3424. The site is irregularly shaped, and has a frontage of 44.543 metres to Kerrs Road, a frontage of 45.379 metres to Joseph Street, and a frontage of 19.954 metres to Armstrong Lane. The total site area is 1,194.7sqm, and is illustrated in **Figure 2** below:

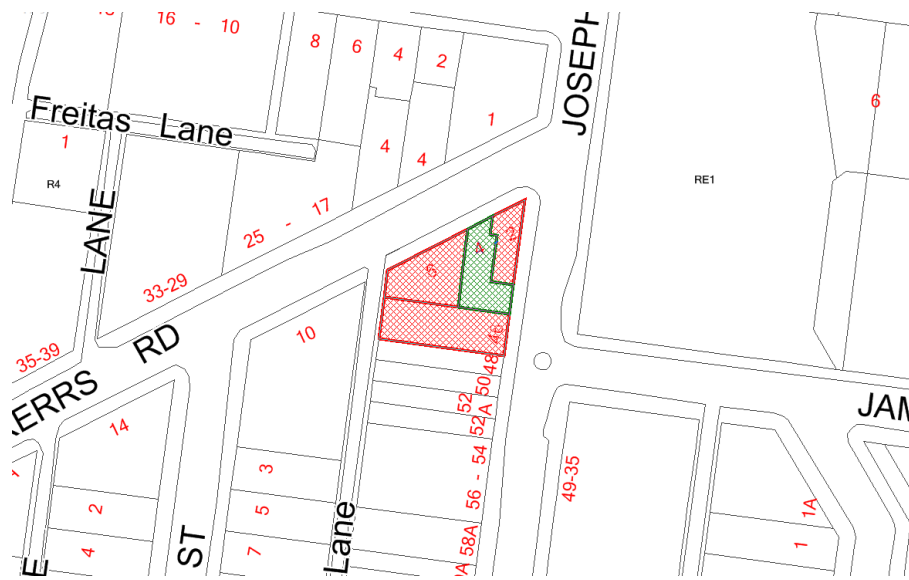


Figure 2 - Location Map (Source: Cumberland Council, 2018)

- 2.2 The subject site is currently built upon, occupied to a number of single storey structures, with no existing trees or vegetation present on the subject site.
- 2.3 The surrounding locality is characterised as follows:
- **North** 1 Kerrs Road and 2, 4, 6 & 8 Vaughan Street, Lidcombe – Vacant Land, with approval for construction of a 10 storey mixed use development.
 - **East** 0 Joseph Street, Lidcombe – Remembrance Park
 - **South** 46, 48, 50, 52A, 52 Joseph Street, Lidcombe – Single and two storey commercial buildings.
 - **West** 17 – 25 Kerrs Road, Lidcombe – 8 storey mixed use development.
8 - 12 Kerrs Road, Lidcombe – 9 storey mixed use development.
- 2.4 The topography of the site is maintained to a 0.8% gradient, with a 0.44 metre fall from North East to South West. The site is affected by flooding, and is listed within the medium and low flood risk regions associated with Haslems Creek and Lower Duck River.
- 2.5 The site is zoned B4 – Mixed Use, pursuant to the Auburn Local Environmental Plan (ALEP) 2010, as shown in **Figure 3** below:

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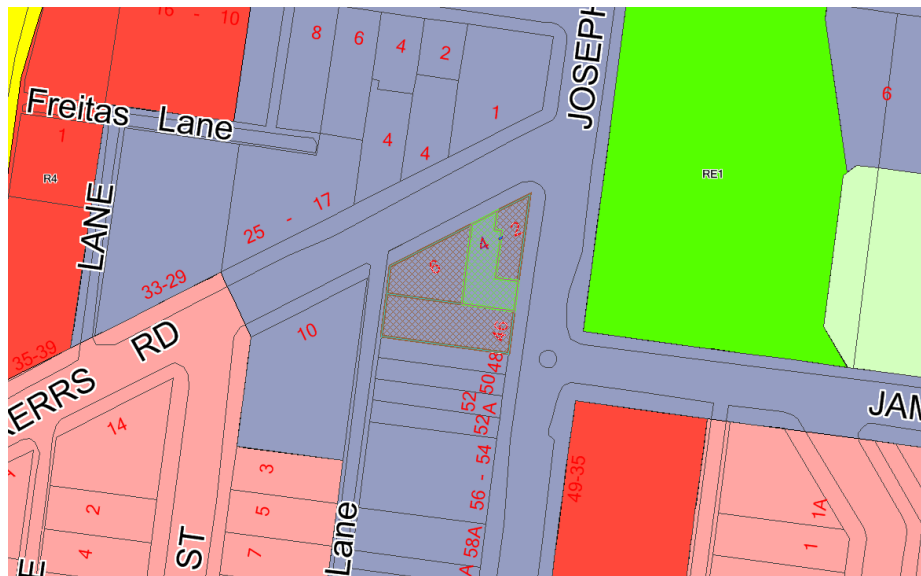


Figure 3 – Zoning Map (Source: Cumberland Council, 2018)

- 2.6 The subject site is situated to the south of Kerrs Road, East of Joseph Street, and West of Armstrong Lane. **Figure 4** below illustrates an aerial perspective of the site and the general surroundings.



Figure 4 – Aerial Photo (Source: Cumberland Council, 2018)

- 2.7 The subject site is located within the vicinity of 2 heritage items, which are as follows:-

- 35-47 Joseph Street, Lidcombe – *Fenton House*; and
- Wellington Park (corner of James Street and Joseph Street, Lidcombe), *Lidcombe War Memorial Statue*.

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3.0 DESCRIPTION OF THE PROPOSED DEVELOPMENT

- 3.1 The proposal is for *demolition of existing structures and construction of a 10 storey mixed use development comprising 72 apartments with ground floor retail over four levels of basement car parking.*
- 3.2 Specific details of the proposed development are as follows:

Built Form

The proposal comprises a 10 storey shop top housing development, with ground floor retail tenancies, totalling 308.3m², and residential units above. In detail, the ground floor comprises a central common foyer area, with separate residential and commercial waste rooms and commercial amenities. The proposed building, as measured to both Kerrs Road and Joseph Street, maintains a nil setback, with a 3 metre setback proposed to Armstrong Lane.

Parking (Basement Levels)

	Basement 1	Basement 2	Basement 3	Basement 4	Total
Residential Parking	12 spaces	20 spaces (7 accessible)	22 spaces	24 spaces (1 accessible)	79 spaces
Retail Parking	7 spaces (2 accessible) 2 loading zones	0 spaces	0 spaces	0 spaces	7 spaces
Bicycle Parking	0 spaces	0 spaces	8 spaces	8 spaces	16 spaces

Residential Apartment Mix

	Building	Total
1 Bedroom	24	24
2 Bedroom	39	39
3 Bedroom	9	9
	Total	72

Access Arrangements

Pedestrian access to the development is maintained from Kerrs Road and Joseph Street. A single core with 2 lifts is maintained to the residential portion of the development, designed to maintain access to the basement levels and residential apartments above. The retail units are also accessible from Kerrs Road and Joseph Street, with access also maintained from the basement level car park through the central core.

Vehicular access to the development is maintained to a single driveway from Armstrong Lane, with parking maintained solely within the basements proposed. Three (3) loading / unloading docks are proposed, with the at-grade Medium Rigid Vehicle (MRV) loading / unloading dock designed for Council's waste functions, and two (2) Small Rigid Vehicle (SRV) loading / unloading docks designed to the first level basement, designed to service the commercial tenancies.

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Communal Open Space

The proposal maintains the primary communal open space area to the western portion within Level 9, with secondary spaces maintained to Level 1 and southern aspect of Level 9. The communal open space areas provide choice of spaces to future residents, and are able to accommodate a variety of uses, with the overall communal open space area designed to an area of 756.4m².

4.0 APPLICANTS SUPPORTING STATEMENT

- 4.1 The applicant has provided a Statement of Environmental Effects prepared by Think Planners dated 28 November 2017, and was received by Council on 13 December 2017 in support of the application.
- 4.2 Additional correspondence was received by Think Planners dated 26 June 2018 and 20 December 2018 in response to Council's request for amended plans and additional information.

5.0 CONTACT WITH RELEVANT PARTIES

- 5.1 The assessing officer has undertaken an inspection of the subject site and has been in contact with the applicant throughout the assessment process.

6.0 INTERNAL REFERRALS

Development Engineer

- 6.1 The Development Application was referred to Council's Development Engineer for comments, who has advised that the proposed development is supportable on the grounds of traffic, parking, loading, and stormwater, subject to standard conditions and deferred commencement conditions to resolve flood issues, which have been imposed within the draft Notice of Determination provided as **Attachment 3** to this report.

Environmental Health Officer

- 6.2 The Development Application was referred to Council's Environmental Health Officer for comments, who has reviewed the submitted Acoustic Report, Detail Site Investigation and Remedial Action Plan (RAP), and advised that the proposed development is supportable, subject to standard conditions of consent, which have been imposed within the draft Notice of Determination provided as **Attachment 3** to this report.

7.0 EXTERNAL REFERRALS

AusGrid

- 7.1 The Development Application was referred to AusGrid for comments who has advised that the proposed development is supported.

NSW Police

- 7.2 The Development Application was referred to the NSW Police Force for comments who has advised that the proposed development is supported.

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8.0 PLANNING COMMENTS

Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP & A Act)

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

- 8.1 The following Environmental Planning Instruments are relevant to the assessment of the subject modification application:

(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 State Environmental Planning Policy (SEPP) (State and Regional Development) 2011. Such applications require a referral to the Sydney Central City Planning Panel for determination. The application is being reported to the Sydney Central City Planning Panel (SCCPP) for determination, as, as the time of lodgement, the development constituted 'Regional Development', as the development exceeded the \$20 million threshold with a Capital Investment Value (CIV) of \$23,414,219.

While Council is responsible for the assessment of the Development Application, 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)

The requirement at Clause 7 of SEPP No. 55 for Council to be satisfied that the site is suitable or can be made suitable to accommodate the proposed development has been considered in the following table:

Matters for consideration	Yes	No	N/A
Does the application involve re-development of the site or a change of land use?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the development going to be used for a sensitive land use (e.g.: residential, educational, recreational, childcare or hospital)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Does information available to you indicate that an activity listed below has ever been approved, or occurred at the site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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.			

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Matters for consideration	Yes	No	N/A
Is the site listed on Council's Contaminated Land Database?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is the site subject to EPA clean-up order or other EPA restrictions?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Has the site been the subject of known pollution incidents or illegal dumping?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Does the site adjoin any contaminated land/previously contaminated land?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
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"/>	<input type="checkbox"/>	<input type="checkbox"/>
Details of contamination investigations carried out at the site: <p>The site, in particular 6 Kerrs Road, Lidcombe, is identified in Council's records as being contaminated. A Detailed Site Investigation has been prepared by Benvin Group, which has been submitted with the Development Application. The site investigation identified levels of arsenic, lead, zinc, and benzo (a) pyrene concentrations within Bore Hole 3. To address the hot spot around the borehole, a Remediation Action Plan (RAP) has subsequently been prepared.</p> <p>Council's Environmental Health Officer has reviewed the site investigation, and associated RAP, and is satisfied that the information has been prepared in accordance with the NSW EPA <i>Guidelines for Consultants Reporting on Contaminated Sites</i> and the <i>National Environment Protection (Assessment of Site Contamination) Measure (2013 Amendment)</i>.</p> <p>Note: The contamination identified is confined near the surface level soils, maintained to a depth of 0.3 metres below ground level, mostly in fill material, and is expected to be easily removed and separated from the remainder of the bulk earthworks.</p>			

(c) **State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development (SEPP 65)**

SEPP 65 and the associated Apartment Design Guide (ADG) apply to the assessment of the subject application as it includes residential flat buildings that are 3 storeys or more in height and contain more than 4 dwellings.

The Development Application has been accompanied by a Design Verification Statement from a Registered Architect. The proposed development has been assessed to comply with the requirements of SEPP 65 and the ADG, with the exception of building separation, and ceiling heights, which is discussed below. A comprehensive assessment against the ADG is contained in **Attachment 4** to this report.

Building Separation

- The ADG requires a minimum separation distance for buildings to side and rear boundaries of 9 metres, for levels 5 to 8, as measured to habitable rooms and balconies. In this regard, a variation is noted along the western elevation of the

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building, with a setback of 6 metres designed to the balconies and bedroom windows of Units 501, 205, 601, 602, 701, 702, 801, and 802.

The proposed variation achieves the aims and objectives of the ADG, and is considered supportable on its merits, noting:

- The openings and balconies of the development have been offset from those of the adjoining mixed use development at 8 – 12 Kerrs Road, Lidcombe. In the case of the development at 8 – 12 Kerrs Road, Lidcombe, the windows which maintain an interface with the subject site, are maintained to bathroom and bedroom windows with a high sill arrangement. Subsequently, privacy of the subject development and the development at 8 – 12 Kerrs Road, Lidcombe is maintained.
- The setback of the development from Armstrong Lane is maintained to 3 metres, which is consistent with the development at 8- 12 Kerrs Road, Lidcombe.

Ceiling Heights

- The ADG requires the first floor of a mixed use building to have a floor to ceiling height measuring 3.3 metres. In this regard, the floor to ceiling height associated with first floor is maintained to 2.73 metres.

A statement has been provided by the Applicant's Planner, in response to the above variation, which is noted as follows:

The floor to ceiling height remains generous and capable of being adapted to appropriate alternative use in the future given the B4 Mixed Use zone.

We note that the objective is to 'promote flexibility of use' – i.e. to future proof land uses that would be reasonably expected to occur. Whilst non-compliant with numerical provision, does provide for a degree of flexibility for commercial adaptation, should this occur in the future.

It is noted that the future built form of the first floor comprises a series of apartments that are arranged in a manner that would limit any future adaptation of the first floor space to either SOHO use or small strata suites. On this basis, the ceiling heights, for use of the first floor for small suites or SOHO's is appropriate.

We note that these uses do not necessitate traditional bulk heads and areas for kitchen exhausts and the like which are for traditional retail spaces and food and drink premises, which will not occur at the first floor level.

On that basis, the 2.73m floor to ceiling (clear) enables future SOHO style uses as well as office premises and the ceiling height does not hinder future adaptability. We also note the location on the fringe of the Lidcombe Commercial Centre measure that future adaptability of residential units to commercial uses in this area is low, however, there remains the ability for adaptable re-use with the floor to ceiling heights proposed.

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The Applicant's written justification submitted to the variation of ceiling heights is considered well founded, and supportable on its merits.

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

The provisions of the 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 occurs within 5 metres of an overhead and underground electricity power lines and the proposed development also includes a substation. As such, the Consent Authority is required to give written notice to an electricity supply authority. The Development Application was referred to AusGrid, who advised that the modified development proposal is supported.

Clause 85 – Development adjacent to railway corridors

The application is not subject to clause 85 of the ISEPP, as the subject site is not located adjacent to a railway corridor.

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 25m (measured horizontally) of a rail corridor.

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

The application is not subject to clause 87 of the ISEPP as the site is not in or adjacent to a rail corridor, and is not likely to be adversely affected by rail noise or vibration.

Clause 101 – Frontage to classified road

The application is not subject to clause 101 of the ISEPP as the site does not have a frontage to a classified road.

Clause 102 – Impact of road noise or vibration on non-road development

The application is not subject to clause 102 of the ISEPP as the annual average daily traffic volume of Kerrs Road and Joseph Street is less than 40,000 vehicles.

Clause 104 – Traffic generation developments

The application is not subject to clause 104 of the ISEPP as the proposal does not trigger the requirements for traffic generating developments listed in Schedule 3 of the ISEPP.

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

A BASIX Certificate has been lodged as a part of the Development Application. The BASIX certificate indicates that the development has been designed to achieve the required water, thermal comfort and energy scores.

(f) State Environmental Plan (Sydney Harbour Catchment) 2005

The subject site is identified as being located within the area affected by the Sydney 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 State Environmental Plan is not directly relevant to the proposed development.

(g) Auburn Local Environmental Plan 2010 (ALEP 2010)

The provision of the ALEP 2010 is applicable to the development proposal. It is noted that the development achieves compliance with the key statutory requirements of the ALEP 2010 and the objectives of the B4 – Mixed Use zoning.

Permissibility

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

Shop top housing means one or more dwellings located above ground floor retail premises or business premises.

Note. Shop top housing is a type of **residential accommodation**

The relevant matters to be considered under ALEP 2010 and the applicable clauses for the proposed development are summarised below. A comprehensive LEP assessment is contained in **Attachment 5** to this report.

Development Standard	Proposed	Compliance
Height of Buildings 32 metres	32.6m A Clause 4.6 Statement has been submitted, justifying the contravention. Refer to commentary below.	No
Floor Space Ratio 5:1	5:1	Yes

Clause 4.6 – Variation to Height of Buildings Development Standard

- 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

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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 Height of Buildings Development Standard. 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 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?

The proposed development is considered to be consistent with the B4 – Mixed use zone objectives, as it provides a mixture of compatible uses, integrates retail and residential in an accessible location, and providing high density residential development.

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

The objectives of Clause 4.6 is to ensure that a maximum building height is established to enable the appropriate development density to be achieved, and to ensure buildings are compatible with the character of the locality. The extent of the exceedance is limited to the lift overrun, with habitable floor space maintained below the height limit, and therefore the built form is consistent with the density and desired future character of the area.

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

Strict compliance with the development standard in this instance is considered to be unreasonable and unnecessary in this instance as:

- The extent of the exceedance is limited to the lift overrun, with habitable floor space maintained below the height limit.
- The development is of high architectural design, which will contribute to the streetscape and visual amenity of the area.
- The exceedance is a result of the flood affectation of the site, and the requirement to raise the building to respond to minimum freeboard levels.
- The variation will not result in noticeable bulk, height or scale, as viewed from the public domain, and will not result in additional solar access, view loss or privacy.

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

The unique circumstances of the case are considered to warrant support of the departure. Given that the proposed development responds to the site and does so without unduly compromising relationships with adjoining development, and does not unduly compromise other relevant controls, the proposal is considered to be consistent with the objectives of the height of buildings development spaces, and development within the B4 – Mixed Use zone. In this regard, the exception is well founded and can be supported.

Conclusion:

Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6 subclause (3). Council is further satisfied that the proposed development 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 height of buildings development standard is considered acceptable in this instance.

Heritage

- The subject site is not heritage listed, nor is it located within a heritage conservation area. The subject site is located within the vicinity of 2 heritage items, which are as follows:-
 - 35-47 Joseph Street, Lidcombe – *Fenton House*; and
 - Wellington Park (corner of James Street and Joseph Street, Lidcombe), *Lidcombe War Memorial Statue*.

A Heritage Impact Statement has been prepared by Urbis, which has considered the potential impacts of the proposed works on the heritage significance of nearby heritage items, and notes the proposed development is supported from a heritage perspective on the following grounds, which in the view of Council Officers is appropriate.

- *The proposed multistorey development will be visible from Lidcombe Remembrance Park, Fenton House and Joseph Street streetscape generally. However, significant sightlines to or from Lidcombe Remembrance Park, Fenton House and Joseph Street streetscape generally will not be impacted by the proposed development.*
- *The subject site and nearby heritage items are becoming incrementally encroached upon by multistorey developments and the subject proposal is*

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in accordance with the future character of the area. The proposed development would therefore not change the existing mixed character of the outlook from the heritage items.

- *The site does not directly adjoin a heritage item (given the buffer of Joseph Street) and is not in a conservation area.*
- *The proposed development is well articulated through colour and form and would not present any unbroken walls to the street.*
- *A substantial amount of retail is proposed on the ground floor, this would activate the area in the vicinity of the heritage item, and maintain the character of the street (in terms of use).*
- *The proposed awnings over the ground floor would retain the human scale of the street and assist in moderating the difference in scale between the heritage items and the proposed development.*

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

8.2 The following draft Environmental Planning Instruments are relevant to the assessment of the subject modification application:

(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.

Refer to assessment above under the heading 'State Environmental Plan (Sydney Harbour Catchment) 2005'.

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

- 8.3 The following Development Control Plans are relevant to the assessment of the subject modification application:

(a) Auburn Development Control Plan 2010 (HDCP 2010)

The ADCP 2010 applies to the subject site. The proposed development has been assessed to comply with the provisions of the ADCP 2010, with the exception of access and driveway design, which is discussed below. A comprehensive assessment against the provisions of the ADCP 2010 is contained in **Attachment 6** to this report.

Access and Driveway

- The Auburn DCP 2010 requires driveways to be designed to allow vehicles to enter and leave in a forward direction. In this regard, the proposed at grade loading / unloading area does not afford entering and exiting the site in a forward direction.

A statement has been provided by the Applicant's Traffic Engineer, in response to the above variation, which is noted as follows:

The proposed ground floor loading bay will be used for garbage collection only, which has been designed to accommodate the swept turning path requirements of a Medium Rigid Vehicle (MRV). The previously submitted swept turning path diagram confirms that the MRV garbage truck can reverse into the loading bay off Armstrong Lane and exit in a forward direction without difficulty and whilst maintaining safe clearances.

The reverse in/forward out arrangement is consistent with a number of new mixed use and residential apartment developments located within the former Auburn LGA and is therefore considered acceptable.

The Applicant's written justification submitted to the variation of access and driveways is considered well founded, and supportable on its merits.

Council also notes the commercial loading / unloading functions are maintained to the loading / unloading docks within the basement, which afford vehicles to enter and exit the site in a forward direction. Furthermore, operations within the at grade loading / unloading dock will be limited to Council's waste functions, which require two (2) operators to be available on site, thus allowing the second operator to guide the MRV safely into the laneway, reducing the opportunity for conflict with other vehicles utilising the laneway.

The provisions of any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4 (EP & A Act s4.15(1)(a)(iia))

- 8.4 There is no planning agreement or draft planning agreement associated with the subject Modification Application.

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

- 8.5 The proposed development raises no concerns as to the relevant matters arising from the *Environmental Planning and Assessment Regulations 2000* (EP & A Regs).

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

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

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

- 8.7 The subject site and locality is not known to be affected by any natural hazards or other site constraints likely to have a significant adverse impact on the proposed development. Accordingly, 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 ☐

- 8.8 In accordance with Council's Notification requirements contained within the ADCP 2010, the proposal was publicly notified for a period of 14 days from 16 January 2018 to 30 January 2018. In response, no submissions were received.

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

- 8.9 The public interest is served by permitting the orderly and economic use 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 approval of the proposed development would not be contrary to the public interest.

9.0 SECTION 7.11 (FORMERLY S94 CONTRIBUTIONS)

- 9.1 The subject development requires the payment of contributions in accordance with Auburn Development Contributions Plan 2007. In accordance with the currently indexed rates, the following, the current rate of the required contribution is **\$457,965.56**. The draft Notice of Determination at **Attachment 3** includes a recommendation to reflect the above contributions.

10.0 DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

- 10.1 The NSW Government has introduced 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 application and notification process did not result in any disclosure of Political Donations or Gifts.

11.0 CONCLUSION

- 11.1 The proposed development has been assessed against the matters for consideration listed in Section 4.15 of the EP & A Act, 1979, and is considered to be satisfactory. Any likely impacts

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of the development have been satisfactorily addressed and the proposal is considered to be in the public interest.

- 11.2 The proposed development is consistent with the objectives of Auburn LEP 2010, and is permissible in the zone with Development Consent. A Clause 4.6 Variation Statement has been submitted, justifying the contravention to the height of buildings development standard, which is considered supportable on its merits. The proposal also complies with the Auburn DCP 2010.

12.0 RECOMMENDATION

- 12.1 That Development Application 525/2017 seeking *demolition of existing structures and construction of a 10 storey mixed use development comprising 72 apartments with ground floor retail over four levels of basement car parking* at 2, 4 & 6 Kerrs Road, and 46 Joseph Street, Lidcombe, be **Approved**, subject to the conditions contained in **Attachment 3** of this report.

13.0 ATTACHMENTS

Attachment 1 – Architectural Plans

Attachment 2 – Clause 4.6 Variation Statement

Attachment 3 – Draft Notice of Determination

Attachment 4 – SEPP 65 Apartment Design Guide Compliance Assessment

Attachment 5 – Auburn Local Environmental Plan 2010 Compliance Assessment

Attachment 6 – Auburn Development Control Plan 2010 Compliance Assessment