

Sydney Planning Panel – Sydney Eastern City

Panel Reference	2019ECI030
Council Reference	DA2019/0160
Local Government Area	City of Canada Bay
Proposed Development	Demolition of existing structures and construction of a residential flat building development
Street Address	2 Rothwell Avenue, Concord West 2A Rothwell Avenue, Concord West 4 Rothwell Avenue, Concord West
Applicant	Alex Hard C/- Eloura Holdings
Owner	Concord Partners Holdings Powells Creek Developments
Cost of Works	\$33,263,111
Number of Submissions	Four (4)
Recommendation	Approval subject to Conditions
Report by	Mr Stuart Ardlie – Coordinator, City of Canada Bay
Reason for referral to the Panel	The development has a capital investment value of greater than \$30 million

REPORT

1. Background

The Concord West Precinct Masterplan was prepared in 2014 by JBA on behalf of the Council, which encompassed parcels of land on the western side of the Northern Railway Line at Concord West.

The conclusions of the Concord West Masterplan informed the preparation of a Planning Proposal for the subject site to amend the then zoning and maximum height and FSR controls as follows:

- Change the zoning of the site from IN1 General Industrial to R3 Medium Density Residential;
- Change the maximum height control from 9 metres to 16 metres; and
- Change the maximum FSR control from 1:1 to 1.4:1.

The amendments proposed to the CBLEP 2013 under the Planning Proposal for the site were gazetted on 20 April 2018.

A draft proposal was considered at a pre-lodgement meeting held with Council's Design Review Panel (DRP) on 22 August 2018. The issues raised at this meeting were resolved through amendments to address issues of building siting and setbacks, through site link and solar penetration.

This development application was lodged on the 05 June 2019. The application was notified on the 13 June 2019 to 475 owners / occupiers for a period of twenty-four (24) days. During the notification period three submissions and one petition were received from neighbouring stakeholders.

On the 01 & 09 August 2019 the following referral matters were raised with the applicant:

- Provide a suitable response to the Design Review Panel minutes from 17/07/2019, which are summarised as follows:
 - Universal access to be provided in the public pedestrian through-site link;
 - Enlargement of foyer fronting Conway Avenue foyer; and
 - Location of covered communal open space areas.
- Vehicular access and parking design;
- Waste management chutes and collection;
- Stormwater and local flooding;
- Tree removal and tree protection measures; and
- Submissions received during notification.

A briefing meeting to the Sydney Eastern City Planning Panel was held on the 26 September 2019. Council staff provided a presentation of the proposed development, its key elements and the planning controls, including an overview of the issues of concern that arose through the assessment process and the submissions received. Further, commentary on the assessment process and likely timing to present the report to the panel were outlined.

On the 30 September 2019 the applicant submitted additional information and amended plans, which resolved all outstanding issues.

This application was then on hold as the Department of Planning, Infrastructure & Environment (DPIE) and the Applicant worked to satisfy Clause 6.9 of the Canada Bay Local Environmental Plan 2013 which requires a contribution for state public infrastructure.

At the time of writing this report the DPIE have advised that they have received the executed planning agreement and full value bank guarantee from the developer. DPIE anticipate that satisfactory arrangements will be in place between the Department Secretary and the Developer to enable this development application to be determined.

2. The Site and its Context

The subject site is located in Concord West which is approximately 14.5km to the west of the Sydney CBD as the crow flies. The site is located approximately 320m southwest of Concord West Station.

The application relates to the following sites:-

- 2 Rothwell Avenue, Concord West – Lot 1, DP 215341
- 2A Rothwell Avenue, Concord West – Lot 2, DP 215341
- 4 Rothwell Avenue, Concord West – Lot X, DP 404807



Figure 1 – Site location (Source: Intramaps)

The site has the following dimensions which results in a total site area of 6,080sqm:

- Northern boundary – 43.98m
- Eastern boundary, Rothwell Avenue frontage – 129.59m
- Southern boundary, Conway Avenue frontage – 43.78m
- Western boundary, Powell's Creek Reserve – 170.44m

The site has a topography with a general fall of approximately 3m from the east down to the west and slight fall of approximately 0.5m from the north down to the south.

The site currently contains three warehouse and industrial style buildings which incorporate at grade parking, loading facilities and variable uses with ancillary office space. The site contains a number of established trees which are generally located along the Rothwell Avenue and Conway Avenue frontage. The neighbouring sites are characterised as follows:

Development to the north

The adjoining sites to the north are zoned IN1 General Industrial with buildings that reflect this zoning consisting of single and two storey industrial buildings.

Development to the east and south

The development on the eastern side of Rothwell Avenue and southern side of Conway Avenue is zoned R2 Low Density Residential and consist of single and two-storey detached dwelling houses with original features and landscape settings. Development further to the east adjoining the Northern Railway Line consists of a residential flat building development of four storeys with basement parking and ground floor commercial tenancies.

Development to the west

The adjoining site to the west is Powells Creek Reserve which is an established landscape corridor that contains the Powells Creek Tennis Centre.

3. Proposed Development in Detail

The proposed development involves the demolition of all existing structures on the site and the construction of a residential development comprising three (3) x four-storey residential flat buildings containing a total of eighty-eight (88) units above basement car park for ninety-one (91) vehicles. The unit mix includes:

- 8 x one bedroom units;
- 64 x two bedroom units; and
- 16 x three bedroom units.

The key features of the proposal include:

- Site remediation;
- Public domain improvements to the adjoining street frontages including footpaths;
- Publicly accessible through site links adjoining northern boundary from Rothwell Avenue to Powells Creek Reserve; and
- Tree removal and replacement planting and landscaping.

The proposed finish material is predominantly matt black colorbond longline cladding with a ground floor Pewter facebrick. This is complemented by dark black metal louvers, window frames, balustrading and awnings. The building entries are defined by vertical breaks in the façade which incorporate facebrick, floor to ceiling glazing and open mesh cladding to the staircases.

4. Public Submissions

In accordance with Council's Notification Development Control Plan, adjoining and nearby property owners and occupiers were advised of the proposal. The notified properties and submitters have been identified on the following map.



The contents of all submissions are summarised and considered below:

- Character of the local area
- Suggest townhouses

Comment: On the 20 April 2019 the site was rezoned to R3 Medium Density Residential with a height limit of 16m and FSR of 1.4:1. The proposed residential flat building development is consistent with the desired future character that has been established through the deliberate and considered rezoning of this site.

- Built form is too large, high and dense
- Exceeds building height limit

Comment: The proposal has a gross floor area of 8,512sqm which is compliant with the maximum floor space ratio of 1.4:1. The main objective of the FSR is to ensure that

buildings are compatible with the bulk and scale of the desired future character of the locality.

The proposal has a maximum height of 16.85 metres which exceeds the maximum height limit of 16 metres. The breach is limited to the north-west and south-western corners and the lift overruns for the middle and southern buildings. Building height has been assessed in Part 6.1.2 of this report which concludes that the breach to the height is inconsequential to the presentation and appearance of the building and does not directly contribute to any impact on the neighbouring properties or public domain.

- Block sunlight and view of trees

Comment: The neighbouring properties will retain 3 hours of direct solar access to northern facing windows and private open space areas during midwinter.

- Block view of trees

Comment: The development will replace single and two storey warehouse and industrial buildings with four storey residential flat buildings which consequently will block the outlook across the site to the tree canopies in Powell's Creek Reserve. Given that this is an outlook as opposed to a view and that the development is largely compliant, the general loss of outlook to the tree canopies is considered reasonable and unavoidable.

- Construction access and noise

Comment: Potential impacts during construction are not matters that can be taken into consideration during the assessment of a development application, however, standard construction conditions in regards to construction traffic management and noise have been included within the recommendation of this report.

- Rothwell Avenue should be widened
- Local traffic and parking
- Traffic Pomeroy Street and George Street

Comment: The development accommodates ninety-one (91) car spaces in the basement which complies with the parking control in the Canada Bay Development Control Plan. Council's Traffic Engineer has reviewed the submitted Traffic Impact Assessment and inspected the subject site and raised no issues from a traffic and parking perspective.

5. ASSESSMENT UNDER SECTION 4.15 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

5.1. Environmental Planning Instruments [Section 4.15(1) (a) (i & ii)]

5.1.1. State Environmental Planning Policies

The proposed development is subject to the following State Environmental Planning Policies.

State Environmental Planning Policy No. 55 (SEPP No. 55) - Remediation of Land

According to clause 7 of SEPP No. 55 consent may not be granted to the carrying out of any development on land unless consideration has been given to whether the land is contaminated, and if the land is contaminated, that the land is suitable in its contaminated state (or will be suitable after remediation) for the purpose for which the development is proposed to be carried out.

The suitability of the site for residential was considered as part of the Planning Proposal which included the submission of a Phase 2 Detailed Site Investigation. This report concluded that the site is suitable for the proposed use and does not require a Remedial Action Plan.

This report was reviewed by Council's Environmental Health Team who are satisfied that the site is suitable for residential subject to conditions which are included in the recommendation of this report.

State Environmental Planning Policy No 65 - Design Quality of Residential Flat Buildings

SEPP 65 aims to improve the design quality of residential flat development in NSW through the application of a series of 10 design principles, which guide the consideration of a proposed residential flat building to ensure that it achieves an appropriate level of design quality.

Clause 30(2) of SEPP 65 requires residential flat development to be designed in accordance with the design quality principles in Part 2 of SEPP 65. In this regard Chris Rogers and Matthew Pullinger provided the following design verification:-

....we are NSW registered architects and are responsible for directing the design of the enclosed development application which is represented by the drawings (indicated in Appendix A) - Development application proposal for a four storey residential flat building comprising 88 Apartments with an in ground carpark – We further verify that the proposal satisfies the design quality principles set out in the State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development and has been designed with regard to the Apartment Design Guide

On the 17 July 2019 the development was considered by Council's Design Review Panel with the following comments provided:

- *The Panel notes that universal access is not provided in the pedestrian through-site link.*
- *The Panel recommends that the internal Conway Avenue entry foyer is enlarged through a reconfiguration of the lift location and the adjoining services/risers.*

- *The Panel accepts the location of the covered communal open space areas as they provide a favourable outlook towards Powells Creeks Reserve.*

The applicant amended the proposal to address these comments including the provision of universal access in the pedestrian through-site link and enlargement of the Conway Avenue entry foyer.

Assessment of the proposal against the nine (9) design quality principles and the Design Criteria of the '*Apartment Design Guide*' is provided below.

Principle 1: Context and Neighbourhood Character

The subject site is located in Concord West which is approximately 14.5km to the west of the Sydney CBD as the crow flies. The site is located approximately 320m southwest of Concord West Station.

The area is characterised by a variety of built form and uses, including a mix of dwelling houses, town houses, apartment buildings, education and industrial uses. To the west of the site is Powell's Creek Reserve with Bicentennial Park beyond.

The Planning Proposal for the subject site amended the then zoning and maximum height and FSR controls as follows:

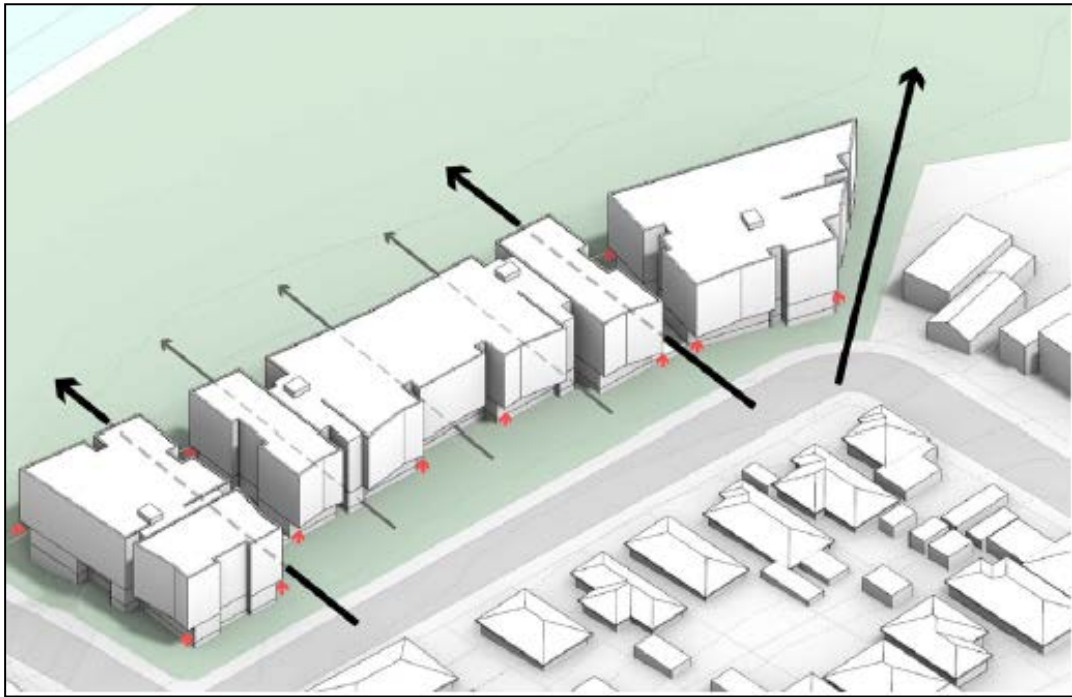
- Change the zoning of the site from IN1 General Industrial to R3 Medium Density Residential;
- Change the maximum height control from 9 metres to 16 metres; and
- Change the maximum FSR control from 1:1 to 1.4:1.

The area is undergoing a transition from the industrial use to residential.

The proposed residential flat building development is consistent with the desired future character that has been established through the deliberate and considered rezoning of this site. The proposed development is considered to relate well to the surrounding key natural and built features fulfilling this principle.

Principle 2: Built Form and Scale

The proposed built form across the site is broken up into three individual buildings to limit the façade length and to provide a visual connection from Rothwell Avenue through to Powell's Creek Reserve. The built form has been setback from Rothwell Avenue to form a large curved landscaped open space area.



Built form and massing (Source: Terroir & Matthew Pullinger Architect)

The proposal has a maximum height of 16.85 metres which exceeds the maximum height limit of 16 metres. The breach is limited to the north-west and south-western corners and the lift overruns for the middle and southern buildings. The breach to the height is inconsequential to the presentation and appearance of the building and does not directly contribute to any impact on the neighbouring properties or public domain.

The CBDCP identifies a 2m setback for the upper floor along the Rothwell Avenue and Conway Avenue street frontages. The Design Review Panel did not raise concerns about this non-compliance in the context of the overall bulk and scale of the middle building currently set well back from the street, which is an appropriate interface with the low-density dwellings to the east.

The proposal meets this principle by following the applicable controls and assuring appropriate architectural expression.

Principle 3: Density

The proposal has a gross floor area of 8,512sqm which is compliant with the maximum floor space ratio of 1.4:1. The main objective of the FSR is to ensure that buildings are compatible with the bulk and scale of the desired future character of the locality.

The proposal includes 88 apartments with different sizes and configurations. Additionally the proposal provides a required amount of communal open space and deep soil satisfying the requirements of the ADG.

Principle 4: Sustainability

The proposal is accompanied by the Basix certificate which assures an appropriate level of sustainable design for residential development.

- 70% of units are cross ventilated which meets ADG's minimum requirement, which reduces the need for mechanical ventilation.
- 88% of the living rooms and private open spaces receive at least 2 hours of solar access in mid winter, which reduces the need for heating.
- More than 25% of the subject site's area is provided as deep soil, which allows for good quality landscape and planting and natural rainwater penetration.
- The design verification statement also indicated the following measures that would ensure sustainability of the proposed development:
 - Passive design
 - Regenerative lifts
 - Auto switching landscape and common area lighting
 - Low energy LED fixtures throughout
 - Energy efficient appliances
 - High efficiency Gas hot water heating
 - Smart energy metering and monitoring
 - Water efficient fixtures and fittings
 - Water capture and reuse for landscape watering
 - Smart water metering and monitoring
 - Construction and demolition waste reduction
 - Operational waste sortation and reduction
 - Unified bin design and compaction
 - Individually controlled efficient HVAC systems and control methods

Principle 5: Landscaping

The proposal includes a comprehensive landscaping design which incorporates a defined curved open space area adjoining Rothwell Avenue, communal open spaces areas, pedestrian through site link, deep soil areas and planting. Terraced landscaping has been provided along Powell's Creek Reserve.

The overall communal open space equates to 1,688sqm (inclusive of pedestrian through site link) which is 28% of the overall subject site. The landscaped areas includes some 1,001sqm of deep soil, which is 16% of the site area satisfying the ADG requirement.



Hierarchy of landscaping (Source: Paddock)

Principle 6: Amenity

Units proposed are of sizes consistent with the ADG and have all been provided with private open space areas in the form of terraces and / or balconies which exceed the minimum requirements.

The proposal provides more than the required number of cross ventilated units. There are also more than required units with appropriate solar access to their living rooms and private open spaces.

The pedestrian through site link, residential apartments and the main communal open space area are accessible, being serviced via lifts and ramps.

Principle 7: Safety

Readily identifiable and safe access points have been provided to the building both for pedestrians and vehicles. Landscaping and fencing provides a clear delineation between the public and private spaces.

The apartments and associated balconies within the complex will provide for good passive surveillance both within the communal open space, along the street frontages and Powell's Creek Reserve.

Principle 8: Housing Diversity and Social Interaction

The proposal includes a well balanced mix of apartment sizes and configurations, which will activate the area and provide apartments for variety of users from families to single residents. The unit mix includes:

- 8 x one bedroom units;
- 64 x two bedroom units; and
- 16 x three bedroom units.

The through site link provided along the northern boundary provides universal access to Powell's Creek Reserve from Rothwell Avenue. This link is currently not available and therefore provides a great benefit for the connectivity of the local community and spaces.

Principle 9: Aesthetics

The proposal includes 3 separate buildings with a high quality design which provides texture and appropriate grain within the streetscape. The proposed design provides an appropriate response with highly articulated facades in vertical and horizontal direction.

The proposed finish material is predominantly matt black colorbond longline cladding with a ground floor Pewter face brick. This is complemented by dark black metal louvers, window frames, balustrading and awnings. The building entries are defined by vertical breaks in the façade which incorporate face brick, floor to ceiling glazing and open mesh cladding to the staircases. The proposed materials are high quality and the colour tone proposed for the buildings will fit the context and will not provide any adverse visual impacts.

The proposal also benefits in landscape design of the communal open spaces and public spaces to each of the surrounding streets and Powell's Creek Reserve.

Further to these design quality principles, Clause 28(2)(c) of SEPP 65 requires a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration) the Apartment Design Guide (ADG). A detailed analysis of the proposed development against this guide has been carried out in the compliance table below.

<i>Design Criteria</i>	<i>Comment</i>
Part 3 – Siting the Development	
3A Site Analysis	A site analysis plan was submitted with the application.
3B Orientation	The building design and layout responds to the orientation of the site.
3C Public Domain Interface	The proposal provides a landscaped interface to each frontage and boundary.
3D Communal and Public Open Space – Min. 25% 50% direct solar access to principle useable part, Min. 2 hours between 9am and 3pm.	The overall communal open space equates to 1,688sqm (inclusive of pedestrian through site link) which is 28% of the overall subject site. The communal open space areas collectively receive compliant solar access.
3E Deep Soil Zones – Min. 7% and 6m dimensions.	1,001sqm, 16.5%
3F Visual Privacy – up to 12m (4 storeys) Habitable – min.6m Non-habitable – min. 3m	Minimum 6m
3G Pedestrian Access and Entries	Clearly defined pedestrian entries are provided from Rothwell and Conway Avenue.
3H Vehicle Access	Vehicular access is provided from Conway Avenue.
3J Bicycle and Parking Access	The proposal incorporates compliant car and bicycle parking.
Part 4 – Designing the Building	
4A Solar Access and Daylight – Min. 70% direct sunlight to living room and private open space between 9am and 3pm at mid-winter Max. 15% receive no direct sunlight	78 units or 88.6% 8 units or 9.1%
4B Natural Ventilation – Min. 60% cross ventilated Overall depth – glass to glass, Max 18m	62 units or 70% Maximum 18m

4C Ceiling Heights – Residential Min. 2.7m	Floor to floor of 3.3m
4D Apartment Size and Layout – Studio – 35m ² 1 Bed – 50m ² 2 Bed – 70m ² 3 Bed – 90m ²	Compliant
Every habitable room must have a window in an external wall with a total minimum glass area of 10%	Compliant
Habitable room depths maximum 2.5 X ceiling height	Compliant
In open plan layouts the maximum habitable room depth is 8m from a window	Compliant
Min. area main bedroom 10m ² Other bedrooms 9m ² (excluding wardrobe)	Compliant
Bedroom Min. width 3m	Compliant
Living room min width Studio and 1 bed – 3.6m 2 and 3 bed – 4m	Compliant
Cross-through min width 4m	Compliant
Max habitable depth 8m	Compliant
4E Private Open Space and Balconies Studio – 4m ² 1 bed – 8m ² , 2m 2 bed – 10m ² , 2m 3+ bed – 12m ² , 2.4m Ground level 15sqm, 3m	Compliant
4F Common Circulation and Spaces – Max unit off single core is 8	6
4G Storage Studio – 4m ² 1 bed – 6m ²	Compliant, condition included within recommendation of this report.

2 bed – 8m2 3+ bed – 10m2 Min 50% in apartment	
4H Acoustic Privacy	The apartment layout minimise noise transmission with the general grouping of bedroom and living room uses.
4J Noise and Pollution	No significant external noise sources.
4K Apartment Mix	<p>The unit mix includes:</p> <ul style="list-style-type: none"> - 8 x one bedroom units; - 64 x two bedroom units; and - 16 x three bedroom units. <p>A satisfactory mix has been provided within the proposal.</p>
4L Ground Floor Apartments	All units are accessed through common foyers, however, ground floor apartments also incorporate a gate access to private courtyards from Rothwell Avenue, Conway Avenue and Powells Creek Reserve.
4M Facades	Building facades are generally considered acceptable with effective articulation provided.
4N Roof Design	A flat roof form is proposed which is consistent with surrounding medium density developments in the area. Roof plant is centralised and not readily visible from the surrounding area.
4O Landscape Design	The proposal has been reviewed by Council's Landscape Team with a high quality landscaped design proposed.
4P Planting on Structures	The applicant has demonstrated that adequate soil depths are provided for any planting proposed on structures.
4Q Universal Design Min. 20% Living Housing Guideline's silver level universal design features	18 units or 20.5%
Min. 15% adaptable housing	14 units or 15.9%
4R Adaptive Reuse	n/a
4S Mixed Use	n/a
4T Awnings and Signage	n/a
4U Energy Efficiency	A BASIX certificate was submitted with the application providing compliance with targets.
4V Water Management and Conservation	The BASIX Certificate provided for the proposal provides a target pass for water conservation.
4W Waste Management	A waste management plan was submitted with appropriate storage and recycling areas provided.
4X Building Maintenance	The selected materials and finishes will require typical ongoing maintenance.

State Environmental Planning Policy - Building Sustainability Index (2004)

To encourage sustainable residential development, all new dwellings must comply with the provisions of State Environmental Planning Policy – Building Sustainability Index (BASIX). The Applicant has submitted a BASIX certificate which achieved compliance with the required water and energy targets.

State Environmental Planning Policy (Infrastructure) 2007

The proposed development is not defined as traffic generating development under the provisions of Schedule 3 of State Environmental Planning Policy (Infrastructure) 2007 as the proposal will provide less than 300 dwellings.

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 applies to non-rural areas of the State inclusive of the subject local government area and aims to (a) protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and (b) preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The proposed tree removal and landscape plans were considered by Council's Tree Services and Landscape Team. The applicant subsequently amended the proposal to retain trees of significance, and as amended, the proposal is considered acceptable subject to conditions included in the recommendation of this report.

5.1.2. *Local Environmental Planning Instruments*

The proposed development, defined as a residential flat building is permissible with consent, within a R3 Medium Density Residential zone under the Canada Bay Local Environmental Plan 2013. The objectives of the zone are considered below:-

Objective	Comment
To provide for the housing needs of the community within a medium density residential environment	The proposal will provide 88 additional apartments which is consistent with this medium density zoning objective.
To provide a variety of housing types within a medium density residential environment	The proposal includes a well balanced mix of apartment sizes and configurations, which will activate the area and provide apartments for a variety of users from families to sole occupants.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	The development of this site for residential purposes will not preclude the neighbouring sites from providing facilities and services to meet the day to day needs of residents. The site is within close proximity to a variety of local facilities and services.

Following is a summary table indicating performance of the proposal against relevant statutory standards of the CBLEP:

Requirement	Proposed	Compliance
CI 4.1A – Minimum lot sizes for dual occupancies, multi dwelling housing and residential flat buildings		
Minimum 800sqm	6,080sqm	✓

CI 4.3 - Building Height		
Maximum height applicable to site - 16m.	<p>Maximum – 16.85m</p> <p>The breach is limited to the north-west and south-western corners and the lift overruns for the middle and southern buildings.</p>	X
CI 4.4 - Floor Space Ratio (FSR)		
Maximum 1.4:1. (8,512sqm)	1.4:1 (8,512sqm)	✓
CI 5.10 - Heritage Conservation		
<p>Effect of proposed development on heritage significance The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.</p>	<p>Powell's Creek Reserve is a local heritage item which is significant as a <i>'Reserve with planting of indigenous species from c.1970/80s. Notable landscape element adjacent to freeway leading to Olympic Games site.'</i></p> <p>The proposed development is consistent with the Concord West Precinct Masterplan and as designed provide a residential flat building with a terraced landscaped gardens along the Powell's Creek Reserve boundary. The proposed development will enhance the existing industrial character of development, with no direct impact on existing significant planting within the reserve.</p> <p>The proposed development will not have any unreasonable impact on the significance of this heritage item.</p>	✓
CI 6.1 - Acid Sulfate Soils		
The subject site is mapped as containing class 2 & 5 Acid Sulfate Soils.	A geotechnical investigation report was submitted which included soil testing that did not identify the presence of potential or actual acid sulfate soils. An acid sulfate soil management plan is not required.	✓
CI 6.8 – Flood Planning		
<p>The site is identified on the Flood planning Map.</p> <p>Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—</p> <p>(a) is compatible with the flood hazard of the land, and</p> <p>(b) will not significantly adversely affect flood behaviour resulting in detrimental</p>	The applicant submitted an updated flood assessment report which was reviewed by Council's Engineering Team. Council's Engineering Team are satisfied that the proposal, as conditioned, would satisfy the floor planning requirements.	✓

<p>increases in the potential flood affectation of other development or properties, and</p> <p>(c) incorporates appropriate measures to manage risk to life from flood, and</p> <p>(d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and</p> <p>(e) is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.</p>		
CI 6.9 – Arrangement for designated State public infrastructure		
<p>The site identified on the Intensive Urban Development Area Map.</p> <p>....development consent must not be granted for development for the purposes of residential accommodation (whether as part of a mixed use development or otherwise) in an intensive urban development area that results in an increase in the number of dwellings in that area, unless the Secretary has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to the land on which the development is to be carried out.</p>	<p>At the time of writing this report the DPIE have advised that they have received the executed planning agreement and full value bank guarantee from the developer. DPIE anticipate that satisfactory arrangements will be in place between the Department Secretary and the Developer to enable this development application to be determined.</p>	-

As indicated in the compliance table, the proposed development does not comply with the building height development standards under Clause 4.3 of the CBLEP 2013.

Clause 4.6 - Exemptions to Development Standards

1) *The objectives of this clause are:*

- a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

2) *Consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*

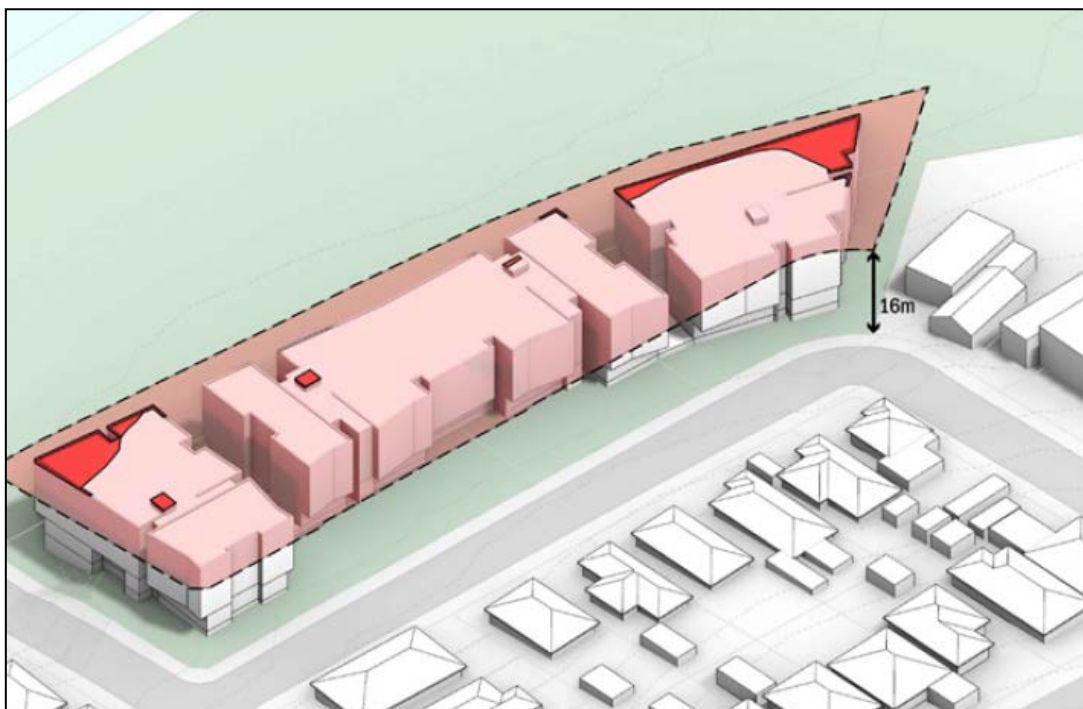
- 3) *Consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

- 4) *Consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *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, and*
 - (b) *the concurrence of the Director-General has been obtained.*

- 5) *In deciding whether to grant concurrence, the Director-General must consider:*
 - a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - b) *the public benefit of maintaining the development standard, and*
 - c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

1. What Clause is sought to be varied:

Clause 4.3(2) of the Canada Bay Local Environmental Plan 2013 (CBLEP 2013) states that *the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Building Map*. The Height of Building Map shows that the maximum Building Height permitted on the subject land is 16m. The proposed development has a Building Height of 16.85m exceeding the development standard by 0.85m (5.3%). The breach is limited to the north-west and south-western corners and the lift overruns for the middle and southern buildings.



Building height limit (Source: Terroir & Matthew Pullinger Architect)

2. Clause 4.6 Objectives:

The following objectives are contained in Clause 4.6 of the Canada Bay Local Environmental Plan 2013:-

- i) to provide an appropriate degree of flexibility in applying certain development standards to particular development, and*
- ii) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

In consideration of the applicant's written submission, Council is satisfied that it is appropriate to invoke the provisions of Clause 4.6 to vary the building height development standard in order to achieve a better planning outcome for the development of the subject site by allowing flexibility in the application of the maximum building height given the circumstances of the proposal as follows:-

The reason that the proposal does not comply with the building height limit is the 3m topographical fall across the site and the minimum finished floor level required in the updated flood assessment report. Compliance with the minimum flood level elevates the development along the western edge which breaches the height limit.

Given the flooding issue it is considered reasonable to provide a degree of flexibility in the assessment of this application as the proposed built form remains consistent with the built form envisaged in the Concord West Masterplan.

3. Clause 4.6(3) Provisions:

Sub-clause (3) of Clause 4.6 of the CBLEP 2013 states that development consent must not be granted for development that contravenes a development standard unless the

consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating the following:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*

In consideration of the applicant's written submission, Council is satisfied that it is unreasonable and unnecessary to require strict compliance with the building height development standard under Clause 4.3(2) of the CBLEP 2013, and that there are sufficient environmental planning grounds to justify contravening the building height standard for the reasons set out below.

Council is also satisfied that the proposed development is in the public interest because it is consistent with the following objectives of the building height development standard, as contained in Clause 4.3(1) of the CBLEP 2013, for the reasons set out below:-

- (a) to ensure that buildings are compatible with the desired future character in terms of building height and roof forms,*
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.*

The breach to the height is inconsequential to the presentation and appearance of the building and does not directly contribute to any impact on the neighbouring properties or public domain.

Council is also satisfied that in accordance with sub-clause (4) (ii) of Clause 4.6, the proposal will be in the public interest because it is consistent with the following objectives of the R3 Medium Density Residential zone in which the site is located, for the reasons stated below:-

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposal will provide 88 additional apartments, which is consistent with this medium density zoning objective. The proposal includes a well balanced mix of apartment sizes and configurations, which will activate the area and provide apartments for a variety of users from families to sole occupants. The development of this site for residential purposes will not preclude the neighbouring sites from providing facilities and services to meet the day to day needs of residents. The site is within close proximity to a variety of local facilities and services.

In accordance with sub-clause (4) of Clause 4.6 of the CBLEP 2013, and in view of the above assessment, Council is satisfied that the applicant's written request to vary the building height development standard adequately addresses the matters required to be demonstrated under sub-clause (3) and that the written submission is well-founded.

Sub-clause (4) (b) states that development consent must not be granted unless the concurrence of the Secretary of the Department of Planning and Environment (DPE) has been obtained. Council has been advised that it can assume the concurrence of the Secretary of the DPE. Under Sub-clause (5) the Secretary is required to consider the following when deciding to grant concurrence:-

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) the public benefit of maintaining the development standard, and*
- (c) any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Council is satisfied that the contravention of the building height development standard in this case will not raise any matter of significance for state or regional environmental planning and that the public benefit of the building height development standard will be maintained.

5.2. **Development Control Plans, Council Policies or Codes [Section 4.15(1)(a)(iii)]**

The Canada Bay Special Precincts Development Control Plan at Part 2.15 provides the relevant design guidelines for development in the Concord West Precinct.

Requirement	Proposed	Compliance
Part 2.15.3 Public Domain and Movement		
Pedestrian and Cycle Connections		
C3. Provide a new mid-block pedestrian connection between Rothwell Avenue and Powells Creek Reserve within the area identified in Figure 71 Public Domain Plan.	The DCP identifies a new mid-block connection shared between No. 4 Rothwell Avenue (subject site) and No. 6 Rothwell Avenue.	✓
C4. All new pedestrian connections are to be a minimum 10 metres wide.	The required connection has been provided along the northern boundary with a minimum width of 6m at the eastern end and opening out to 9m towards the western end. The connection provides universal access and is appropriately landscaped. The balance of the link can be provided on the adjoining site as landscaping, noting the physical access has been secured through this application.	Acceptable
C5. All pedestrian connections and footpaths are to be publicly accessible 24 hours a day through access easements.	Public access will be provided by an easement.	✓

C6. All new pedestrian connections are to be consistent with Safer-by-Design (or CPTED) principles (i.e. clear lines of sight).	The pedestrian link is clearly defined with clear sightlines through the link with minimal opportunity for people to conceal themselves. Passive surveillance is provided by the adjoining apartments which have glazing and private open space areas along the length of the pedestrian link. The landscape design incorporates lighting at night. It is considered that the proposed pedestrian connection incorporates design elements which are consistent with the Safer-by-Design Principles.	✓
C9. Provide for new footpaths as indicated in Figure 71 Public Domain Plan. – Footpath along Rothwell Avenue.	The proposal includes footpaths along Rothwell Avenue and Conway Avenue.	✓
Part 2.15.4 Built Form		
Building Setbacks		
C18. Development setbacks are to be in accordance with Figure 72 Primary Setbacks. Powells Creek Reserve – 3m Rothwell and Conway Avenue – 6m	The development incorporates setback which exceed the minimum requirements.	✓
C19. The upper most level of new development four storeys or higher is to provide a 2 metre setback in accordance with Figure 73 Secondary Setback. Refer to Figures 75-87 for built form examples.	The Design Review Panel did not raise concerns about this non-compliance in the context of the overall bulk and scale of the middle building currently set well back from the street, which is an appropriate interface with the low-density dwellings to the east.	Satisfactory
C20. The area within the primary setback of the street frontage is to be a deep soil zone and is to have no structures below.	Deep soil planting has been provided along each street frontage.	✓
C21. Access points to underground parking are encouraged to be located between existing and new development if that will provide for increased building separation.	Vehicular access is suitably located on Conway Avenue which is a secondary frontage. The building is appropriately setback from the future development site to the north.	✓
Building Height		
C22. New buildings are to be consistent with Figure 74 Maximum Building Heights. <i>Note: Maximum building heights are to be in accordance with the LEP. This control provides further, more detailed guidance, and is intended to articulate building height in storeys to better achieve the objective of this point, in particular minimising negative impacts on existing development.</i> Interface heights – 2-4 storeys	4 storeys	✓
Building Articulation		

C24. Where a building is greater than 60 metres in length the facade is articulated through the use of: - significant recesses or projections. - deep balconies. - elements of a finer scale than the main structural framing including the eaves and overhangs. - vertical elements such as blade walls or fins.	The design consists of three separate buildings which each incorporate design elements that provide articulation.	✓
Ground Floor Residential		
C25. Dwellings on the ground floor facing the street are to have individual entries from the street.	All units are accessed through common foyers, however, ground floor apartments also incorporate a gate access to private courtyards from Rothwell Avenue, Conway Avenue and Powells Creek Reserve.	✓
C26. Ground floor private open space is to be designed as a private terrace. <i>Note: The area and dimension of private open space is to be consistent with Part 6 (6.4.6) of the Canada Bay DCP.</i> Minimum 40sqm and 5 x 5m	Each terrace has an area of 40sqm, however, some do not comply with the 5m dimension. The terraces comply with the ADG and each directly adjoin the living areas of the units with layout that accommodate outdoor setting and the recreation of the occupants.	Acceptable
C27. Where fronting a pedestrian connection, ground floor dwellings are to be designed to maximise passive surveillance.	Passive surveillance provided by the glazing and private open space areas along the length of the pedestrian link.	✓
Part 2.15.5 General		
Flooding		
C30. New development is to be consistent with the findings, conclusions and recommendations of the Concord West Precinct Master Plan Flood Study.	The applicant submitted an updated flood assessment report which was reviewed by Council's Engineering Team. Council's Engineering Team are satisfied that the proposal, as conditioned, would satisfy the floor planning requirements.	✓
Passive Surveillance		
C32. Where fronting Powell's Creek Reserve, the Canada Bay Primary School playing fields or Olympic Park, development is to engage and activate open space through layout and design measures which include: - Orienting living areas and areas of principal open space toward open space, having large, transparent windows facing the open space. - Avoid dense screen vegetation within private open space. - Increasing opportunities for passive surveillance. - Avoiding large / expansive walls. - Providing low or transparent fencing.	Living areas and areas of principal open space have been orientated towards Powells Creek Reserve including large elements of glazing. Suitable landscaping and fencing interface has been provided.	✓

- Avoiding significant grade change of built form.		
Parking		
<p>C33. Car and bicycle parking provision is to be in accordance with Section 3.8 Car Parking and Bicycle Parking under the Parramatta Road Urban Transformation Planning and Design Guidelines (see Table 1).</p> <p>Studio – 0.3 1 bed – 0.5 2 bed – 0.9 3 bed – 1.2 Visitor – 0.1</p> <p>Car space – 82 Visitor – 9 Bicycle parking – 9</p>	<p>Car space – 82 Visitor – 9 Bicycle parking – 9</p>	✓
<p>C34. Car parking provision must not exceed individual maximums provided per Sub-precinct in Table 2.</p> <p>Sub-precinct 6 – 141</p>	Car spaces - 91	✓

The proposal provides justified compliance with the special precinct controls with any variation considered in the table above to be acceptable.

The Special precinct DCP also adopts the control contained within Part C General Controls (excluding C3 car parking) and Part E2 Environmental Criteria and Residential Amenity of the Canada Bay Development Control Plan 2018.

Requirement	Proposed	Compliance
Part C General Controls		
C1.1 Adaptable housing		
In accordance with Table C-A – A minimum of 15% of the total dwellings are required to be adaptable housing.	14	✓
Minimum 13.2 units		
C4 Waste Management		
C1. Residential developments are to provide storage space for garbage, recyclables and garden organics.	A dual garbage and recycling chute system is provided on each floor adjoining the lift. A dedicated waste and recycling bin area is located in the basement with the bins then presented to a waste collection area adjoining Conway Avenue for collection by the truck from the street.	✓
Part E Residential Development		
E2 Environmental Criteria and Residential Amenity		
E2.1 Topography		

C1. Natural ground level should be maintained within 900mm of a side and rear boundary.	This control cannot be satisfied due to the flood control measures that are required. The site does however generally maintain the levels along each boundary.	Acceptable
C2. Cut and fill should not alter natural or existing ground levels by more than 600mm.	As above	Acceptable
C3. Habitable rooms (not including bathrooms, laundries and storerooms) are to be located above existing ground level.	All habitable rooms are located above existing ground level.	✓
C5. Soil depth around buildings should be capable of sustaining trees as well as shrubs and smaller scale gardens.	Depp soil planting is maintained around the perimeter of the site.	✓
E2.3 Solar Access		
C1. New buildings and additions are sited and designed to maximise direct sunlight to north-facing living areas and all private open spaces.	The proposal exceeds the ADG solar access requirement.	✓
C2. Direct sunlight to north facing windows of habitable rooms and all private open space areas of adjacent dwellings should not be reduced to less than 3 hours between 9am and 3pm on 21 June.	The neighbouring properties will maintain 3 hours of direct solar access to norther facing windows and private open space areas during midwinter.	✓
E2.4 Visual and Acoustic Privacy		
C1. Openable first floor windows and doors as well as balconies should be located so as to face the front or rear of the building.	The proposal exceeds the ADG building separation distances which mitigates any visual or acoustic privacy impacts.	✓
C2. Balconies should be located so as to face the front or rear of the building. No balconies are permitted on side elevations.	As above.	✓
C3. Provide a minimum sill height of 1.5m from finished floor level to windows on a side elevation which serve living areas and have a direct outlook to windows or principal private open space (not being front yard) of adjacent dwellings or alternatively use fixed obscure glass.	As above.	✓
C4. Upper level balconies to the rear of a building should be set back a minimum of 2m from any side boundary and should have a maximum 1.8m depth.	As above.	✓
C5. Upper level balconies that face side and rear boundaries will not be permitted when the upper level setback is less than 6.0 metres.	As above.	✓
C6. Provide suitable screen planting on a rear boundary that will achieve a minimum mature height of 6.0 metres where the rear upper floors are proposed to be less than 7m off a rear boundary.	As above.	✓

<p>C7. Ground floor decks, terraces or patios should not be greater than 500mm above natural ground level. If expansive terraces are sought on sloping ground, they should be designed to step down in relation to the topography of the site.</p>	<p>As above.</p>	<p>✓</p>
<p>C8. Where the visual privacy of adjacent properties is likely to be significantly affected from windows, doors and balconies, or where external driveways and/or parking spaces are located close to bedrooms of adjoining buildings, one or more of the following alternatives are to be applied:</p> <p>a) Fixed screens of a reasonable density (minimum 85% block out) should be provided in a position suitable to alleviate loss of privacy;</p> <p>b) Where there is an alternative source of natural ventilation, windows are to be provided with translucent glazing and fixed permanently closed;</p> <p>c) Windows are off-set or splayed to reduce privacy effects;</p> <p>d) An alternative design solution is adopted which results in the reduction of privacy effects; and</p> <p>e) Suitable screen planting or planter boxes are to be provided in an appropriate position to reduce the loss of privacy of adjoining premises.</p> <p>Note: This option will only be acceptable where it can be demonstrated that the longevity of the screen planting has been provided for eg. Automatic watering systems.</p>	<p>As above.</p>	<p>✓</p>
<p>E2.5 Access to Views</p>		
<p>C1. Development should seek to protect water views, iconic views and whole views.</p> <p>Water views are valued more highly than land views. Iconic views (e.g. of the Harbour Bridge or the City skyline) are valued more highly than views without icons. Whole views are valued more highly than partial views (e.g. a water view in which the interface between the land and water is visible is more valuable than one in which it is obscured).</p>	<p>There are no significant views, however, a submission was received raising concerns with the buildings blocking the outlook to the trees in Powells Creek Reserve.</p> <p>The development will replace single and two storey warehouse and industrial buildings with four storey residential flat buildings which consequently will block the outlook across the site to the tree canopies in Powell's Creek Reserve. Given that this is an outlook as opposed to a view and that the development is largely compliant, the general loss of outlook to the tree canopies is considered reasonable and unavoidable.</p>	<p>✓</p>

E2.6 Safety and Security		
C1. Ensure lighting is provided to all pedestrian paths, shared areas, parking areas and building entries for multi-unit development	Lighting has been provided.	✓
C2. High walls which obstruct surveillance are not permitted.	Appropriate sightlines are provided around and within the site.	✓
C4. Buildings adjacent to public streets or public spaces should be designed so residents can observe the area and carry out visual surveillance. At least one window of a habitable room should face the street or public space.	Windows and private open space areas provide passive surveillance of the adjoining streets, Powells Creek Reserve and the pedestrian through site link.	✓
C8. Balconies and windows should be positioned to allow observation of entrances.	The entry foyers are flanked by balconies and / or windows.	✓
C9. Proposed planting must not obstruct the building entrance from the street or sightlines between the building and the street frontage.	The entry points have been landscaped to ensure sightlines are maintained.	✓

The proposal provides justified compliance with the Canada Bay Development Control Plan 2018 with any variation considered in the table above to be acceptable.

5.3. **Likely Impacts of the Development [Section 4.15 (b)]**

The likely impacts of the proposed development upon the surrounding area are discussed as follows:

Built Form / Streetscape

This report has found that the proposal will present an appropriate built form, bulk and scale within the scope of the planning controls. The design is consistent with the planning framework and constraints of the site. The built form is considered in the SEPP 65 assessment in Part 5.1.1 of this report which concluded that the proposal is consistent with the design quality principles.

Solar Access

The proposal complies with solar access controls of the CBDP with all neighbouring properties maintaining 3 hours of direct solar access to their north facing windows and private open space areas during midwinter.

Privacy

The proposal exceeds the ADG building separation distances which mitigates any visual or acoustic privacy impacts.

Traffic Generation, Parking and Loading

A total of 91 car spaces are provided in the development which consists of 82 residential spaces and 9 visitor spaces. This complies with the maximum car parking rates for this site and sub-precinct 6.

Waste Management

A dual garbage and recycling chute system is provided on each floor adjoining the lift. A dedicated waste and recycling bin area is located in the basement with the bins then presented to a waste collection area adjoining Conway Avenue for collection by the truck from the street. Council's Waste Services Team have reviewed the proposal and provided conditions which have been included within the recommendation of this report.

Intensity of Use

The proposal will intensify the use of the subject site. The density / intensity is consistent with that embodied within the planning framework.

Social / Economic

The proposal will have minimal social / economic impacts. The proposed unit mix including 1, 2 and 3 bedrooms is appropriate to this area. The proposed design will provide for a variety of units sizes and a unit mix which will promote diversity, affordability and housing choice.

5.4. Suitability of the Site for the Development Proposed [Section 4.15(1)(c)]

The proposed development has been assessed in relation to its environmental consequences, and in terms of State Environmental Planning Policy No. 55 and SEPP 65. Having regard to this assessment it is considered that the land is suitable for the intended development.

5.5. The Public Interest [Section 5.14 (1)(e)]

The proposed development is consistent with the objectives of the Environmental Planning and Assessment Act in so far as it promotes the co-ordinated and orderly, and economic use and development of the land. As a result Council may be satisfied that the development subject to conditions is consistent with the public interest.

6. Referral Responses

<i>Department / Agency</i>	<i>Referral summary</i>
Department of Planning, Infrastructure and Environment	The Department and applicant have entered into a VPA and the Department has advised that satisfactory arrangements have been made for designated State public infrastructure.
Ausgrid	Conditions provided and included in the recommendation of this report.
Sydney Water	Conditions provided and included in the recommendation of this report.
Engineering Team	Conditions provided and included in the recommendation of this report.
Landscape Team	Conditions provided and included in the recommendation of this report.
Access Committee	Proposal amended and conditions imposed to ensure compliance with the access requirements of the BCA.
Traffic Team	Conditions provided and included in the recommendation of this report.

Waste Team	Conditions provided and included in the recommendation of this report.
Environmental Health Team – Contamination	The site does not require a remedial action plans with conditions provided and included in the recommendation of this report.
Environmental Health Team – Acid Sulfate Soil	Conditions provided and included in the recommendation of this report.

7. Conclusion

The proposed residential flat building development is consistent with the desired future character that has been established through the deliberate and considered rezoning of this site through the Concord West Precinct Masterplan.

The proposed development is appropriately located within a R3 Medium Density Residential zone under the provisions of Canada Bay Local Environmental Plan 2013 and is consistent with the statutory and non-statutory development standards and controls of relevance to the proposal.

Further, the development performs adequately in terms of its relationship to the surrounding built and natural environment, particularly in relation to likely impacts upon surrounding properties. Consequently, the proposal is supported from an environmental planning perspective.

Prepared by:



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Endorsed by:



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City of Canada Bay

8. Recommendation

Pursuant to Section 4.16 of the Environmental Planning and Assessment Act 1979 (as amended)

- A. THAT the Sydney Eastern City Planning Panel assume the concurrence of the Secretary: Department of Planning and Environment and invoke the provisions of clause 4.6 of the Canada Bay Local Environmental Plan 2013 and resolve that in the circumstance of the case a strict application of the statutory standards contained in Clause 4.3 Height of Buildings in the Canada Bay Local Environmental Plan 2013 is unnecessary and unreasonable.
- B. The Sydney Eastern City Planning Panel, as the determining authority, grant consent to development application DA2019/0160 for demolition of existing structures and construction of a residential flat building development on land at 2 – 4 Rothwell Avenue, Concord West, subject to the site specific conditions contained in Appendix A of this report.

APPENDIX - A