

SYDNEY CENTRAL CITY PLANNING PANEL

TO: Sydney Central City Planning Panel (SCCPP) – 11 December 2019 Meeting
SUBJECT: 2-36 Church Street, Lidcombe
FILE No: DA-94/2019

Application lodged	25 March 2019	
Applicant	Saul Moran	
Owner	NSW Land and Housing Corporation (Crown Application)	
Application No.	DA-94/2019	
Description of Land	2-36 Church Street, Lidcombe	
Proposed Development	Construction of 4 residential flat buildings of varying heights from 4 to 10 storeys, comprising 262 units (including 53 social housing units) over basement parking for 335 vehicles, pursuant to SEPP (Affordable Rental Housing) 2009, and construction of a roundabout at the intersection of Martin Street and Church Street	
Site Area	10,132.7m 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"> o <i>Rookwood Cemetery or Necropolis</i> – Item A00719; and o <i>Lidcombe Signal Box</i> – Item A56. 	
Principal Development Standards	Floor Space Ratio	Height of Buildings
	<u>2-8 Church Street, Lidcombe</u> Permissible: 3.12:1 Proposed: 3.13:1 (Resolved through Condition)	<u>2-8 Church Street, Lidcombe</u> Permissible: 27m Proposed: 29m
	<u>10-16 Church Street, Lidcombe</u> Permissible: 2.99:1 Proposed: 3:1 (Resolved through Condition)	<u>10-16 Church Street, Lidcombe</u> Permissible: 22.9m Proposed: 30.2m
	<u>18-24 Church Street, Lidcombe</u> Permissible: 1.99:1 Proposed: 1.98:1	<u>18-24 Church Street, Lidcombe</u> Permissible: 16.9m Proposed: 26m
	<u>26-36 Church Street, Lidcombe</u> Permissible: 1.79:1 Proposed: 1.37:1	<u>26-36 Church Street, Lidcombe</u> Permissible: 14.9m Proposed: 18.1m
Issues	<ul style="list-style-type: none"> • Natural Ventilation • Units per Level / Core • Landscaped Area • Deep Soil Zones • Solar Access • Height of Buildings (Clause 4.6 Variation) • Rear Setback 	

SYDNEY CENTRAL CITY PLANNING PANEL



Figure 1 – Aerial Perspective, Looking South-West (Source: Cox Architecture, 2019)



Figure 2 – Perspective of Buildings A and B from Church Street, looking South
(Source: Cox Architecture, 2019)

SYDNEY CENTRAL CITY PLANNING PANEL



Figure 3 – Perspective of Buildings C and D from Church Street, looking South-East
(Source: Cox Architecture, 2019)

1.0 SUMMARY

Council is in receipt of a development application from Saul Moran seeking approval for *construction of 4 residential flat buildings of varying heights from 4 to 10 storeys, comprising 262 units (including 53 social housing units) over basement parking for 335 vehicles, pursuant to SEPP (Affordable Rental Housing) 2009, and construction of a roundabout at the intersection of Martin Street and Church Street at 2-36 Church Street, Lidcombe*. The development application architectural plans are provided as **Attachment 1** to this report.

The owner of the subject property is NSW Land and Housing Corporation. Consequently, the application has been made by the Crown, and is defined as a *Crown Development* pursuant to Division 4.6 of the Environmental Planning and Assessment Act, 1979. The draft notice of determination provided as **Attachment 3** to this report has been issued to the Applicant prior to the meeting for their review and concurrence, and concurrence has been provided on 26 November 2019.

The development application was publicly notified for a period of 14 days from 16 April 2019 to 30 April 2019. In response, no submissions were received, however, a submission was received following the notification period, objecting to the proposal, which has been considered in the assessment of the application.

The site is zoned R4 High Density Residential, pursuant to the Auburn Local Environmental Plan 2010 (ALEP). A *Residential Flat Building* development is permissible with development consent in the R4 High Density Residential zone.

The proposal is generally consistent with the aims and objectives of State Environmental Planning Policy (State and Regional Development) 2011, State Environmental Planning Policy No 19 – Bushland in Urban Areas, State Environmental Planning Policy No. 55 (Remediation of Land), State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development, State

SYDNEY CENTRAL CITY PLANNING PANEL

Environmental Planning Policy (Affordable Rental Housing) 2009, State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004, State Environmental Planning Policy (Coastal Management) 2018, State Environmental Planning Policy (Infrastructure) 2007, Sydney Environmental Plan (Sydney Harbour Catchment) 2005, State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, Auburn Local Environmental Plan 2010 (ALEP), Draft State Environmental Planning Policy (Environment), and Auburn Development Control Plan 2010 (ADCP).

The development application was referred for comments externally to Sydney Trains, Roads and Maritime Services, AusGrid and the NSW Police Force, and internally to Council's Development Engineer, Tree Management Officer, Environmental Health Officer, and Resource Recovery Officer, to which the application is supported.

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.

The variations sought via the subject application are as follows:

Control	Required		Provided	% Variation
Natural Ventilation	158 units / 60%		110 units / 42%	30.4%
Units per Level / Core	Max. 8 units		9 to 12 units	12.5% to 50%
Landscaped Area	9,170m ²		3,986.7m ²	56.5%
Deep Soil Zones	709.29m ² / 7% or 1,519.905m ² / 15%		336.4m ² / 3.3% or 1,266.1m ² / 12.5%	52.57% / 16.7%
Solar Access - 3hrs via SEPP (ARH)	184 units / 70%		180 units / 68.7%	2.2%
Height of Buildings	2-8 Church	Max. 27m	29m	7.4%
	10-16 Church	Max. 22.9m	30.2m	31.9%
	18-24 Church	Max. 16.9m	26m	53.8%
	26-36 Church	Max. 14.9m	18.1m	21.5%
Rear Setback	Min. 10m		5.3m / 9.6m	47% / 4%

The application is being reported to the Sydney Central City Planning Panel (SCCPP) for determination, as, the development constitutes 'Regional Development' within the meaning of State Environmental Planning Policy (State and Regional Development) 2011, as the development exceeds the \$30 million threshold, with a Capital Investment Value (CIV) of \$85,418,508.

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

The subject site is known as 2-36 Church Street, Lidcombe, and is legally described as Lots 1 to 18 (inclusive), Deposited Plan 217589. The site is irregularly shaped, and has a frontage of 307.155m to Church Street, a rear boundary of 296.7 metres which adjoins a railway corridor, and a western boundary of 20.565 metres. The total site area is 10,132.7sqm, and is illustrated in **Figure 4** below:

SYDNEY CENTRAL CITY PLANNING PANEL

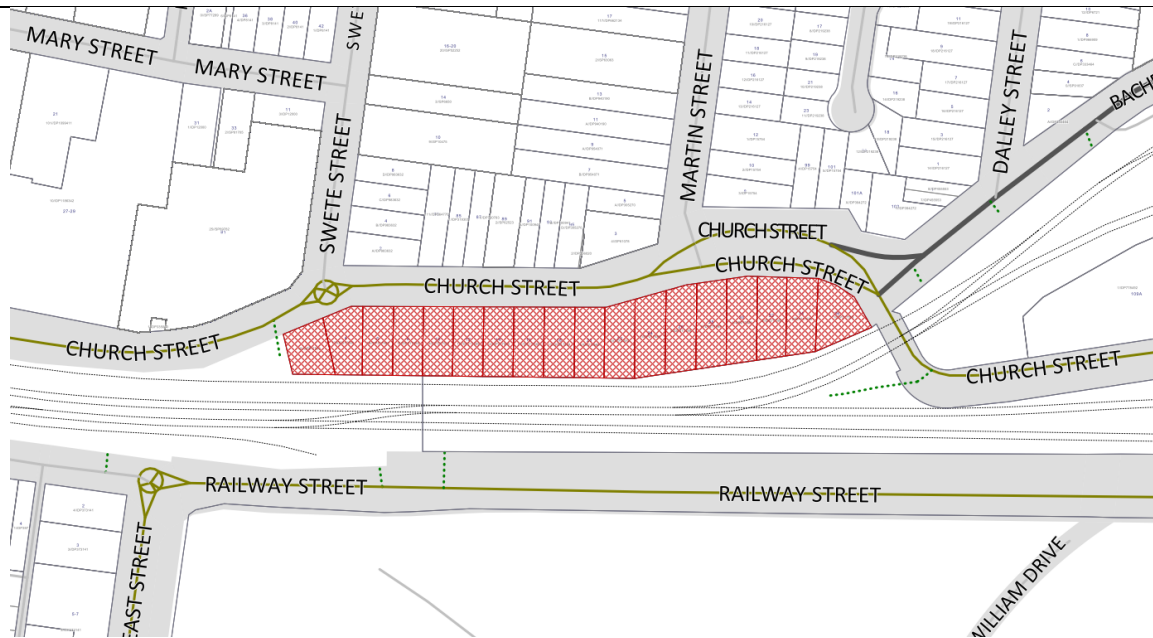


Figure 4 - Location Map (Source: Cumberland Council, 2019)

The subject site is currently vacant with 64 existing trees on or immediately adjacent to the subject site.

The surrounding locality is characterised as follows:

- **North** Church Street, with one and two storey low and medium density residential developments beyond, with the exception of development opposite 2 Church Street, Lidcombe, being 81 Church Street, Lidcombe, which is maintained to an 8 storey residential flat building.
- **East** Church Street, with the railway corridor and industrial development beyond.
- **South** Railway corridor, with Railway Street and Rookwood Cemetery beyond.
- **West** Railway land, with Church Street beyond, and residential flat buildings of 8 and 6 storeys beyond located at 81 Church Street, Lidcombe.

The topography of the site is maintained to a 2.66% gradient, with a 7.98 metre fall from North West to South East. The site is zoned R4 High Density Residential, pursuant to the Auburn Local Environmental Plan 2010 (ALEP), as shown in **Figure 5** below:

SYDNEY CENTRAL CITY PLANNING PANEL

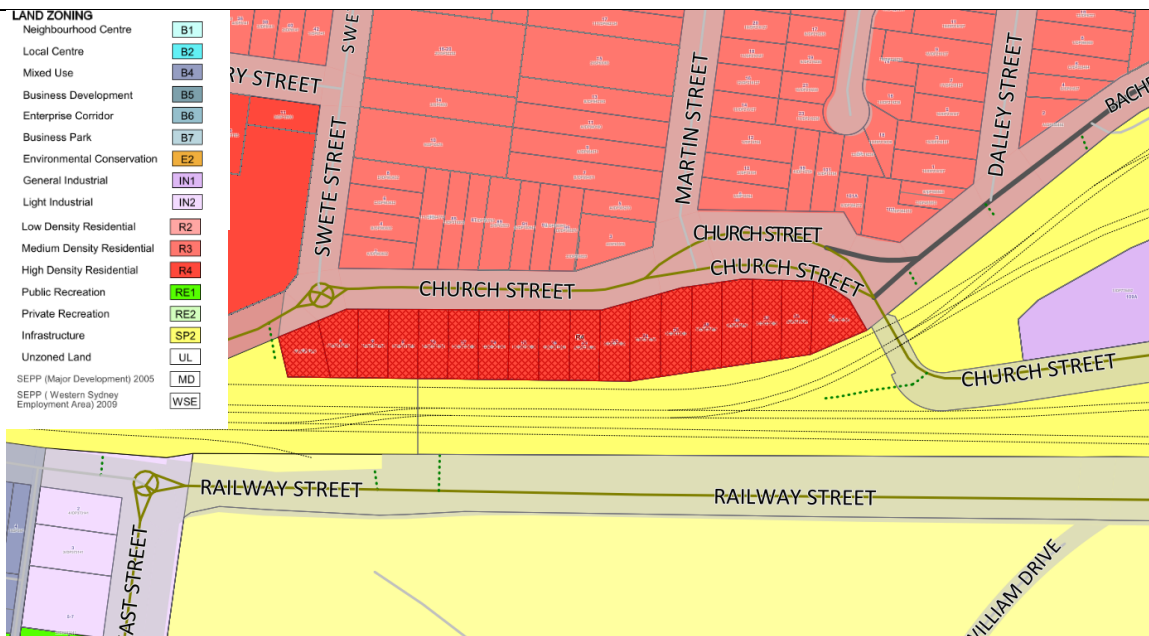


Figure 5 – Zoning Map (Source: Cumberland Council, 2019)

The subject site is situated to the south of Church Street. **Figure 6** below illustrates an aerial perspective of the site and the general surroundings.



Figure 6 – Aerial Photo (Source: Cumberland Council, 2019)

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

- *Rookwood Cemetery or Necropolis* – Item A00719; and
- *Lidcombe Signal Box* – Item A56.

The heritage items listed above are illustrated in **Figure 7** below.

SYDNEY CENTRAL CITY PLANNING PANEL

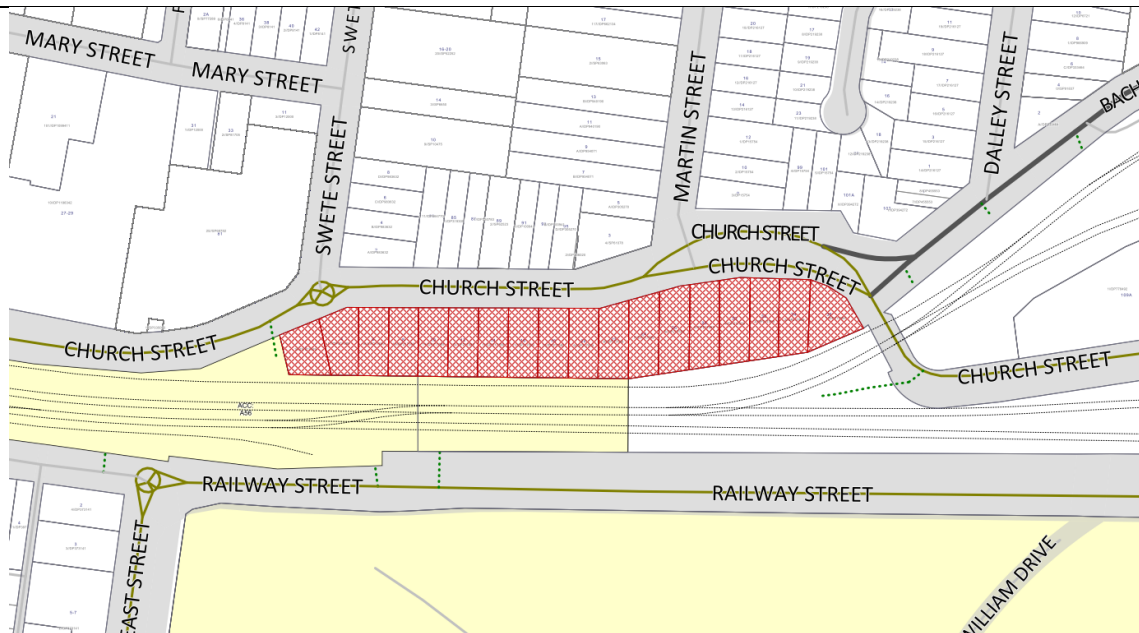


Figure 7 – Heritage Map (Source: Cumberland Council, 2019)

3.0 DESCRIPTION OF THE PROPOSED DEVELOPMENT

The proposal is for construction of 4 residential flat buildings of varying heights from 4 to 10 storeys, comprising 262 units (including 53 social housing units) over basement parking for 335 vehicles, pursuant to SEPP (Affordable Rental Housing) 2009, and construction of a roundabout at the intersection of Martin Street and Church Street.

In detail, the following description has been provided by the Applicant within the Statement of Environmental Effects prepared by Ethos Urban, dated March 2019. The description has been updated, where relevant, to reflect subsequent changes made through the resubmission of amended plans and documents:

Description of Proposed Development

The DA seeks approval for:

- Site preparation works, excavation and tree removal;
- Construction of four (4) residential flat buildings comprising 262 dwellings split between:
 - Building A comprising 4-5 storeys and 53 apartments (social housing);
 - Building B comprising 6-7 storeys and 59 apartments (market housing);
 - Building C comprising 8-9 storeys and 73 apartments (market housing); and
 - Building D comprising 9-10 storeys and 77 apartments (market housing);
- Construction of parking and waste facilities including:
 - Shared loading facilities and waste room on the ground level zone between buildings A and B;

SYDNEY CENTRAL CITY PLANNING PANEL

- *A single level basement car park with 48 25 car spaces for Building A;*
- *A shared 3-4 levels basement comprising 310 car spaces, waste room and residential storage for Buildings B, C, and D.*
- *Associated landscaping works, including:*
 - *Ground level communal courtyards;*
 - *Rooftop communal open space for Buildings A, B, C, and D including BBQ, informal seating and landscaped recreational areas.*
- *Construction of a single lane roundabout at the intersection with Martin Street, and modifications to the median strip along Church Street.*

Following from the above, a numerical overview of the key components of the development is provided below:

Numerical Overview of Key Components

Component	Required / Permissible		Proposed	Complies
Site Area	N/A		10,132.7m ²	N/A
Gross Floor Area (GFA) – Combined	23,969.76m ²		22,373.4m ²	Yes
Floor Space Ratio (FSR)	2-8 Church	3.12:1	3.13:1	No, but Resolved via Condition
	10-16 Church	2.99:1	3:1	
	18-24 Church	1.99:1	1.98:1	Yes
	26-36 Church	1.79:1	1.37:1	Yes
Height of Buildings (HOB)	2-8 Church	27m	29m (V. 7.4%)	No, but Acceptable on Merit
	10-16 Church	22.9m	30.2m (V. 31.9%)	
	18-24 Church	16.9m	26m (V. 53.8%)	
	26-36 Church	14.9m	18.1m (V. 21.5%)	
Boundary Setbacks	North	4m	4.1m	Yes
	South	10m	5.3m / 9.6m (V. 47% / 4%)	No, but Acceptable on Merit
	East	N/A	10.9m	
	West	N/A	8.4m	N/A
Building Separation	North	27m	>27m	Yes
	South	N/A	N/A	
	East	N/A	N/A	
	West	27m	>27m	
	Building A & B	12m – 18m	12m – 18m	
	Building B & C	12m – 18m	18m	
	Buildings C & D	12m – 24m	18m – 24m	
Apartment Numbers	Building A		53 units	N/A
	Building B		59 units	
	Building C		73 units	
	Building D		77 units	

SYDNEY CENTRAL CITY PLANNING PANEL

	Total		262 units	
Apartment Mix	1 bedroom		74 units (28.25%)	N/A
	2 bedroom		135 units (51.5%)	
	3 bedroom		53 units (20.25%)	
Car Parking	Building A	25 spaces	25 spaces	Yes
	Buildings B, C & D	126 spaces	310 spaces	
	Total		335 spaces	
Bicycle Parking	Building A		21 spaces	N/A
	Buildings B, C & D		37 spaces	
	Total		58 spaces	
Communal Open Space (COS)	2,533.175m ²		2,861.7m ²	Yes
Deep Soil Zone	709.29m ² (6m Dimension) / 1,519.905m ² (3m Dimension)		336.4m ² (6m Dimension) 1,266.1m ² (3m Dimension)	No, but Acceptable on Merit
Landscape Area	9,170m ²		3,986.7m ² (V. 56.5%)	No, but Acceptable on Merit
Solar Access (2hr)	184 units		195 units	Yes
Natural Ventilation	158 units		110 units (V. 30.4%)	No, but Acceptable on Merit

*V - Variation

Built Form

The proposal comprises 4 residential flat buildings oriented north-south, with building massing tiered from the western end of the site to eastern end, with the tallest building located closest to the railway station, reflecting the density controls applicable. The height in storeys is reflected below:

- Building D comprises 9-10 storeys
- Building C comprises 8-9 Storeys
- Building B comprises 6-7 storeys
- Building A comprises 4-5 storeys

Separation between the buildings is maintained between 12 metres and 24 metres, to ensure visual privacy and solar access is maintained. All buildings maintain a central indentation, which serves to reduce building bulk and enhance natural ventilation. The lower floors of the building provide recurring curved elements to the ends and central indentation, providing a uniform expression. The upper floors of the buildings are setback a minimum of 2 metres to provide a recessive element, and subsequently reduce building bulk and mass as perceived from the public domain.

Landscaping, Private and Communal Open Space

The proposal seeks to provide landscaping to both the ground floor and rooftop areas, with an aim to provide a diversity of landscaped areas and uses. Sixty-four (64) existing trees are present on or immediately adjacent to the subject site, with 43 trees to be removed, and 21 trees to be retained and protected. To offset the loss of the existing trees, and to improve the landscape character, 109 new trees are proposed within the site and via street tree planting, with the species reflected below:

SYDNEY CENTRAL CITY PLANNING PANEL

- | | |
|------------------------------------|-----------------------------|
| • Acer buregeranum | - Trident Maple |
| • Backhousia citriodora | - Lemon Scented Myrtle |
| • Banksia Integrifolia | - Coastal Banksia |
| • Franxinus 'Raywoodii' | - Claret Ash |
| • Hymenosporum flavum | - Native Frangipani |
| • Lagerstroemia indica | - Crepe Myrtle |
| • Mellalueca decora | - White Feather Honeymyrtle |
| • Sapium sebiferum | - Chinese Tallow Tree |
| • Tristaniopsis laurina 'Luscious' | - Water Gum |
| • Waterhousia floribunda | - Weeping Lilly Pilly |

Communal open space areas are designed to the northern and eastern aspects of Building A, between Buildings B and C, between Building C and D, and to the rooftop areas of Buildings A, B, C, and D. The communal open space area provide a diversity of spaces, and are designed with appropriate amenities to service the needs of future residents of the development. Private open space areas are provided in the form of courtyard areas to the ground floor units, and balcony areas to the units above.

Stormwater Management

The proposed development is designed to drain to an On-site Stormwater Detention (OSD) system, and discharge into a proposed kerb inlet pit and proposed stormwater pipe extension, with stormwater draining to the western end of Church Street.

Pedestrian and Vehicular Access, and Car Parking

Pedestrian access is maintained from the footpath areas fronting Church Street via dedicated pathways into Buildings A, B, C, and D, and into the communal open space area to the north of Building A, and communal open space areas between Buildings B and C, and C and D. Pedestrian access between the buildings and ground floor communal open space areas is maintained via a pathway to the southern / rear aspect of the development.

Vehicular access has been maintained to two access points designed to Church Street. The first vehicular access point is designed to the area between Buildings C and D, maintaining access to the basement to service Buildings B, C and D. The second vehicular access point is design to the area between Buildings A and B, maintaining access to the basement to service Building A, and loading bay / waste collection area servicing a 8.8m Medium Rigid Vehicular (MRV) and 10.25m Heavy Rigid Vehicle (HRV) respectively. A single lane roundabout is designed to the second access point, and vehicular access is maintained from both access points is maintained to forward in, forward out.

Car parking is designed to two basements, being 310 spaces to the basement which services Buildings B, C and D, which is maintained to four levels, and 25 spaces to the basement which services Building A, which is maintained to a single level. A total of 335 car parking spaces are proposed to service the development.

4.0 APPLICANTS SUPPORTING STATEMENT

The applicant has provided a Statement of Environmental Effects prepared by Ethos Urban dated 4 March 2019, and was received by Council on 25 March 2019 in support of the application.

SYDNEY CENTRAL CITY PLANNING PANEL

Additional correspondence was received by Ethos Urban dated 6 September 2019 in response to Council's request for amended plans and additional information.

5.0 CONTACT WITH RELEVANT PARTIES

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

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, which have been imposed within the draft notice of determination provided as **Attachment 3** to this report.

Tree Management Officer

The development application was referred to Council's Tree Management Officer for comments, who has advised that the proposed development is supportable on the grounds of tree removal, tree retention, proposed planting and landscape design, subject to standard conditions, which have been imposed within the draft notice of determination provided as **Attachment 3** to this report.

Environmental Health Officer

The development application was referred to Council's Environmental Health Officer for comments, who has reviewed the submitted Acoustic Report, Detailed Site Investigation, 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.

Resource Recovery Officer

The development application was referred to Council's Resource Recovery Officer for comments, who has reviewed the submitted Waste Management Plan and waste arrangements proposed, 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 / CONCURRENCE AUTHORITIES

Sydney Trains

The development application was referred to Sydney Trains for comments, noting the proposed development is adjacent to a railway corridor, with excavation proposed to a depth of at least 2m within 25m of the rail corridor pursuant to State Environmental Planning Policy (Infrastructure) 2007. Sydney Trains has assessed the application and provided General Terms of Approval, which have been imposed within the draft notice of determination provided as **Attachment 3** to this report.

Roads and Maritime Services

The development application was referred to Roads and Maritime Services for comments, noting the proposed development is classified as 'Traffic Generating Development' pursuant to State Environmental

SYDNEY CENTRAL CITY PLANNING PANEL

Planning Policy (Infrastructure) 2007. Roads and Maritime Services has assessed the application, and advised that the proposed development is supportable subject to conditions, which have been imposed within the draft notice of determination provided as **Attachment 3** to this report.

AusGrid

The development application was referred to AusGrid for comments, who has advised that the proposed development is supported.

NSW Police

The development application was referred to the NSW Police Force for comments, who has advised that the proposed development is supported.

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))

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 (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 the development constitutes 'Regional Development' within the meaning of State Environmental Planning Policy (State and Regional Development) 2011, as the development exceeded the \$30 million threshold with a Capital Investment Value (CIV) of \$85,418,508.

(b) State Environmental Planning Policy No 19 – Bushland in Urban Areas

The proposal does not propose to disturb bushland zoned or reserved for public open space.

(c) State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55)

Clause 7 of State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55) requires Council to be satisfied that the site is suitable, or can be made suitable, to accommodate the proposed development. The following table has been provided in consideration of the above.

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"/>

SYDNEY CENTRAL CITY PLANNING PANEL

Matters for consideration	Yes	No	N/A
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.			
Is the site listed on Council's Contaminated Land Database?	<input type="checkbox"/>	<input checked="" 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"/>
*Refer to comments below.			

Details of contamination investigations carried out at the site:

A Detailed Site Investigation (DSI) has been prepared by Benvin Group, which has been submitted with the development application. The site investigation identified:

- The site has been filled to a depth of approximately 0.2m to 0.9m previously, consisting a mixture of layered materials.
- No odours or staining were noted during intrusive works.
- All soil sampled analysed during the site assessment were below adopted soil criteria and / or the 95% upper confidence limit.
- Fragments of fibro asbestos were present on the surface of the site, which are likely remnants from the demolition of dwellings previously on the site.

Noting the above, the DSI concluded that following the removal of the fibro fragments found on the surface of the site, the site is suitable for the proposed development.

Council's Environmental Health Officer has reviewed the site investigation, and is satisfied that the information has been prepared in accordance with the NSW EPA *Guidelines for Consultants Reporting on Contaminated Sites* and the *National Environment Protection (Assessment of Site Contamination) Measure (2013 Amendment)*.

SYDNEY CENTRAL CITY PLANNING PANEL

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

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

SEPP 65 outlines 9 Design Quality Principles, which are addressed as follows:

Design Quality Principle	Comment	Yes	No	N/A
1. Context and Neighborhood Character	The subject site is zoned R4 High Density Residential pursuant to the Auburn Local Environmental Plan 2010 (ALEP), with the proposed development maintained to 4 x residential flat buildings, which is permitted with consent. The proposed residential flat building development is considered to be in harmony with nearby buildings, in particular those located to the north-west of the subject site.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Built Form and Scale	The building has been designed to correspond with the existing landform, providing for an appropriate building scale, when viewed from the public domain. The proposed development minimises overshadowing, and maintains an appropriate level of visual privacy to the adjoining properties.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Density	The subject site is well located with respect to existing public transport and community facilities. The design of the development provides for an appropriate separation, supplemented by privacy treatment to balconies and windows where necessary.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Sustainability	A BASIX Certificate and relevant reports have been submitted with the development application. The certificates require sustainable development features to be installed into the development. The proposal will incorporate features relating to Environmentally Sustainable Design (ESD), inclusive of water efficient fixtures and energy saving devices.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Landscape	Landscaping of the site has been provided, which will provide an appropriate level of amenity to for future residents, while also being consistent with the landscape character of the local area.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Amenity	The proposal will deliver sufficient amenity to residents of the building. The proposal generally achieves compliance with the Apartment Design Guide (ADG) and is considered to provide an appropriate level of	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

SYDNEY CENTRAL CITY PLANNING PANEL

Design Quality Principle	Comment	Yes	No	N/A
	amenity for future residents. Suitable access is provided to all parts of the building, through the use of lifts and stairwell cores.			
7. Safety	Suitable and secure access is provided to all parts of the building.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Housing Diversity and Social Interaction	The apartment mix is considered appropriate. The specifics of the building are:- <ul style="list-style-type: none"> • 74 x 1 bedroom units (28.25%); • 135 x 2 bedroom units (51.5%); and • 53 x 3 bedroom units (20.25%) The number of adaptable units proposed is in accordance with the Auburn Development Control Plan 2010.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Aesthetics	The proposed development has an attractive contemporary appearance, utilising building elements that provide individuality to the development, without compromising the streetscape or detracting from the appearance of existing surrounding development.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Pursuant to clause 28(2)(c) of SEPP 65, a consent authority must consider the provisions of the Apartment Design Guide (ADG) in the assessment of a residential flat development. The proposed development has been assessed to comply with the requirements of the ADG, with the exception of natural ventilation, and units per level / core, which is discussed below. A comprehensive assessment against the ADG is contained in **Attachment 4** to this report.

Natural Ventilation

- The ADG requires at least 60% of apartment be naturally cross ventilated in the first nine storeys of the building. In this regard, 165 units of the 262 units proposed have the ability to be naturally cross ventilated, equivalent to 63% of units. However, a review of the submitted acoustic report reveals 55 of the units which have the ability to be naturally cross ventilated, require alternate means of ventilation, due to the requirement to maintain windows in a closed position for periods of time. Therefore, 110 units of the 262 units proposed are naturally cross ventilated, equivalent to 42% of units.

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

- The situation is a result of the sites proximity to the railway corridor, which is located to the south of the subject site. To this end, in order to maintain appropriate amenity to the units in question, the submitted acoustic report has identified that a number of windows be kept in the closed position.
- An alternate means of ventilation, that being a mechanically ventilated system, has been proposed for the subject units. This will ensure the units affected will maintain an appropriate level of amenity, while still achieving a means of cross ventilation.

SYDNEY CENTRAL CITY PLANNING PANEL

Units per Level / Core

- The ADG requires the maximum number of units off a circulation core on a single level is eight. In this regard, the proposed development maintains the following maximum number of units on a single level, per building:
 - Building A – 12 units
 - Building B – 10 units
 - Building C – 9 units
 - Building D – 9 units

The proposed variation achieves the aims and objectives of common circulation spaces, and is considered supportable on merits, noting:

- The Design Guidance under *Part 4F – Common Circulation and Spaces* of the ADG, notes *where design criteria 1 [as annotated above] is not achieved, no more than 12 apartments should be provided off a circulation core on a single level*. To this end, the proposed development maintains a maximum of 9 to 12 units off a circulation core, on a single level.
- Each building is designed to be serviced by a minimum of 2 lifts and stairwell core, limiting wait times for persons travelling within the development. Furthermore, each unit is designed to be a maximum distance of 7 to 18 metres from the lift core, as measured from the furthest unit, which represents a limited distance for persons to travel.

(e) State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)

The development application has been lodged under Part 2 – New Affordable Rental Housing – Division 1 – Infill Affordable Housing, pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH). The proposed development has been assessed to comply with the requirements of SEPP ARH, with the exception of landscape area, deep soil zone, and solar access, which, along with the character assessment, is discussed below. A comprehensive assessment against the SEPP ARH is contained in **Attachment 5** to this report.

Landscape Area

- SEPP ARH notes that a Consent Authority must not refuse development on the grounds of landscape area, where in the case of a development application made by a social housing provider, at least 35 square metres of landscaped area per dwelling is proposed. In the case of the proposed development, an area of 9,170m² is required. Contrary to the above, the proposed development maintains 3,986.7m² of the site as landscaped area, equivalent to 39.3% of the site area.

The proposed variation is considered acceptable on its merits, noting the following:

- In order to achieve compliance with the above numerical standard, an area of 9,170m² would need to be provided as landscaped area, which when compared to the site area of 10,132.7m², represents an area of 90.5% of the site, which is considered to be overly onerous.

SYDNEY CENTRAL CITY PLANNING PANEL

- The above standard indicates that in any other case (i.e. where the development application has not been made by a social housing provider), a Consent Authority must not refuse development on the ground of landscape area, where at least 30% of the site is landscaped. As noted above, 39.3% of the site is proposed to be landscaped.
- No minimum landscape area requirements are noted with the ADG or Auburn Development Control Plan 2010.

Deep Soil Zone

- SEPP ARH notes that a Consent Authority must not refuse development on the grounds of deep soil zones, where there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15% of the site area, with each area forming part of the deep soil zone having a minimum dimension of 3 metres. In the case of the proposed development, the requirement is equivalent to an area of 1,519.905m².

Furthermore to the above, the ADG requires that at least 7% of the site be deep soil zone, which in the case of the proposed development, is equivalent to an area of 709.29m², with sites greater than 1,500m² having a minimum dimension of 3 metres.

In this regard, the following is proposed:

- 1,266.1m² of the site is deep soil zone, equivalent to 12.5% of the site area, maintaining a minimum dimension of 3 metres.
- 336.4m² of the site is deep soil zone, equivalent to 3.3% of the site area, maintaining a minimum dimension of 6 metres.

Objective 3E-1 – Deep Soil Zones of the ADG requires *deep soil zones provide area on the site that allow for and support heathy plant and tree growth. They improve residential amenity and promote management of water and air quality.* In considering the above, the proposed variation is considered acceptable on its merits, noting the following:

- Significant areas of deep soil zone have been provided through the site to support plant and tree growth, with the extent of deep soil zone proposed being 1,957.9m², equivalent to 19.3% of the site area. The above calculation is based on no minimum dimension requirement.
- The proposed development seeks to maintain 130 within the site and via street tree planting, consisting of 21 existing trees to be retained, and 109 new trees, providing for an improved landscape character, and diversity of landscaped areas and uses. The proposed landscape design has been reviewed by Council's Tree Management Officer to be acceptable, when considering appropriate soil depths to support species growth, location and placement of trees, and tree species selection.

Solar Access

- SEPP ARH notes that a Consent Authority must not refuse development on the grounds of solar access, if living rooms and private open spaces for a minimum of 70% of units receive a minimum 3 hours direct sunlight between 9am and 3pm in mid-winter. Contrary

SYDNEY CENTRAL CITY PLANNING PANEL

to the above, the proposed development maintains 180 units achieving 3 hours solar access, equivalent to 68.7% of units.

The proposed variation is considered acceptable on its merits, noting the following:

- In accordance with *Design Criteria 4A-1 – Solar and Daylight Access* of the ADG, living rooms and private open spaces of at least 70% of apartments in a building shall receive a minimum of 2 hours direct sunlight between 9am and 3pm at mid-winter. In this regard, the proposed development maintains 195 units achieving 2 hours solar access, equivalent to 74.4% of units.

Assessment of Character of the Local Area Pursuant to Clause 16A of SEPP ARH

A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area. SEPP ARH does not contain any guidance for assessing whether a proposal is compatible with the character of the local area. However, a planning principle for assessing compatibility in the urban environment was established by the Land and Environment Court in the judgement for *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191. This involves consideration of the following two questions:

- *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
- *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

A merit assessment of the character of the local area should therefore consider the following 3 steps:

- Step 1 – Identify the 'local area'.
- Step 2 – Determine the character of the 'local area'.
- Step 3 – Determine whether the design of the proposed development is compatible with the character of the 'local area'.

An assessment against each step is provided below:

Step 1 – Identify the local area.

This assessment identifies the local area as primarily the visual catchment of the site (hatched in red) as viewed from directly within the site and adjacent to the site on the street. **Figure 8** below illustrates an aerial perspective of the site and the general surroundings, and the visual catchment, as denoted by a red outline.

SYDNEY CENTRAL CITY PLANNING PANEL



Figure 8 – Aerial Photo (Source: Cumberland Council, 2019)

Step 2 – Determine the character (present and future) of the local area.

The zoning of the immediate locality comprises R4 High Density Residential to the north-west of the site, R3 Medium Density Residential to the north of the site, and SP2 Infrastructure to east, south and west of the site pursuant to the Auburn Local Environmental Plan 2010 (ALEP), as shown in **Figure 9** below:

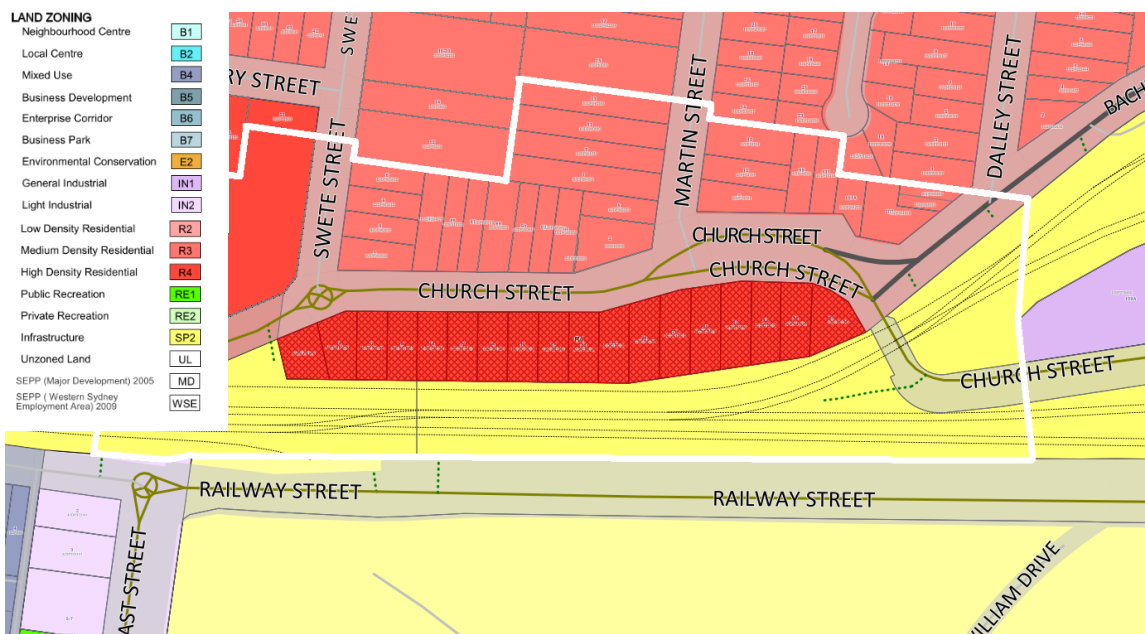


Figure 9 – Zoning Map (Source: Cumberland Council, 2019)

SYDNEY CENTRAL CITY PLANNING PANEL

Present Character of the Area

The existing character of the local area is as follows:

- **North** One and two storey low and medium density residential developments, with the exception of development opposite 2 Church Street, Lidcombe, being 81 Church Street, Lidcombe, which is maintained to an 8 storey residential flat building.
- **East** Railway corridor.
- **South** Railway corridor.
- **West** Railway land, and residential flat buildings of 8 and 6 storeys beyond located at 81 Church Street, Lidcombe.

Future Character of the Area

The future character of the area is unlikely to change, noting:

- **North** The maximum Height of Buildings (HOB) and Floor Space Ratio (FSR) of the R3 Medium Density Residential zone is maintained to 9 metres / 0.75:1 FSR. Furthermore, the site opposite 2 Church Street, Lidcombe, being 81 Church Street, Lidcombe, which is zoned R4 High Density Residential, maintains a maximum HOB and FSR of 25 metres (approximately 8 storeys), and 2:1 FSR respectively.
- **East** Railway corridor.
- **South** Railway corridor.
- **West** Railway land, and residential flat buildings of 8 and 6 storeys beyond located at 81 Church Street, Lidcombe, maintain a maximum HOB and FSR of 25 metres (approximately 8 storeys), and 2:1 FSR respectively.

Step 3 - Determine if the development is compatible with the character of the local area.

In accordance with the Land and Environment Court's planning principle, and relevant case law, compatibility is best defined as 'capable of existing together in harmony'. In order to test compatibility, two questions are required to be considered. These questions, as well as a response to each, are provided below:

- *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*

Physical impacts general include privacy, overshadowing, and visual bulk.

In terms of the physical impacts of the development:

- Privacy within the development and to adjoining sites has been maintained to an acceptable level, through the incorporation of sufficient building separation in

SYDNEY CENTRAL CITY PLANNING PANEL

accordance with the Apartment Design Guide (ADG), and appropriate privacy treatments, where necessary.

- Overshadowing to adjoining developments is limited by virtue of the orientation of the site. The shadow cast from the development is maintained predominately to the railway corridor, and road network located to the south of the subject site.
 - The setback of the proposed development from Church Street is consistent with the desired future character of residential flat buildings in the area, as defined within the Auburn Development Control Plan 2010 (ADCP).
 - The height of the development, while exceeding the maximum height as defined within the Auburn Local Environmental Plan 2011 (ALEP), maintains the tallest building located closest to the railway station, with building massing tiered from the western end of the site to eastern end. The upper floors of the buildings are setback a minimum of 2 metres to provide a recessive element, and subsequently reduce building bulk and mass as perceived from the public domain.
 - The development meets the requirement of the ALEP in terms of Floor Space Ratio (FSR) and maximum Gross Floor Area (GFA), subject to the inclusion of a condition, which has been imposed within the draft notice of determination provided as **Attachment 3** to this report.
 - The proposal will not result in the isolation of adjoining sites, nor does it unduly constrain adjoining sites.
- *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

The proposed residential flat building development is considered to be in harmony with nearby buildings, in particular those located to the north-west of the subject site.

(f) 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.

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

The subject site is not identified as a coastal wetland and is not or land identified as "proximity area for coastal wetlands".

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

The provisions of State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) 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 electricity power lines and the proposed development also includes a substation. As such, the Consent Authority is required

SYDNEY CENTRAL CITY PLANNING PANEL

to give written notice to an electricity supply authority. The development application was referred to AusGrid, who advised that the development proposal is supported.

Clause 85 – Development adjacent to railway corridors

The subject site is adjacent to a railway corridor, and as such, the Consent Authority is required to give written notice to the rail authority. Consequently, the development application was referred to Sydney Trains, who have assessed the application and provided General Terms of Approval, which have been imposed within the draft notice of determination provided as **Attachment 3** to this report.

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

The proposed development involves excavation to a depth of at least 2m below ground level (existing), on land within 25m (measured horizontally) of a rail corridor and as such, the Consent Authority is required to give written notice to the rail authority. Consequently, the development application was referred to Sydney Trains, who have assessed the application and provided General Terms of Approval, which have been imposed within the draft notice of determination provided as **Attachment 3** to this report.

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

The subject site is adjacent to a rail corridor, and is likely to be adversely affected by rail noise and vibration. As such, an acoustic report has been submitted, which has been referred to Council's Environmental Health Officer for comment, who 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.

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 Church Street is less than 40,000 vehicles.

Clause 104 – Traffic generation developments

The proposed development is defined as 'Traffic Generating Development' pursuant to Schedule 3 of the ISEPP, as the development proposes in excess of 200 car parking spaces, with 335 car parking spaces proposed. As such, the Consent Authority is required to give written notice to Roads and Maritime Services. Roads and Maritime Services has assessed the application, and advised that the proposed development is supportable subject to conditions, which have been imposed within the draft notice of determination provided as **Attachment 3** to this report.

(i) 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.

SYDNEY CENTRAL CITY PLANNING PANEL

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.

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

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) applies to the subject site. An assessment of the proposal has revealed the proposed development complies with the requirements of the Vegetation SEPP, noting:

- The site is not located in a declared area of outstanding biodiversity value as outlined within the Biodiversity Values Map;
- The proposal does not exceed the area clearing threshold for native vegetation pursuant to the Biodiversity Conservation Act 2016; and
- The tree species identified to be removed do not satisfy the test of significance pursuant to Section 7.3 of the Biodiversity Conservation Act 2016.

(k) Auburn Local Environmental Plan 2010 (ALEP)

The Auburn Local Environmental Plan 2010 (ALEP) applies to the subject site. The proposed development has been assessed to comply with the requirements of ALEP, with the exception of height of buildings development standard, which is discussed below. The relevant matters to be considered under ALEP, and the applicable clauses for the proposed development, are summarised below. A comprehensive assessment against the ALEP is contained in **Attachment 6** to this report.

Permissibility

The proposed development is defined as *residential flat buildings*, and is permissible in the R4 High Density Residential zone with consent.

Residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

Note. Residential flat buildings is a type of **residential accommodation**

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:

- *Rookwood Cemetery or Necropolis* – Item A00719; and
- *Lidcombe Signal Box* – Item A56.

A Heritage Impact Statement has been prepared by Weir Phillips Heritage, which has considered the potential impacts of the proposed works on the heritage significance of nearby

SYDNEY CENTRAL CITY PLANNING PANEL

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 works will have no impact on the ability to understand the historic / social / or technical significance of these items.*
- *The proposed works will not block significant view corridors to / from these items.*
- *The proposed works lie outside of the immediate setting of each of the above items. The new building will, however, be visible within their wider setting. The impact is minimal and acceptable in each case because:*
 - *Of the physical distance between the site and the items.*
 - *In the case of the Cemetery and Signal Box, the distinct visual break that is provided by the rail corridor, existing fencing and planting.*
 - *The retention of some of the existing trees on the site and the proposed new planting.*
 - *The setting of these items is changing in line with the zoning of the subject site and the land to the west for building of this, and higher, heights. The proposed buildings have been designed in accordance with Council's desired future character of the area as expressed in the LEP 2010 controls. The massing and scale of the proposed development is broken down through the use of four separate building forms of different heights, with well resolved elevations. The buildings will read as one of a growing group of buildings of a similar massing and scale in the wider setting of the above items.*

Key Development Standards

The following key development standards are applicable:

Development Standard	Zone	Max.	Proposed	Compliance
Floor Space Ratio (FSR)	2-8 Church	3.12:1	3.13:1 (E. 12m ²)	No, but Resolved via Condition
	10-16 Church	2.99:1	3:1 (E. 32m ²)	
	18-24 Church	1.99:1	1.98:1	Yes
	26-36 Church	1.79:1	1.37:1	Yes
	Comment: The above exceedances appear to be due the exclusion of the recycling storage areas within the Applicant's calculations, which are required to be included as per the Standard Instrument definition of Gross Floor Area (GFA). As such, a condition has been included within the Draft Notice of Determination provided as Attachment 3 to this report, requiring amended architectural plans to be lodged which reduce the FSR and GFA of the development to be in compliance with the above standards.			
Height of Buildings (HOB)	2-8 Church	27m	29m (V. 7.4%)	No, but Acceptable on Merit.
	10-16 Church	22.9m	30.2m (V. 31.9%)	

SYDNEY CENTRAL CITY PLANNING PANEL

	18-24 Church	16.9m	26m (V. 53.8%)	A Clause 4.6 Statement has been submitted, justifying the contravention. Refer to commentary below.
	26-36 Church	14.9m	18.1m (V. 21.5%)	

*E – Exceedance

V - Variation

Figures 10 through 14 (inclusive) below illustrate the height variations sought:

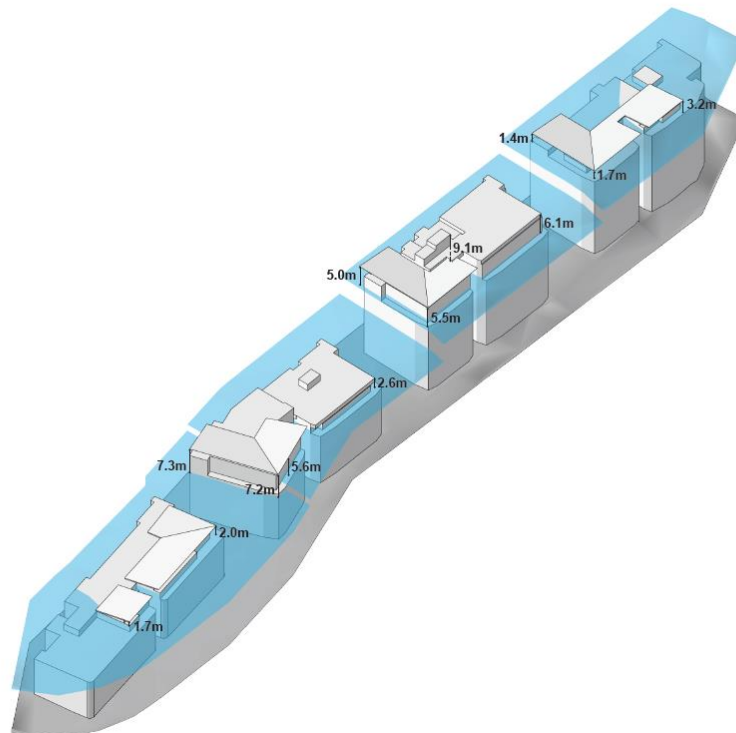


Figure 10 – Building Height Plane Diagram (Source: Cox Architecture, 2019)



Figure 11 – Building A - Elevation with 14.9m Height Plane (Source: Cox Architecture, 2019)

SYDNEY CENTRAL CITY PLANNING PANEL



Figure 12 – Building B - Elevation with 16.9m Height Plane (Source: Cox Architecture, 2019)



Figure 13 – Building C - Elevation with 22.9m Height Plane (Source: Cox Architecture, 2019)

SYDNEY CENTRAL CITY PLANNING PANEL



Figure 14 – Building D - Elevation with 27m Height Plane (Source: Cox Architecture, 2019)

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 Secretary's concurrence can be assumed where Clause 4.6 is adopted as per the Department of Planning Circular PS 18-003, dated 21 February 2018.

The applicant has submitted a written request to vary the development standard for building height. Based on various case laws established by the Land and Environment Court of NSW such as *Four2five P/L v Ashfield Council* [2015] NSWLEC 9, *Randwick City Council v Micaul Holdings P/L* [2016] NSW LEC7 and *Zhang and anor v Council of the City of Ryde* [2016] NSWLEC 1179 and recent case law in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130, 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?

Objective 1 - *To provide for the housing needs of the community within a high density residential environment.*

Applicant's Comment

The proposed development will provide for a range of social and market housing (including adaptable dwellings) that meet the needs of the community and future social housing tenants. The market dwellings will cater to demand in the local area, with specific regard to the development's proximity to the town centre and railway station. The social dwellings cater to social housing need within the allocation zone, and will respond to demand for various housing types based on the waiting list.

SYDNEY CENTRAL CITY PLANNING PANEL

The dwellings will be provided in buildings that have a high level of residential amenity and will exhibit design excellence. The dwellings provide a range of communal open spaces, both at ground level and rooftop, allowing residents to recreate within a high density residential environment.

Council's Comment

Agreed, and Council further notes that the proposed development provides for 262 units, made up of both social housing and market housing, which are designed to support the needs of the local community, and are appropriately located on land zoned R4 High Density Residential zone.

Objective 2 - *To provide a variety of housing types within a high density environment.*

Applicant's Comment

The proposed development provides diversity, both in tenure (incorporating market and social housing) and typology. The proposed dwelling mix includes a significant number of three-bedroom dwellings (20% of total), as well as smaller one- and two-bedroom dwellings. A variety of unit sizes have also been provided to cater to different price points and needs. In addition, the ground floor provides for two- and three-bedroom units with larger terraces and discrete access to provide for families or other demographics that may require ground floor access and additional space.

Council's Comment

Agreed, and Council further notes that the proposed development provides a variety of housing types, appropriately located on land zoned R4 High Density Residential zone.

Objective 3 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

Applicant's Comment

The proposed development provides residential accommodation in proximity to the Lidcombe town centre, and will support the growth and development of local businesses and services.

Council's Comment

Agreed, and Council further notes that the proposed development is limited to a residential flat building development, which is permissible with consent in the R4 High Density Residential zone.

Objective 4 - *To encourage high density residential development in close proximity to bus service nodes and railway stations.*

Applicant's Comment

The proposed development is within 400 metres of Lidcombe Station – one of Sydney's most connected railway stations outside the Sydney CBD. The development is easily accessible with a short walk along Church Street.

SYDNEY CENTRAL CITY PLANNING PANEL

Council's Comment

Agreed, and Council further notes that the proposed development is not only in close proximity to Lidcombe Train Station, but also local bus service nodes.

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

Objective 1(a) – *To establish a maximum height of buildings to enable appropriate development density to be achieved, and*

Applicant's Comment

Under the existing height controls, heights of 4-9 storeys could be achieved if the buildings were to comply with the height of buildings development standard. To determine whether the proposed buildings heights are acceptable, the existing building height control is taken to represent a baseline for an "appropriate development density".

The question is therefore: do the non-compliant components of the building represent a development density that is not appropriate?

In Veloshin v Randwick Council [2007] NSWLEC 428, Roseth SC established a planning principle around assessment of height and bulk. This planning principle is considered appropriate in this instance, given height and bulk are the relevant drivers of development density.

The questions asked by Roseth SC that are most relevant to the proposed are as follows:

- 1. Are the impacts consistent with impacts that may be reasonably expected under the controls?*
- 2. How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?*
- 3. Is the proposal consistent with the bulk and character intended by the planning controls?*

In relation to the first question, the key issue is whether the additional massing above the height limit creates any significant additional impacts that would not be present if the development were to comply. In this regard, it is noted that the development still graduates from four storeys to nine storeys across the length of the site – the interfaces at the easternmost and westernmost extent of the site remain the same. Any additional overshadowing would also fall on the railway corridor. As such, the additional massing does not result in any significant adverse impacts.

In relation to the second question, the proposed development does not fundamentally depart from the desired bulk and scale under the relevant controls. The development is compliant on the eastern and western frontages of the site, and maintains an appropriate relationship with development to the west. The buildings will continue to read as multi-storey residential buildings with graduated height plane.

SYDNEY CENTRAL CITY PLANNING PANEL

In relation to the third question, it is noted that the intention of the zoning and density controls is to create a high-density residential environment in close proximity to transport nodes. The density proposed is commensurate with the site's proximity to Lidcombe Station and town centre, and would not create a bulk or character inconsistent with that envisaged by the applicable zoning or density controls.

Overall, the proposed building heights are considered to maintain an appropriate development density given the expected scale of development under the controls and the relationship with surrounding development. The additional height elements do not result in a significant difference in how the buildings will be read, nor do they produce any significant adverse impacts. Objective (a) is therefore achieved despite [the] non-compliance with the standard.

Council's Comment

Agreed, and Council further notes that the proposed development, via condition of consent, will maintain the density as permitted by the ALEP and SEPP ARH.

Objective 1(b) – *To ensure the height of buildings is compatible with the character of the locality.*

Applicant's Comment

In Project Venture Developments V Pittwater Council [2005] NSWLEC 191, Roseth SC established a planning principle around compatibility in the urban environment. The planning principle poses two questions.

- 1. Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*
- 2. Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

In relation to the first question, the proposal does not overshadow, isolate or otherwise impact any surrounding development. The site is contained on its own block and is bounded on all sides by either the rail corridor or Church Street. The site does not suffer from any critical interface issues that would preclude additional height. The site's unique characteristics lend themselves to increased density with minimal adverse impacts. The physical impacts of the additional height are therefore negligible and acceptable.

In relation to the second question, it is first that the western end of the site remains consistent with the height of the existing residential building diagonally opposite, to the north west. ... The building height is eight storeys in height, with a parapet on the corner, and an elevated ground floor. This is generally consistent with the height of the proposed Building D, which is nine storeys at the western edge.

....

The non-compliant levels have been designed to minimise bulk and scale impacts when viewed from Church Street and the surrounding areas. Specifically, the design incorporates the following mitigation measures:

SYDNEY CENTRAL CITY PLANNING PANEL

- *The upper levels have been set back by 2m to reduce the visibility of the upper levels from the public domain.*
- *The upper levels are visually recessive and have been differentiated from the lower parts of the building with darker materiality.*
- *Thin roof structures top off the building and provide a lightweight and non-intrusive architectural 'cap'.*

The most sensitive interface is arguably the interface with the R3 Medium Density Residential zone on the northern side of Church Street. The height limit to the north is 9m, and existing development generally consists of detached dwellings and townhouses.

In relation to the development's interface to the north, the following points are made:

- *The existing height limits already permit buildings with heights ranging from 4-9 storeys. The proposed variation to the height limit does not significantly change the perceived scale of the development when compared to a compliant development. The upper levels have also been set back by two metres to mitigate any visual impact from the increased height.*
- *The development will provide significant street tree planting and planting on-site. This will serve to screen the development when viewed from the north or along the street, while also creating a human scale for pedestrians and motorists.*
- *The development is separated from the R3-zoned areas to the north by a 20-metre road reservation. The proposed development is also setback by 6-8 metres from Church Street, with an additional 2 metre setback for the upper levels. The separation between the proposed development and existing and future development to the north is therefore in excess of 26 metres, which is considered to be sufficient as a buffer and transition.*
- *Due to the half levels and the ability to take lifts to a rooftop space, the height variation has allowed for landscaped rooftop communal open spaces to be provided. These rooftop spaces will support significant planting and will add greenery at the upper levels of each building, offsetting the built [form] along the street.*

It is also noted that the site is located close to Lidcombe Station and town centre. The character of Lidcombe is due to change as it gradually transitions to a high-density, transport-oriented centre. In 2016, Cumberland Council released the Draft Auburn and Lidcombe Town Centre Strategy. This strategy was prepared "in recognition that Auburn and Lidcombe Town Centres are at a critical transition point".

Lidcombe is also within the Greater Parramatta and Olympic Peninsula – a rapidly growing and changing region that will support significant residential and employment growth over the coming years.

Given the site and the areas to the north are well-within 800 metres of Lidcombe Station, it is expected that development will occur and the area will transition in character from its current scale to a high-density residential precinct supported by Lidcombe Station, which is currently one of the best-connected stations outside the Sydney CBD.

SYDNEY CENTRAL CITY PLANNING PANEL

Based on the above, the site is considered to be compatible with the character of the locality – both existing and future. Objective (b) is therefore achieved despite [the] non-compliance with the standard.

Council's Comment

Agreed, and Council further refers to the comments provided above under the assessment of character required by SEPP ARH.

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

Applicant's Comment

Compliance with the development standard is considered unreasonable and unnecessary in the circumstances of the case, as:

- *The FSR of each building complies with the FSR generated by the LEP and the ARHSEPP bonus;*
- *The additional height is required to accommodate the ARHSEPP FSR bonus and facilitate the delivery of social housing; and*
- *The aims of cl. 4.3 (height of buildings) in LEP 2010 can be achieved notwithstanding the non-compliance, as:*
 - *The site continues to be consistent with the high-density residential character envisaged by the R4 High Density Residential zone and the site's proximity to public transport and the town centre;*
 - *The proposed heights maintain compliant interfaces on the eastern and western ends of the site;*
 - *The additional height does not substantially change how the buildings will be read in the context of the overall development and the heights envisaged under the LEP; and*
 - *The development will be screened by substantial street tree planting and will incorporate significant planning on the proposed rooftop communal open spaces.*

The above comments are limited to those provided under the heading 3.1.3 – *Conclusion on Clause 4.6(3)(a)* within the submitted Clause 4.6 Variation Statement, noting the extent commentary provided. In this regard, further commentary is provided within the submitted Clause 4.6 Variation Statement, to be considered in turn.

SYDNEY CENTRAL CITY PLANNING PANEL

Council's Comment

Agreed, and Council further notes that:

- The proposed development, via a condition of consent, will maintain the density as permitted by the ALEP and SEPP ARH;
- The development is of high architectural design, which will contribute to the streetscape and visual amenity of the area; and
- 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.

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

Applicant's Comment

It is considered that there are sufficient environmental planning grounds to justify contravention of the development standard, [on] the basis that:

- *The development is eligible for an FSR bonus under the ARHSEPP for providing affordable housing (in the form of social housing); the variation to the height limit is needed to accommodate this additional density;*
- *The additional dwellings provided through the FSR bonus will result in the provision of an additional four social housing dwellings, which will directly address the waiting list and under occupancy across the LAHC portfolio;*
- *Accommodating the FSR bonus within the height limit would result in poorer outcomes, both in terms of residential amenity and built form; and*
- *The additional height results in little to no additional impact to surrounding areas, in terms of overshadowing, site isolation or view loss.*

The above comments are limited to those provided under the heading 3.2.4 – *Conclusion on Clause 4.6(3)(b)* within the submitted Clause 4.6 Variation Statement, noting the extent commentary provided. In this regard, further commentary is provided within the submitted Clause 4.6 Variation Statement, to be considered in turn.

Council's Comment

Agreed, and Council further reiterates Council's comments note above under the heading *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?*

SYDNEY CENTRAL CITY PLANNING PANEL

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, as 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 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.

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

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 State Environmental Planning Policy (Environment) (Draft ESEPP) 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 ESEPP 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'.

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

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

(a) Auburn Development Control Plan 2010 (ADCP)

The Auburn Development Control Plan 2010 (ADCP) applies to the subject site. The proposed development has been assessed to comply with the requirements of ADCP, with the exception of rear setback, which is discussed below. A comprehensive assessment against the ADCP is contained in **Attachment 7** to this report.

SYDNEY CENTRAL CITY PLANNING PANEL

Rear Setback

- The ADCP requires the rear setback to a minimum 10 metres, as measured from the rear property boundary. In this regards, the setback of the development from the rear property boundary varies between 5.3 metres and 9.6 metres.

The proposed variation is considered acceptable on its merits, noting the following:

- The proposed development continues to maintain reasonable amenity of adjoining properties, noting the rear property boundary is common with the railway corridor, and therefore, any impact would be isolated to the subject development.
- The proposed development has been designed to maintain reasonable levels of amenity to the subject development, noting:
 - The proposed development is designed to achieve compliance with the ADG design criteria related to building separation.
 - An acoustic report has been submitted with the application, which outlines suitable treatment and design requirements to achieve the relevant statutory criteria. Council's Environmental Health Officer has reviewed the acoustic report, and is satisfied that the proposed recommendations will result in a reasonable internal noise environment for the future occupants of the building.

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))

There is no planning agreement or draft planning agreement associated with the subject development application.

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

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

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

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

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

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 ☐

SYDNEY CENTRAL CITY PLANNING PANEL

In accordance with Council's Notification requirements contained within the ADCP, the proposal was publicly notified for a period of 14 days from 16 April 2019 to 30 April 2019. In response, no submissions were received, however, a submission was received following the notification period.

The issue raised in the public submission is summarised and commented on as follows:

<p>Property Damage <i>Concern is raised that the proposed development will result in property damage to a surrounding residential property.</i></p>	<p>It is unlikely that property damage will occur to surrounding residential properties from the proposed development, due to the distance between the site and surrounding residential properties. However, if this occurs, the persons affected could contact the certifying authority and report any damage for them to investigate.</p>
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The public interest (EP & A Act s4.15(1)(e))

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)

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 **\$1,552,441.81**. The draft notice of determination at **Attachment 3** includes a recommendation to reflect the above contributions.

10.0 DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

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

The proposed development is appropriate located within the R4 High Density Residential zone under the provisions of the ALEP, and is consistent with the zone. The development however proposes a variation to the natural ventilation, and units per level / core requirements under SEPP 65, variation to the landscape area, deep soil zones, and solar access requirement under SEPP ARH, variation to the height of buildings development standard under the ALEP, and variation to the rear setback requirements under the ADCP. 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 development is considered to be acceptable in terms of the relationship to its surrounding built environment, particularly having regard to the impacts on adjoining properties.

SYDNEY CENTRAL CITY PLANNING PANEL

12.0 RECOMMENDATION

That development application 94/2019 seeking *construction of 4 residential flat buildings of varying heights from 4 to 10 storeys, comprising 262 units (including 53 social housing units) over basement parking for 335 vehicles, pursuant to SEPP (Affordable Rental Housing) 2009, and construction of a roundabout at the intersection of Martin Street and Church Street at 2-36 Church Street, Lidcombe,* be **Approved**, subject to the conditions contained in the draft notice of determination contained in **Attachment 3** of this report.

13.0 ATTACHMENTS

Attachment 1 – Architectural Plans

Attachment 2 – Clause 4.6 Variation Statement and Applicant's Follow up Response

Attachment 3 – Draft Notice of Determination

Attachment 4 – SEPP 65 Apartment Design Guide Compliance Assessment

Attachment 5 – SEPP (Affordable Rental Housing) 2009 Compliance Assessment

Attachment 6 – Auburn Local Environmental Plan 2010 Compliance Assessment

Attachment 7 – Auburn Development Control Plan 2010 Compliance Assessment

Attachment 8 – Submission x 1