

TO: Sydney Central City Planning Panel
SUBJECT: 215, 229-239 Pitt Street, MERRYLANDS NSW 2160
APPLICATION No: DA2020/0308

Application Lodged:	28 May 2020	
Application Number:	DA2020/0308	
Responsible Officer:	William Attard	
Description of Land:	215, 229-239 Pitt Street, MERRYLANDS NSW 2160 Lot 2, DP 501597, Lot 2, DP 537031, Lot J, DP 10354, and Lot 1, DP 1079960	
Proposed Development:	Demolition of existing structures and construction of a 24 storey mixed use development comprising retail and commercial premises, an 88 bed registered aged care facility, 98 independent living units, basement car parking and public domain works	
Capital Investment Value:	\$104,021,632	
Site Area:	2,089.3m ²	
Zoning:	B4 Mixed Use pursuant to the Holroyd Local Environmental Plan 2013 (HLEP)	
Permissibility:	Permissible – <i>Seniors housing and Commercial premises</i>	
Applicant:	Anglican Community Services C/- Mecone NSW Pty Ltd	
Owner:	Anglican Community Services	
Notification/Advertising:	25 June 2020 to 16 July 2020	
Disclosure of political donations / gifts	Nil disclosed on the application form	
Submissions:	Three (3) submissions	
Principal Development Standards:	<u>Floor Space Ratio (FSR)</u> Maximum: 8:5:1 (Inclusive of *DE) Proposed: 8.5:1	<u>Height of Buildings (HOB)</u> Maximum: 94.6m (Inclusive of *DE) Proposed: 93.295m (*+0.6m (ADG)) = 93.895m
Heritage:	The subject site is not heritage listed, is not located within a heritage conservation area, and is not located within the vicinity of any heritage items.	
Variations:	- Landscape Area - Deep Soil Zones - Solar Access - Visual Privacy - Floor Space Ratio (Residential)	- Awnings - Setbacks - Street Wall Heights - Upper Storey Setbacks
Recommendation:	Approval, subject to conditions	

*DE – Design Excellence

*+0.6m (ADG) – The floor to ceiling heights on Level 01 are conditioned to be 3.3m, in accordance with the Apartment Design Guide (ADG), resulting in an increased height of 0.6m



Figure 1 – Perspective of Development Looking South-West (Source: Turner, 2020)

SUMMARY

Council is in receipt of a development application from Anglican Community Services C/- Mecone NSW Pty Ltd seeking approval for *demolition of existing structures and construction of a 24 storey mixed use development comprising retail and commercial premises, an 88 bed registered aged care facility, 98 independent living units, basement car parking and public domain works* at 215, 229-239 Pitt Street, Merrylands. The development application architectural plans are provided as Attachment 1 to this report.

The development application was publicly notified for a period of 21 days from 25 June 2020 to 16 July 2020. In response, three (3) submissions were received, objecting to the proposal, which has been considered in the assessment of the subject application.

The site is zoned B4 Mixed Use, pursuant to the Holroyd Local Environmental Plan 2013 (HLEP). *Seniors Housing* and *Commercial Premises* development are permissible with development consent in the B4 Mixed Use zone.

The development application was referred for comments externally to NSW Police – Cumberland Local Area Command, and Endeavour Energy, and internally to Council’s Development Engineer, Tree Management Officer, Landscape Architect, Environmental Health Officer, Waste Project Officer, and Property Development Officer, to which the application is supported.

The application was referred to the Cumberland Design Excellence Panel (DEP) in accordance with the *Cumberland Design Excellence Panel Policy*, as the proposal involves the construction a new building that will result in a building that is greater than 55 metres in height, on land identified as “Area 2” on the *Design Excellence Map*. The design has been found to be worthy of support, with the DEP issuing a Design Excellence Certificate pursuant to Clause 6.11 of the HLEP.

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 proposal has been assessed against the following Environmental Planning Instruments (EPIs), Draft EPIs, and Development Control Plans (DCPs):

- 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 Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy (Coastal Management) 2018;
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy (State and Regional Development) 2011;
- Sydney Environmental Plan (Sydney Harbour Catchment) 2005;
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017;
- Holroyd Local Environmental Plan 2013 (HLEP);
- Draft State Environmental Planning Policy (Environment);
- Draft State Environmental Planning Policy (Remediation of Land);
- Draft Cumberland Local Environmental Plan (CLEP); and
- Holroyd Development Control Plan 2013 (HDCP).

The variations sought via the subject application are provided in **Table 1** below:

EPI / DCP	Control	Required / Permissible	Provided	Variation
SEPP (HSPD)	Landscape Area – RACF	2,200m ²	686m ²	1,514m ² / 68.8%
	Landscape Area – ILUs	3,430m ²	328m ²	3,102m ² / 90.4%
	Solar Access – ILUs (3hrs)	69 units / 70%	46 units / 47%	23 units / 33.3%
SEPP 65 – (ADG)	Visual Privacy – South	Level 02 - 6m	4.8m	1.2m / 20%
		Levels 04 to 07 – 9m	6.0m	3m / 33.3%

		Level 08 – 12m	9.5m	2.5m / 20.8%
	Visual Privacy – West	Level 02 – 6m	4.2m	1.8m / 30%
HLEP	Floor Space Ratio (FSR) – Maximum Residential	6.8:1 (Inclusive of DE*)	7.6:1	0.8:1 / 11.77%
HDCP	Awnings – Laneways	30% of Frontage	100% of Frontage	70%
		Retractable Only	Fixed Structure	-
	Setbacks	Reyes Lane – 0m	2.8m to 6.5m	2.8m to 6.5m / 100%
		Short Lane – 0m	1.2m	1.2m / 100%
	Street Wall Heights	Laneways – 2 storeys	3 Storeys	1 storey / 50%
	Upper Level Setbacks	McFarlane Street – 4m	4.2m	0.2m / 5%
		Pitt Street – 4m	4.5m	0.5m / 12.5%

Table 1 – Variations (Source: Cumberland Council, 2020)

*EPI – Environmental Planning Instrument

*SEPP (HSPD) – State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004

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

*HLEP – Holroyd Local Environmental Plan 2013

*HDCP – Holroyd Development Control Plan 2013

*DE – Design Excellence

*LGFA – Leasable Gross Floor Area

*RACF – Residential Aged Care Facility

*ILUs – Independent Living Units

The application is being reported to the Sydney Central City Planning Panel (SCCPP) for determination, as pursuant to Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011, the development constitutes '*Regionally Significant Development*', with the development exceeding the \$30 million Capital Investment Value (CIV) threshold.

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.

REPORT

SUBJECT SITE AND SURROUNDING AREA

The subject site is known as 215, 229-239 Pitt Street, Merrylands, and the legal description of the site is provided in Table 2 below:

Lot	Section	Deposited Plan	Address
Lot 2	-	DP 501597	215 Pitt Street, Merrylands
Lot 2	-	DP 537031	229-239 Pitt Street, Merrylands
Lot J	-	DP 10354	
Lot 1	-	DP 1079960	

Table 2 – Legal Description of Site (Source: Cumberland Council, 2020)

The land is an irregular shaped site, which is bounded by Pitt Street to the east, McFarlane Street to the north, Short Lane to the south, and Reyes Lane to the West. The frontages of the site are provided in Table 3 below:

Street	Frontage
Pitt Street, Merrylands	43.63 metres
McFarlane Street, Merrylands	39.625 metres
Short Lane, Merrylands	36.86 metres
Reyes Lane, Merrylands	46.685 metres

Table 3 – Frontages of Site (Source: Cumberland Council, 2020)

The topography of the site is maintained to a maximum 0.9% gradient, with a 0.54 metre fall as measured from the intersection of Pitt Street and McFarlane Street, to the intersection of Short Lane and Reyes Lane. The subject site is located within the 'Merrylands Town Centre' within the area identified by the Holroyd Development Control Plan 2013 (HDCP) as the 'Merrylands Station & McFarlane Street Precinct'. The site is within proximity to the Merrylands Railway Station, which is approximately 90 metres as measured east of the subject site. The total site has an area of 2,089.3m², and is illustrated in Figure 2 below:



Figure 2 - Location Map (Source: Cumberland City Council, 2020)

The site is zoned B4 Mixed Use, pursuant to the Holroyd Local Environmental Plan 2013 (HLEP), as shown in Figure 3 below:



Figure 3 – Zoning Map (Source: Cumberland City Council, 2020)

The subject site presently maintains existing single and two storey commercial tenancies, with at grade car parking accessed from Reyes Lane, and the site is void of landscaping. Forward of the site, existing outdoor dining areas are designed to McFarlane Street. The locality is characterised by one to three storey built form, comprising an existing shopping centre to the north, commercial and retail development to the east, south, and west, a hotel to the south, and mixed use development currently under construction to the north-east of the site. Figure 4 below illustrates an aerial perspective of the site and the general surroundings.



Figure 4 – Aerial Photo (Source: Cumberland City Council, 2020)

DESCRIPTION OF THE PROPOSED DEVELOPMENT

The proposal is for *demolition of existing structures and construction of a 24 storey mixed use development comprising retail and commercial premises, an 88 bed registered aged care facility, 98 independent living units, basement car parking and public domain works.*

In detail, the following description has been provided by the Applicant within the Statement of Environmental Effects prepared by Mecone, undated:

Proposed Development

Development Summary

The proposed development seeks approval for a 24 storey mixed use development comprising seniors living and commercial uses. The proposal includes:

- *Demolition of existing structures; and*
- *Construction of a 24 storey mixed use building comprising:*
 - *3 x levels of basement parking;*
 - *Ground floor retail and back of house;*
 - *Podium commercial;*
 - *Podium support services and communal open space;*
 - *Tower comprising:*
 - *88 x Residential Care Facility (RACFs) beds;*
 - *98 x Independent Living Units (ILUs); and*
 - *Communal roof top open space.*

The proposal relies on the additional floor space ratio and height bonuses, to which the proposal has received endorsement by the Cumberland Design Excellence Panel pursuant to Clause 6.11 of the Holroyd Local Environmental Plan 2013.

Note: The proposal also includes public domain works at ground level, inclusive of road widening and land dedication associated with the widening of Reyes Lane and Short Lane. The road widening and land dedication aims to facilitate a total laneway width of 8m in accordance with the HDCP.

Following from the above, a numerical overview of the key components of the development are provided in Table 4 below:

Numerical Overview of Key Components

Component	Required / Permissible	Proposed	Complies
Site Area	N/A	2,089.3m ²	N/A
Site Frontage	32m	Pitt Street - 43.63m	N/A
Gross Floor Area (GFA)	Overall – 17,759.05m ²	17,759m ²	Yes
	Residential – 14,207.24 m ²	15,585m ²	No, but Acceptable on Merit
	Overall – 8:5:1 (Inclusive of *DE)	8.5:1	Yes

Floor Space Ratio (FSR)	Residential – 6.8:1 (Inclusive of *DE)		7.6:1	No, but Acceptable on Merit
Height of Buildings (HOB)	94.6m (Inclusive of *DE)		93.295m + *0.6m (ADG) = 93.895m	Yes
Boundary Setbacks	Pitt Street	0m	0m	Yes
	McFarlane Street	0m	0m	Yes
	Reyes Lane	0m	2.8m to 6.5m	No, but Acceptable on Merit
	Short Lane	0m	1.2m	
Building Separation	North	6m to 12m	>12m	Yes
	East	6m to 12m	>12m	Yes
	South	6m to 12m	4.8m to 13.5m	No, but Acceptable on Merit
	West	6m to 12m	4.2m to 12.5m	
Breakdown of Tower	Commercial (*LGFA)		1,595.995m ²	N/A
	Residential Aged Care Facility (*RACF)		88 beds	
	Independent Living Units (*ILUs)		98 units	
Car Parking	*RACF	32 spaces	32 spaces	Yes
	*ILUs	20 spaces	84 spaces	Yes
	Commercial	32 spaces	16 spaces	Yes, with Condition
Applicable to Independent Living Units (ILUs) Only				
Apartment Mix	1 bedroom		20 units (20.4%)	N/A
	2 bedroom		60 units (61.2%)	
	3 bedroom		18 units (18.4%)	
Communal Open Space	522.325m ²		754m ²	Yes
Solar Access (2hrs)	69 units		75 units	Yes
Natural Ventilation	Level 8 / Storey 9 – 3 units		4 units	Yes

Table 4 – Numerical Overview of the Key Components (Source: Cumberland Council, 2020)

*DE – Design Excellence

*LGFA – Leasable Gross Floor Area

*RACF – Residential Aged Care Facility

*ILUs – Independent Living Units

*+0.6m (ADG) – The floor to ceiling heights on Level 01 are conditioned to be 3.3m, in accordance with the Apartment Design Guide (ADG), resulting in an increased height of 0.6m

SITE HISTORY

The following relevant site history is noted as under in chronological order:

- **PL2020/0001** Pre-lodgement Application seeking advice on a proposal for *construction of a 24 storey mixed use development comprising seniors*

living and commercial – Meeting minutes issued on 9 April 2020. The subject application has addressed the matters raised within the pre-lodgement meeting minutes.

APPLICANT'S SUPPORTING STATEMENT

The applicant has provided a Statement of Environmental Effects prepared by Mecone, undated, and was received by Council on 28 May 2020 in support of the application.

Additional correspondence was received by Mecone, dated 9 October 2020, 26 October 2020, and 27 November 2020, in response to Council's request for amended plans and additional information.

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.

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 advised that the proposed development is supportable on the grounds of tree planting, subject to standard conditions of consent, which have been imposed within the draft notice of determination provided as Attachment 3 to this report.

Landscape Architect

The development application was referred to Council's Landscape Architect for comments, who advised that the proposed development is supportable on the grounds of proposed landscape works.

Environmental Health Officer

The development application was referred to Council's Environmental Health Officer for comments, who advised that the proposed development is supportable on the grounds of acoustic amenity, vibration, contamination, and site suitability, subject to standard conditions of consent, which have been imposed within the draft notice of determination provided as **Attachment 3** to this report.

Waste Project Officer

The development application was referred to Council's Waste Project Officer for comments, who has advised that the proposed development is supportable on the grounds of waste management.

Property Officer

The development application was referred to Council's Property Officer for comments, who has advised that the proposed development is supportable on the grounds of outdoor dining, providing advisory comments for Council's Planning Officer's consideration, which have been considered in the assessment of the application.

1.0 EXTERNAL REFERRALS / CONCURRENCE AUTHORITIES

Design Excellence Panel (DEP)

The application was referred to the Cumberland Design Excellence Panel (DEP) in accordance with the *Cumberland Design Excellence Panel Policy*, as the proposal involves the construction a new building that will result in a building that is greater than 55 metres in height, on land identified as "Area 2" on the *Design Excellence Map*. The design has been found to be worthy of support, with the DEP issuing a Design Excellence Certificate pursuant to Clause 6.11 of the HLEP, subject to conditions, which have been imposed within the draft notice of determination provided as Attachment 3 to this report.

Note: Changes to the proposal have been made in response to Council's request for additional information dated 09 September 2020. The changes are minor, and largely address matters initially raised by Council's Development Engineer, which do not warrant re-referral of the application to the DEP. The plans considered in the assessment of the subject application are endorsed within the draft notice of determination provided as Attachment 3 to this report.

NSW Police – Cumberland Local Area Command

The development application was referred to the NSW Police Force for comments, consistent with an ongoing arrangement for development referrals, who identified objectives, design features, and social conditions that are likely to impact crime opportunities at the development site, which have been considered in the assessment of the application.

Endeavour Energy

The development application was referred to Endeavour Energy in accordance with *Clause 45 – Determination of Development Applications – Other Development*, pursuant to State Environmental Planning Policy (Infrastructure) 2007. Endeavour Energy has 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.

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 application:

(a) 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.

(b) 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. Table 5 below 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?	☒	☐	☐
Is the development going to be used for a sensitive land use (e.g.: residential, educational, recreational, childcare or hospital)?	☒	☐	☐
Does information available to you indicate that an activity listed below has ever been approved, or occurred at the site? acid/alkali plant and formulation, agricultural/horticultural activities, airports, asbestos production and disposal, chemicals manufacture and formulation, defence works, drum re-conditioning works, dry cleaning establishments, electrical manufacturing (transformers), electroplating and heat treatment premises, engine works, explosive industry, gas works, iron and steel works, landfill sites, metal treatment, mining and extractive industries, oil production and storage, paint formulation and manufacture, pesticide manufacture and formulation, power stations, railway yards, scrap yards, service stations, sheep and cattle dips, smelting and refining, tanning and associated trades, waste storage and treatment, wood preservation.	☒	☐	☐
Is the site listed on Council's Contaminated Land Database?	☐	☒	☐
Is the site subject to EPA clean-up order or other EPA restrictions?	☐	☒	☐
Has the site been the subject of known pollution incidents or illegal dumping?	☐	☒	☐
Does the site adjoin any contaminated land/previously contaminated land?	☐	☒	☐
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	☒	☐	☐

Matters for consideration	Yes	No	N/A
or can be made suitable to accommodate the proposed development?			
*Refer to comments below.			

Table 5 – Considerations under Clause 7 of SEPP 55 (Source: Cumberland Council, 2020)

Details of Contamination Investigations Carried out at the Site

The following site investigation reports have been prepared, which have been submitted with the development application:

- Stage 1 Preliminary and Stage 2 Detailed Site Investigation prepared by Construction Sciences, dated 07 May 2020.
- Remedial Action Plan prepared by Construction Sciences, dated 27 November 2020.

Note: Concerns were initially raised by Council's Environmental Health Officer regarding the possible presence of Underground Petroleum Storage Systems (UPSS) on-site, noting the site previously was developed as a service station. In response, the applicant submitted a request to Safework NSW to ascertain the presence of UPSS on-site, to which a response is outstanding at the writing of this report. Noting this, the applicant's environmental consultants, Construction Sciences, recommended a Remedial Action Plan (RAP) be prepared as a precaution, should UPSS be found on site, which has been submitted in support of the application.

Council's Review

Council's Environmental Health Officer has reviewed the submitted reports and is satisfied with the approach taken by the applicant, and 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)*.

Council's Environment Health Officer is satisfied that the site can be made suitable for its intended use and has provided that should the application be determined by way of approval, be subject to standard conditions of consent.

(c) 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) applies to the assessment of the subject application, as it includes a residential flat building that is 3 storeys or more in height and contains more than 4 dwellings. The development application has been accompanied by a Design Verification Statement from a Registered Architect.

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 apartment development. The proposed development has been assessed to comply

with the requirements of the ADG, except for the design criteria related to visual privacy, which is discussed below. A comprehensive assessment against the ADG is contained in Attachment 4 to this report.

Design Criteria 3F-1 - Visual Privacy

Separation between windows and balconies is to be provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:

- Up to 12m (4 storeys), 6m to habitable rooms and balconies, and 3m to non-habitable rooms.
- Up to 25m (5-8 storeys), 9m to habitable rooms and balconies, and 4.5m to non-habitable rooms.
- Over 35m (9+ storeys), 12m to habitable rooms and balconies, and 6m to non-habitable rooms.

In this regard, the following variations to the above requirements are noted:

Control	Required / Permissible	Provided	Variation
Visual Privacy – South	Level 02 - 6m	4.8m	1.2m / 20%
	Levels 04 to 07 – 9m	6.0m	3m / 33.3%
	Level 08 – 12m	9.5m	2.5m / 20.8%
Visual Privacy – West	Level 02 – 6m	4.2m	1.8m / 30%

The proposed variations are considered acceptable on their merits, noting the following:

Southern Separation

- **Level 02** The variation is a result of the south facing windows associated with the staff lunch / lounge, and staff training / resource lounge rooms. Visual privacy from the windows in question can be maintained with a condition, requiring the windows to have an opaque finish, which has been imposed within the draft notice of determination at Attachment 3
- **Levels 04 to 07** The variation is a result of the south facing windows associated with B.09, C.09, D.09 and E.09, the south facing windows associated with Lounge 2 (Levels 04 to 07), and associated balcony areas. Visual privacy from the windows are maintained, as they are designed to have an opaque finish. In addition, the balcony areas maintain a balustrade height of 1.8m. Visual privacy from the balcony areas in question can be maintained with a condition, requiring the balustrading to have an opaque finish, which has been imposed within the draft notice of determination at Attachment 3
- **Level 08** The variation is a result of the balcony areas associated with Units 8.02, 8.03, and 8.04. Visual privacy from the majority of the

area has been maintained, due to the southern garden. In addition, the balcony areas maintain a balustrade height of 1.8m. Visual privacy from the balcony areas in question can be maintained with a condition, requiring the balustrading not adjoining the southern garden, to have an opaque finish, which has been imposed within the draft notice of determination at Attachment 3

Western Separation

- **Level 02** The variation is a result of the west facing windows associated with the administration area, and balcony areas associated with the common lounge / activities / chapel, physiotherapy, and staff / lunch / lounge. Visual privacy from the windows in question can be maintained with a condition, requiring the windows to have an opaque finish. In addition, the balcony areas maintain a balustrade height of 1.8m. Visual privacy from the balcony areas in question can be maintained with a condition, requiring the balustrading to have an opaque finish, which has been imposed within the draft notice of determination at Attachment 3

(d) 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.

(e) 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".

(f) State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004

State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP (HSPD)) aims to encourage the provision of housing that will increase the supply and diversity of residences that meet the needs of seniors or people with a disability, make efficient use of existing infrastructure and services, and be of good design.

The proposed development has been assessed to comply with the provisions of the SEPP (HSPD), except for the controls related to landscape area, and solar access, which are discussed below. A comprehensive assessment against the provisions of the SEPP (HSPD) has been undertaken and is provided at Attachment 5.

Clauses 48(c) and 50(c) - Landscape Area

A consent authority must not refuse consent, where a minimum of 25m² of landscaped area per residential care facility bed is provided. Furthermore, a consent authority must not refuse consent, where in the case of a development application made by a social housing providing, a minimum 35m² of landscape area per dwelling is provided.

In this regard, the following variations to the above requirements are noted:

Control	Required / Permissible	Provided	Variation
Landscape Area – RACF	2,200m ²	686m ²	1,514m ² / 68.8%
Landscape Area – ILUs	3,430m ²	328m ²	3,102m ² / 90.4%

The proposed variations are considered acceptable on their merits, noting the following:

- In order to achieve compliance with the above numerical standards, a combined area of 5,630m² would need to be provided as landscaped area, which when compared to the site area of 2089.3m², represents an area of 269.5% of the site, which is considered to be overly onerous.
- No minimum landscape area requirements are noted with the ADG or HDCP. Particular reference is made to Part C, *Clause 1.5 – Landscaping and Open Space* of the HDCP, which identifies no landscaped area is required in business zones, to which the site is zoned.
- Having regard to the highly urbanised environment and site constraints, the development has optimised the amount of landscape area provided within the tower typology. The landscaped areas proposed are of sufficient dimension, enabling planting which contributes to the amenity of the site, improves the landscape character of the site and general surrounds, while also creating buffer zones for privacy between the subject development and surrounding properties.
- Despite the non-compliance, the development will provide appropriate amenity for future residents, including the compliant provision of private open space and communal open space, in accordance with the requirements of SEPP (HSPD) and design criteria of the ADG.

Clause 50(e) - Solar Access

A consent authority must not refuse consent, where 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.

In this regard, the following variation to the above requirements is noted:

Control	Required / Permissible	Provided	Variation
Solar Access – ILUs (3hrs)	69 units / 70%	46 units / 47%	23 units / 33.3%

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

- *Design Criteria 4A-1 – Solar and Daylight Access* of the ADG, requires 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 75 independent living units achieving 2 hours solar access, equivalent to 76.5% of units.

- The design of the development optimises direct sunlight to habitable rooms, balconies, and communal open space areas through; maximising the north aspect, designing a high number of dual aspect apartments with shallow apartment layouts, and minimising the number of single aspect south facing apartments.

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

State Environmental Planning Policy (Infrastructure) 2007 (ISEPP) aims to facilitate the efficient delivery of infrastructure across the state. The proposed development has been assessed to comply with the provisions of the ISEPP. A comprehensive assessment against the provisions of the ISEPP has been undertaken and is provided at **Attachment 6**.

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

Development of a type that is listed under Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011, is defined as '*Regionally Significant Development*', which requires a referral to the Sydney Central City Planning Panel (SCCPP) for determination, as constituted by Part 3 of Schedule 2 under the *Environmental Planning and Assessment Act, 1979*.

The application is being reported to the Sydney Central City Planning Panel (SCCPP) for determination, as the development constitutes '*Regionally Significant Development*', with the development exceeding the \$30 million Capital Investment Value (CIV) threshold.

State Environmental Plan (Sydney Harbour Catchment) 2005

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

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

(i) 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 include tree removal, and therefore the area clearing threshold for native vegetation pursuant to the Biodiversity Conservation Act 2016 is not applicable; and
- The proposal does not include tree removal, and therefore the test of significance pursuant to Section 7.3 of the Biodiversity Conservation Act 2016 is not applicable.

(j) Holroyd Local Environmental Plan 2013 (HLEP)

The Holroyd Local Environmental Plan 2013 (HLEP) applies to the subject site. The proposed development has been assessed to comply with the requirements of HLEP, except for the Floor Space Ratio (FSR) development standard, which is discussed below. The relevant matters to be considered under HLEP, and the applicable clauses for the proposed development, are summarised below. A comprehensive assessment against the HLEP is contained in Attachment 7 to this report.

Permissibility

The site is zoned B4 Mixed Use, pursuant to the HLEP. The subject development is characterised as a *seniors housing* and *commercial premises* development, and is permissible with consent.

Seniors housing means a building or place that is—

- (a) A residential care facility, or
- (b) A hostel within the meaning of clause 12 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, or
- (c) A group of self-contained dwellings, or
- (d) A combination of any of the buildings or places referred to in paragraphs (a)–(c),

And that is, or is intended to be, used permanently for—

- (e) Seniors or people who have a disability, or
- (f) People who live in the same household with seniors or people who have a disability, or
- (g) Staff employed to assist in the administration of the building or place or in the provision of services to persons living in the building or place,

But does not include a hospital.

Note. Seniors housing is a type of **residential accommodation**

Commercial premises means any of the following—

- (a) Business premises,
- (b) Office premises,
- (c) Retail premises.

Heritage

The subject site is not heritage listed, is not located within a heritage conservation area, and is not located within the vicinity of any heritage items.

Key Development Standards

Table 7 below identifies the following key development standards:

Development Standard	Maximum		Proposed	Compliance
Clause 4.3 Height of Buildings (HOB)	94.6m (Inclusive of Design Excellence)		93.295m + *0.6m (ADG) = 93.895m	Yes
Clause 4.4 Floor Space Ratio (FSR)	Overall	8.5:1 (Inclusive of *DE)	8.5:1	Yes
	Residential	6.8:1 (Inclusive of *DE)	7.6:1	No, but Acceptable on Merit

Table 7 – HLEP Key Development Standards (Source: Cumberland Council, 2020)

*DE – Design Excellence

*+0.6m (ADG) – The floor to ceiling heights on Level 01 are conditioned to be 3.3m, in accordance with the Apartment Design Guide (ADG), resulting in an increased height of 0.6m

Clause 4.6 – Variation to Height of Buildings and Floor Space Ratio Development Standards

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 Floor Space Ratio (FSR) development standard, which is contained in Attachment 2 to this report. 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?*

2. *Is the proposed development consistent with the objectives of the development standard which is not met?*
3. a) *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? and;*
 b) *Are there sufficient environmental planning grounds to justify contravening the development standard and therefore is the Applicant's written justification well founded?*

The preconditions are addressed in turn.

Clause 4.4 - Floor Space Ratio (FSR) Development Standard

Control	Permitted	Provided	Variation
Clause 4.4 Floor Space Ratio (FSR) – Maximum Residential	6.8:1 (Inclusive of *DE)	7.6:1	0.8:1 / 11.77%

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

Objective	Comment
Objective 1 – To provide a mix of compatible land uses.	<u>Applicant's Comment</u> <i>The proposal achieves a genuine mixed use building with a combination of commercial and residential uses that are allocated appropriately within the development. The commercial uses will be capable of providing a mix of activated retail at street level as well as office uses within the podium.</i>
	<u>Council's Comment</u> Council agrees with the comments made, and further notes that the proposed development provides for a combination of commercial and residential uses, which by virtue of the proposed design and layout, are compatible.
Objective 2 – To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.	<u>Applicant's Comment</u> <i>The proposal co-locates complementary land uses in excellent proximity to transport infrastructure, shops and services. The site is located in the Merrylands Town Centre, and is within 200m walking distance to Merrylands Train Station and Interchange, and Stockland Shopping Centre.</i>
	<u>Council's Comment</u> Council agrees with the comments made, and further notes that the proposed development is designed in a highly accessible location, that being the

	Merrylands Town Centre, which encourages use of public transport, walking and cycling.
Objective 3 – To facilitate a vibrant, mixed-use centre with active retail, commercial and other non-residential uses at street level.	<u>Applicant's Comment</u> <i>The proposal has undergone a rigorous design excellence process to demonstrate a high level of architectural design. The design, which has been informed by the proposed uses and their location within the building, serve to activate and respond to the public domain including ground level retail, podium commercial and RACF within the upper levels.</i>
	<u>Council's Comment</u> Council agrees with the comments made, and further notes that the proposed development seeks an active commercial frontage to Pitt Street, McFarlane Street, and part of Reyes Lane.
Objective 4 – To encourage the development and expansion of business activities that will strengthen the economic and employment role of the Merrylands town centre.	<u>Applicant's Comment</u> <i>The proposal serves to enhance the role of Merrylands Town Centre by providing sufficient commercial uses within the development. Despite the minor breach of residential accommodation FSR, the RACF component will require 45 staff to support residents, as well as an additional 5 staff for the ILU component.</i>
	<i>In turn, the employment generation created from these uses alone would arguably be similar to what would be realised if the shortfall of non-residential GFA was provided on the site.</i>
	<i>The proposed seniors living component will support additional economic activity in the Merrylands Town Centre, through flow on effects and consumer demand for goods and services for nearby businesses, which will improve local retail trade.</i>
	<u>Council's Comment</u> Council agrees with the comments made, and further notes that the proposed development will enhance and strengthen the economic and employment role of the Merrylands Town Centre through both the commercial component designed to the ground and first floor levels, and employment generating components associated with the Residential Aged Care Facility (RACF) and Independent Living Units (ILUs).

Table 8 – B4 Zone Objectives (Source: Cumberland City Council, 2020)

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

Objective	Comment
Objective 1(a) - To support the viability of commercial centres and provide opportunities for economic development within those centres.	<u>Applicant's Comment</u> <i>The proposal will provide a genuine mixed use development with ground floor and podium commercial uses along with seniors living in the tower forms.</i> <i>The proposal will be one of the first redevelopments in the Merrylands Town Centre, following the finalisation of the Merrylands and McFarlane Station Precinct Planning Proposal, and provides seniors living uses that will support the economic activity and demand for services in the centre.</i> <u>Council's Comment</u> Council agrees with the comments made, and further reiterates that the proposed development will support the viability and economic development of the Merrylands Town Centre, through both the commercial component designed to the ground and first floor levels, and employment generating components associated with the Residential Aged Care Facility (RACF) and Independent Living Units (ILUs).
Objective 1(b) - To facilitate the development of a variety of housing types.	<u>Applicant's Comment</u> <i>The proposal achieves a mix of apartment types within the ILU component, including 20.4% x 1 bedroom, 61.2% x 2 bedroom, and 18.4% x 3 bedroom apartments. These apartments are located within a development that exhibits design excellence through the provision of private open space and community facilities within the development, as well as activation of the ground plane.</i> <u>Council's Comment</u> Council agrees with the comments made, and further notes that the proposed development provides a variety of apartment types, appropriately located on land zoned B4 Mixed Use.
Objective 1(c) - To ensure that development is compatible with the existing and desired future built form and character of the locality.	<u>Applicant's Comment</u> <i>The proposal has been designed in consideration of the future character of the Merrylands Town Centre. Detailed urban design and master planning has been undertaken by Turner Architects through the course of the design excellence process, to ensure the scale of built form responds not only to its context, but presents opportunities to minimise impacts of built form on adjoining development.</i>

	<u>Council's Comment</u> Council agrees with the comments made, and further notes that the proposed development is supported by the Cumberland Design Excellence Panel, and the appearance of the development is acceptable in the context of the desired future character of the locality.
Objective 1(d) - To provide a high level of amenity for residential areas and ensure adequate provision for vehicle and pedestrian access, private open space and landscaping.	<u>Applicant's Comment</u> <i>The proposal includes a careful consideration of landscape and private open space areas to enhance residential amenity. Vertical greening is embedded within the design of the development, presenting diverse open space areas for social interaction. The site achieves 36.09% communal open space on an infill site, as well as additional landscaped areas for the ILU and RACF components.</i> <i>A high level of pedestrian access has been considered within the design including two entries at the ground level from Reyes Lane and Pitt Street.</i> <i>The proposed design also ensures key ADG criteria are not only met but are substantially exceeded, including solar access, private open space and cross flow.</i> <u>Council's Comment</u> Council agrees with the comments made, and further notes that the proposed development is generally consistent with the requirements for residential amenity, access, private open space, and landscaping.

Table 9 – FSR Development Standard Objectives (Source: Cumberland City Council, 2020)

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

Applicant's Comment

Compliance with the Floor Space Ratio (FSR) development standard is unreasonable and unnecessary given the following circumstances of the case:

- *The proposal including 88 Residential Aged Care Facility (RACF) beds, equates to a GFA of 6,249m²;*
- *While RACF are defined as residential accommodation, the RACF component of the building is anticipated to generate up to 45 total staff, with a rostered maximum of 33 staff on any shift. The use is still employment generating and is not strictly residential in nature or operation;*

- *The proposal includes 98 Independent Living Units (ILUs) that equate to a GFA of 9,609m². This use is anticipated to generate up to 4 – 5 total staff including sales, village manager, assistant village manager and a maintenance manager;*
- *Overall, the uses within the residential accommodation component are also employment generating and will provide up to 50 staff within the development;*
- *While these are considered to be a form of residential accommodation under the HLEP, they also run commercial operations and will facilitate jobs and flow on services that would similarly be realised by meeting the shortfall of non-residential floor space;*
- *Notwithstanding the variation, the proposal is consistent with the objectives of the FSR development standard;*
- *The contravention of the FSR development standard does not raise any matter of state or regional planning significance; and*
- *There is no public benefit in maintaining the standard in the circumstances of the case.*

Strict compliance with the FSR development standard is considered unreasonable and unnecessary as explained in the cases above. There is no public benefit to maintaining strict compliance with the standard in this circumstance.

Council's Comment

Council agrees with the comments made, and further notes that:

- *The proposed development seeks a redistribution of FSR onsite and complies with the overall Floor Space Ratio (FSR) development standard, pursuant to the HLEP.*
- *The variation sought is maintained to the maximum residential accommodation component of the development. While *seniors housing* is defined as *residential accommodation* pursuant to the HLEP, the *seniors housing* component sought within the subject application is employment generating, as supported by the applicant's statements above. The proposal therefore complies with the objectives of the Floor Space Ratio (FSR) development standards pursuant to the HLEP, particularly Objective 1(a), which seeks to support the viability of commercial centres and provide opportunities for economic development within those centres.*

- 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

There are sufficient environmental planning grounds to justify contravening the development standard in the following ways:

- *The variation only results in a redistribution in the quantum of allocated FSR permitted on the site, and as such, does not increase the bulk or scale of the building;*
- *The redistribution of FSR does not give rise to any additional overshadowing or amenity impacts;*
- *The de facto commercial nature of the RACF component in the podium provides for an improved design response of the building and its relationship to the public domain including improved private outdoor and landscaping areas that would unlikely be realised through strict commercial uses;*
- *The proposal has undergone a rigorous design excellence process and has demonstrated an optimal built form outcome in relation to the varying street conditions and impacts to adjoining properties;*
- *The proposal does not undermine the objectives of the B4 zone and maintains both ground and podium commercial uses, in addition to employment generating in the residential components;*
- *The proposal delivers important social outcomes for Merrylands, by not only delivering housing choice, but housing tailored to seniors or people with a disability so they can age in place; and*
- *The development complies with the objectives of the B4 Mixed Use zone, the objectives of Clause 4.4, and the desired future character of the area.*

Given the above, strict compliance with the FSR controls would hinder the attainment of the objects of the Act, and would not result in the orderly and economic use and development of land.

Council's Comment

Council agrees with the comments made, and further notes that the development responds to the site, and does so without unduly compromising relationships with adjoining development, and the other relevant controls.

The proposal is considered to be consistent with the objectives of the Floor Space Ratio (FSR) development standard, and development within the B4 Mixed Use zone. In this regard, there are sufficient environmental planning grounds to justify contravening the development standard, and the Applicant's written justification is well founded.

Conclusion

Council is satisfied that the Applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6. 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.

Considering the application on its merit, the exception to the Floor Space Ratio (FSR) 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 application:

(a) Draft State Environmental Planning Policy (Environment) (Draft ESEPP)

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.

Changes are also proposed to the Standard Instrument – Principal Local Environmental Plan. Some provisions of the existing policies will be transferred to new Section 117 Local Planning Directions where appropriate.

As discussed under the existing State Environmental Planning Policy No. 19 – Bushland in Urban Areas and State Environmental Plan (Sydney Harbour Catchment) 2005 earlier within this report, the development is considered acceptable having regard to the provisions of the SEPPs.

(b) Draft State Environmental Planning Policy (Remediation of Land) (Draft RSEPP)

The Draft State Environmental Planning Policy (Remediation of Land) (Draft RSEPP), relates to the remediation of land and seeks to repeal and replace the current SEPP

55. Generally, the Draft RSEPP maintains similar provisions to the current SEPP 55 and will contain provisions to the following effect:

- Making remediation work permissible, despite anything to the contrary in another environmental planning instrument.
- Specifying when development consent is, and is not required, for remediation work.
- Specifying considerations that are relevant in determining development applications.
- Requiring remediation work meet certain standards and notification requirements.

As discussed under SEPP 55 earlier within this report, the development is considered acceptable having regard to site suitability.

(c) Draft Cumberland Local Environmental Plan (Draft CLEP)

The Draft Cumberland Local Environmental Plan (Draft CLEP) has been prepared by Cumberland City Council to provide a single planning framework for the future planning of Cumberland City. The changes proposed seek to harmonise and repeal the three existing LEPs currently applicable to the Cumberland City local government area, those being:

- Holroyd Local Environmental Plan 2013 (HLEP).
- Parramatta Local Environmental Plan 2011 (PLEP).
- Auburn Local Environmental Plan 2010 (ALEP).

The current planning controls for the subject site are not proposed to change under the Draft CLEP.

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 development application:

(a) Holroyd Development Control Plan 2013 (HDCP)

The Holroyd Development Control Plan 2013 (HDCP) applies to the subject site. The proposed development has been assessed to comply with the requirements of HDCP, except for the controls related to awnings, setbacks, street wall heights, and upper level setbacks, which are discussed below. A comprehensive assessment against the HDCP is contained in Attachment 8 to this report.

Part M, Clause 10.3.1 – Street Network and Clause 10.6.9 – Awnings and Colonnades

Lanes are not to be covered, but awnings may be permitted on buildings facing lanes up to a maximum of 30% of each frontage. Furthermore, awnings if provided on laneways shall be retractable and only to be used in hours of operation.

In this regard, the following variations to the above requirements are noted:

Control	Required / Permissible	Provided	Variation
Awnings – Laneways	30% of Frontage	100% of Frontage	70%
	Retractable Only	Fixed Structure	-

The proposed variations are considered acceptable on their merits, noting the following:

- The proposed awnings designed to the laneways satisfy the relevant objectives of *Clause 10.3.1 – Street Network* and *Clause 10.6.9 – Awnings and Colonnades*, pursuant to Part M of the HDCP, as follows:
 - The proposed awnings do not conflict with the existing laneway network and proposed widening along Short Lane and Reyes Lane. A condition of consent has been imposed within the draft notice of determination at Attachment 3, to ensure the awnings designed to Reyes Lane and Short Lane are designed either to the proposed property boundary, or setback as proposed.
 - The proposed awnings enhance the climatic conditions and amenity of the laneway, encouraging more intensive pedestrian use and social activity, encouraging activity, vitality and interaction between public laneways and adjacent uses, and providing weather protection.
 - The proposed awnings do not impede essential servicing, vehicular access, views to other streets and laneways.

Part M, Clause 10.6.4 – Setbacks

New developments are to maintain a 0m setback to Reyes Lane and Short Lane.

In this regard, the following variations to the above requirements are noted:

Control	Required / Permissible	Provided	Variation
Setbacks	Reyes Lane – 0m	2.8m to 6.5m	2.8m to 6.5m / 100%
	Short Lane – 0m	1.2m	1.2m / 100%

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

- The setbacks of the development along Reyes Lane and Short Lane are designed to increase pedestrian access and general amenity of the space, and achieve compliance with the ADG design criteria related to building separation.
- The setbacks do not result in additional overshadowing, view loss or a reduction in privacy.
- The proposed setbacks designed to the laneways satisfy the relevant objectives of *Clause 10.6.4 – Setbacks*, pursuant to Part M of the HDCP, as follows:

- The proposed setbacks enhance the character of the precinct, reinforcing a strong definition of streets and public spaces in the Centre Precinct. The proposed development is supported by the Cumberland Design Excellence Panel, and the appearance of the development is acceptable in the context of the desired future character of the locality.

Part M, Clause 10.6.5 - Street Wall Heights and Clause 10.6.6 - Upper Level Setbacks

Where a site has frontage to a laneway, a maximum two storey street wall height is to be maintained. Furthermore, all buildings above 3 storeys in height are to display a uniform 4m setback above the street wall.

In this regard, the following variations to the above requirements are noted:

Control	Required / Permissible	Provided	Variation
Street Wall Heights	Laneways – 2 storeys	3 Storeys	1 storey / 50%
Upper Level Setbacks	McFarlane Street – 4m	4.2m	0.2m / 5%
	Pitt Street – 4m	4.5m	0.5m / 12.5%

The proposed variations are considered acceptable on their merits, noting the following:

- The proposed street wall heights and upper storey setbacks designed to the development satisfy the relevant objectives of *Clause 10.6.5 – Street Wall Heights* and *Clause 10.6.6 – Upper Level Setbacks*, pursuant to Part M of the HDCP, as follows:
 - The proposed street wall heights reinforce and reflect the various uses and desired future character of the precinct, while also ensuring the buildings heights at street level are at a human scale.
 - The proposed street wall heights provide a prominence to the street level, establishing a clear presence of commercial, increasing the visibility, marketability and utility of ground floor space.
 - The proposed upper level setbacks ensure building modulation, while also enabling an efficient tower footprint through removing incremental stepping of facades. The proposed upper level setbacks also have the effect of minimising adverse wind impacts on the pedestrian environment, while also maximising sunlight penetration into the streets, public places, and surrounding buildings.
- The proposed street wall heights and upper level setbacks enhance the character of the precinct, reinforcing a strong definition of streets and public spaces in the Centre Precinct. The proposed development is supported by the Cumberland Design Excellence Panel, and the appearance of the development is acceptable in the context of the desired future character of the locality.

- The proposed street wall heights and upper storey setbacks do not result in additional overshadowing, view loss or a reduction in privacy.

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 ☐

In accordance with Council's Notification requirements contained within the HDCA, the development application was publicly notified for a period of 21 days from 25 June 2020 to 16 July 2020. In response, three (3) submissions were received, objecting to the proposal.

The submissions received are contained within Attachment 9 to this report, and discussed within Table 10 below:

Concerns	Planners Comment
Submission 1	
Site / Location Suitability and Development Type	
<i>The Property Council of Australia suggests Council should provide more opportunities for seniors housing, with a focus on the 'missing middle', to which the subject development is not.</i>	The subject application in part seeks construction of a <i>seniors housing</i> development. In accordance with the HLEP, <i>seniors housing</i> is permissible with consent within sites zoned B4 Mixed Use, to which the site is zoned. Note: The suggestions of the Property Council of Australia do not supersede the permissibility of

	development pursuant to the HLEP.
<i>Seniors have more needs and require more sympathetic development than persons living in residential flat buildings / shop top housing development.</i>	SEPP (HSPD) aims to encourage the provision of housing that will increase the supply and diversity of residences that meet the needs of seniors or people with a disability. In this regard, the development has been assessed to generally comply with the controls of SEPP (HSPD).
<i>An alternate, more suitable location, which can provide greenery, space and adequate parking, should be explored, and the subject site left to be developed as typical shop top housing.</i>	The subject site has been assessed to be suitable, having regard to the relevant controls and design criteria related to landscape area, open space, and on-site parking.
Affordable / Social Housing	
<i>There is no designated affordable housing and the proposed development does not provide social housing, despite the development being undertaken by a social housing provider.</i>	This is not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979.
<i>The Independent Living Units (ILUs) are typical apartments or units and will not be priced as 'affordable housing / social housing'.</i>	This is not a matter for consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979.
<i>The development does not seek a Floor Space Ratio (FSR) bonus under Part 6 of SEPP (HSPD), rather, seeks an FSR bonus through the design excellence provisions of the HLEP, and thus avoiding being 'locked in' to the affordable housing provision.</i>	In accordance with Part 6, Clause 45 of SEPP (HSPD), a consent authority may consent to a development application for the purposes of seniors housing, with a bonus 0.5:1 FSR, to which the development is required to provide 10% of dwellings as <i>affordable places</i>. In this regard, the proposed development does not seek a bonus FSR pursuant to Part 6, Clause 45 of SEPP (HSPD), rather seeks a bonus FSR pursuant to Clause 6.11 of the HLEP, and therefore Part 6, Clause 45 of SEPP (HSPD) is not applicable. Note: The development is not required to seek the bonus FSR under SEPP (HSPD).
<i>The proposed development ignores Council's Interim Affordable Housing Policy, which sets targets for affordable housing.</i>	In accordance with Council's <i>Affordable Interim Housing Policy</i> , Council seeks to encourage the provision of infill affordable rental housing within a short walking distance of public transport, through planning agreements and planning proposals.

	In this regard, the subject application is not accompanied by a planning agreement, and the site is not subject to a planning proposal.
<i>The proposed development provides 315% more parking than is required by SEPP (HSPD), and 20% of units are 3 bedroom units. Persons seeking social housing are less likely to own a car, and generally want to downsize or be on their own, and likely can't afford or need a 3 bedroom unit.</i>	The proposed development has been found to comply with the required number of car parking spaces, pursuant to SEPP (HSPD). Refer to a detailed breakdown below under the heading <i>On-Site Parking</i>. Note: A maximum number of parking spaces is not applicable to the calculation of car parking, pursuant to SEPP (HSPD). Regarding the concerns related to the development of 3 bedroom units, refer to commentary below under the heading <i>Apartment Mix</i>.
Questions have been raised as to: - <i>What eligibility criteria will be in place for the occupants of the ILUs?</i> - <i>What monitoring occurs to ensure seniors and those with a disability reside in the ILUs?</i>	A condition of consent has been imposed within the draft notice of determination at Attachment 3, restricting the occupation of residential accommodation to the following kinds of people: (a) Seniors or people who have a disability, (b) People who live within the same household with seniors or people who have a disability, (c) Staff employed to assist in the administration of and provision of services to housing provided under this Policy. A restriction as to use will be registered against the title of the property, in accordance with Section 88E of the <i>Conveyancing Act, 1919</i>, limiting the use of any residential accommodation to the above kinds of people. No ongoing monitoring exists, however, should a complaint be received, Council's Compliance Team will investigate accordingly.
Design Excellence	
The following concerns are noted: - <i>The proposed development does not exhibit 'design excellence'.</i>	In accordance with Clause 6.11 of the HLEP, the consent authority must consider if the development exhibits design excellence, as the proposal involves a building that is greater than 55

- <i>The proposal simply meets controls, and in instances, is substantially non-compliant.</i> Questions have been raised as to: - <i>Should the development be afforded height and FSR bonuses?</i> - <i>What criteria is required to be met, to achieve design excellence?</i>	metres in height on land identified as "Area 2" on the <i>Design Excellence Map</i>. In this regard, the proposal has been referred to the Cumberland Design Excellence Panel (DEP), who have subsequently considered the design excellence assessment criteria pursuant to the HLEP and have deemed the development to exhibit design excellence. Consequently, The Cumberland DEP have issued a Design Excellence Certificate accordingly. Note: Where a development is required to exhibit design excellence, the consent authority is required to have regard to the criteria as identified under Clause 6.11(4) of the HLEP.
Apartment Mix	
<i>The proposed development is made up of a number of 3 bedroom units and does not consider that the needs of seniors living.</i>	The overall apartment mix of the Independent Living Units (ILUs) is as follows: - 20 x 1 bedroom units (20.4%) - 60 x 2 bedroom units (61.2%) - 18 x 3 bedroom units (18.4%) The apartment mix is subject to market forces and is considered acceptable in reflecting the housing needs of Cumberland City, and the Merrylands area. Note: SEPP (HSPD) does not exclude the development of 3 bedroom ILUs.
Floor Space Ratio Variation – Residential	
The following concerns are noted: - <i>The proposed development complies with the maximum Floor Space Ratio (FSR) requirements of the HLEP, when assessed with the design excellence bonus.</i> - <i>The proposed development exceeds the maximum residential Floor Space Ratio (FSR) requirements of the HLEP.</i> - <i>The proposed split is not appropriate for the Merrylands Town Centre, and should instead incorporate more commercial, as no modern commercial / office areas are available in the centre.</i>	In accordance with Clause 4.4 of the HLEP, the subject site benefits from an overall Floor Space Ratio (FSR) of 8:1, and maximum residential accommodation FSR of 6.3:1. Pursuant to Clause 6.11 of the HLEP, the consent authority must consider if the development exhibits design excellence, and if so, the development may exceed the FSR development standard by up to 0.5:1. Consequently, the proposal has been considered by the Cumberland DEP, who

- <i>The proposed development is mainly for residential use, despite being zoned B4 Mixed Use.</i> - <i>The variation does not fully support the public interest.</i> A question has been raised as to: - <i>How can the applicant assert strict compliance is not necessary?</i>	have deemed the development to exhibit design excellence. In this regard, the proposed development benefits from an overall FSR of 8.5:1, and maximum residential accommodation FSR of 6.8:1. Noting the above, the proposed development has been designed to an overall FSR of 8.5:1, and residential accommodation FSR of 7.6:1. In response, the application, pursuant to Clause 4.6 of the HLEP, has submitted a Clause 4.6 Variation Statement, which has been considered acceptable in this instance. For further discussion, refer to commentary above under the heading <i>Clause 4.4 – Floor Space Ratio (FSR Development Standard)</i>. Note: Development standards can be varied pursuant to Clause 4.6 of the HLEP.
Discrepancy in Calculations	
<i>The extent of retail and commercial space within the Statement of Environmental Effects (SEE), and Traffic Impact Assessment (TIA) does not correspond.</i>	The extent of Leasable Gross Floor Area (LGFA) applicable to the commercial component of the development is 1,595.995m².
On-Site Parking	
<u>General</u> The following concern is noted: - <i>The SEE and TIA reference a minimum parking rate of 20% and maximum rate of 70% that must be provided on site. There is no longer any provision for off-site parking within the DCP or the Cumberland Local Infrastructure Contributions Plan 2020. Furthermore, the application does not mention any off-site parking, and a Council car parking is no longer planned.</i> A question has been raised as to: - <i>Based on the non-compliance proposed, where will all the patrons of the new eateries, offices and retail outlets park?</i>	In accordance with Part A, Clause 3.1 of the HDCP, the following is noted: C2. <i>Parking rates for commercial and other non-residential land uses may be provided off-site with payment of a local parking contribution where a Section 94 development contributions plan makes provision for such contributions.</i> C3. <i>Notwithstanding the above provision, a minimum parking rate of 20% and maximum of 70% must be provided on-site.</i> Note: Controls permitted S94 contributions for future public parking do not apply until a S94 plan permits such contributions.

	A review of the Cumberland Local Infrastructure Contributions Plan 2020 reveals that the plan does not contemplate a local parking contribution. In this regard, Part A, Clause 3.1, Controls C2 and C3 are not applicable, and have therefore not been applied. Regarding the concerns related to a non-compliance with the extent of parking proposed, refer to the detailed breakdown below.
<u>Independent Living Units (ILUs) Residents</u> The following concerns are noted: - <i>The number of parking spaces required for the ILUs where the development application is made by a person other than a social housing provider, is 97 car parking spaces.</i> - <i>The number of parking spaces required under the Apartment Design Guide and RMS Guide to Traffic Generating development, is 92 car parking spaces.</i> - <i>The TIA does not qualify that the development is not providing social housing.</i> - <i>The non-compliance to on-site parking should not be permitted.</i> Questions have been raised as to: - <i>Are the ILUs provided under the umbrella of ‘social housing’?</i> - <i>Why 83 car parking spaces have been provided, rather than 97 / 92 car parking spaces?</i> - <i>Is this acceptable from a community organisation, and whether this is unreasonable, immoral or unethical?</i> <u>Independent Living Units (ILUs) Visitors</u> The following concerns are noted: - <i>The number of parking spaces required under SEPP (HSPD), is 10 car parking spaces.</i> - <i>The number of parking spaces required under the RMS Guide to Traffic Generating development, is 10 car parking spaces.</i> - <i>The number of parking spaces required under the HDCP, is 20 car parking spaces.</i> - <i>The inadequacy of parking is acknowledged by the Applicant, which seeks to rely on other parking in the</i>	In accordance with Clause 50 of SEPP (HSPD), a consent authority must not refuse consent where at least 1 car space is provided per 5 Independent Living Units (ILUs), where the development application is made by, or jointly with, a social housing provider. In this regard, the proposed development is made by Anglican Community Services, who are a registered social housing provider under the National Provider Register. To this end, 98 ILUs are proposed, requiring 20 car parking spaces to service the ILUs. The proposed development provides 84 car parking spaces to service the ILUs, and therefore consent cannot be refused. Note: SEPP (HSPD) does not distinguish a separate requirement for ILU residents and ILU visitors.

<i>Merrylands Town Centre, to which parking in the centre is limited.</i> Question has been raised as to: - <i>Why 4 car parking spaces have been provided, rather than 10 / 20 car parking spaces?</i>	
<u><i>Residential Aged Care Facility (RACF) Visitors</i></u> The following concerns are noted: - <i>The number of parking spaces required under SEPP (HSPD), is 9 car parking spaces, to which the application provides.</i> - <i>The rate of spaces provided is incomprehensible, with particular mention to concerns post COVID-19 about public transportation usage.</i> - <i>The Applicant seeks to rely on other parking in the Merrylands Town Centre, to which parking in the centre is limited.</i>	In accordance with Clause 48 of SEPP (HSPD), a consent authority must not refuse consent, where at least: - One (1) car space is provided per 10 Residential Aged Care Facility (RACF) beds. - One (1) car parking space for each 2 persons to be employed in connection with the development, and on duty at any one time. - One (1) parking spaces is suitable for an ambulance. In this regard, 88 RACF beds and 45 RACF staff are proposed, requiring 9 and 23 car parking spaces respectively, and one parking space suitable for an ambulance. The proposed development provides 9 and 23 car parking spaces respectively, and one parking space suitable for an ambulance to service the RACF, and therefore consent cannot be refused.
<u><i>Retail / Commercial</i></u> The following concern is noted: - <i>The number of parking spaces required under the HDCP, is 36 / 41 car parking spaces.</i> Questions have been raised as to: - <i>What is the required number of car parking spaces?</i> - <i>Why have only 16 car parking spaces been provided?</i> <u><i>Food and Drink Premises</i></u> The following concerns are noted: - <i>The proposed development does not cater for the increased rate of car parking required for food and drink premises within the HDCP.</i>	In accordance with Clause 3.1 of the HDCP, commercial (including retail premises, business premises and office premises) in a B4 Mixed Use zone, to which the site is zoned, are required to provide parking as follows: - Minimum 1 car parking space per 50m² of Leasable Gross Floor Area (LGFA). - Maximum 1 car parking space per 15m² of LGFA. In this regard, 1,595.995m² of LGFA is proposed, requiring a minimum of 32 car parking spaces, and maximum of 107 car parking spaces. The proposed development provides 16 car parking spaces, which is non-compliant. As the development provides additional car parking spaces to service the ILUs, as noted above, that being 64 additional car parking spaces beyond the requirement

	of SEPP (HSPD), a condition of consent has been imposed within the draft notice of determination at Attachment 3, requiring a redistribution of parking to achieve compliance with the HDCP. Note: The car parking rate applicable to food and drink premises has not been applied to the subject development, as use of commercial tenancies has not been sought under the subject application.
Access	
<u>Number Plate Recognition Technology</u> A question has been raised as to: - <i>As visitor number plates will not be listed, will there be an intercom facility available for visitor access?</i>	An intercom control device has been designed to the median island at the top of the basement car parking ramp, to facilitate visitor access.
<u>Turntable</u> The following concerns are noted: - <i>Traffic management measures are required should the turntable be unavailable due to the turntable being occupied or redundant.</i> - <i>Deliveries and waste collection will need to be scheduled, however, delivery and pickup vehicles seldom run on time, due to Sydney's traffic.</i> Questions have been raised as to: - <i>Will waste trucks be able to fit on the turntable?</i> - <i>Will the ongoing need to use a turntable be problematic?</i>	Should the proposed turntable stop functioning, the Applicant has demonstrated by means of a swept path analysis, that a Small Rigid Vehicle can manoeuvre on-site within the loading dock area, to continue to facilitate on-site loading and unloading. Council's Development Engineer has reviewed the proposed loading and unloading arrangements of the development to be acceptable, subject to conditions. Furthermore, a condition of consent has been imposed within the draft notice of determination at Attachment 3, requiring the preparation of a Loading Dock Management Plan, to facilitate the scheduling of loading and unloading. Note: The proposed turntable has been designed to fit Council's 8.8m Medium Rigid Vehicle (MRV) waste trucks. Furthermore, no evidence has been found to suggest the use of a turntable onsite will be problematic.
<u>Loading Dock</u> <i>Trucks will have to go on the wrong side of the road to access the loading dock, which the</i>	A swept path analysis has been submitted, which identifies Medium Rigid Vehicles (MRVs) are required to

<i>issue compounded due to the expected number of deliveries.</i>	transverse the centreline of Short Lane, to access the proposed loading dock. Council's Development Engineer has reviewed the proposed access to the loading dock of the development to be acceptable. In reference, Council's Development Engineer noted the limited width of Short Lane, and the ramifications for the design of the development should the entrance to the loading dock be setback into the site, with reference to the basement access arrangement from Reyes Lane, and proposed core. Furthermore, a condition of consent has been imposed within the draft notice of determination at Attachment 3, requiring the preparation of a Loading Dock Management Plan, to facilitate the safe manoeuvring of vehicles to and from the site.
<u>Traffic Flow</u> The following concern is noted: - <i>A one-way system is designed to Reyes Lane and Short Lane.</i> Questions have been raised as to: - <i>Is this what Council anticipated for the site?</i> - <i>Is Short Lane required to be 2 way to access the basement car park?</i> - <i>Can Short Lane be 2 way due to the inherent loading dock problems?</i>	The proposed development does not seek to alter the access arrangement of Reyes Lane and Short Lane, that being one-way access for Reyes Lane, and two-way access for Short Lane. Note: Council does not have intentions to alter the access arrangements of Reyes Lane and Short Lane. Refer to commentary above regarding the proposed loading dock.
<u>Laneway Widening</u> A question has been raised as to: - <i>Whether the development contributes to the required widening of Reyes Lane and Short Lane?</i>	The property boundaries are designed to be adjusted, and land dedicated to Council, such that the laneways be widened to 8m, with 4m provided from the centreline to the proposed property boundaries.

<u>Traffic Calculations</u> <i>Council should review the Applicant's calculations regarding traffic to and from the site, as they may be calculating some vehicles as being parked off-site.</i> <u>Congestion</u> The following concerns are noted: - <i>The TIA acknowledges queuing currently exists in the area but indicates it will not be affected by the proposed development.</i> - <i>The development of nearby sites must be factored into the assessment of traffic as well.</i> - <i>The assessment of traffic with individual development applications should portray a holistic approach.</i>	A Traffic Impact Assessment (TIA) has been submitted with the development application, which considers traffic generation. Council's Development Engineer has assessed the submitted TIA and considers the proposed development supportable on the grounds of traffic generation, when considering the prevailing traffic conditions, and the capacity of the street network. In this regard, the traffic generated by the development is not expected to adversely affect the performance of the road network or key intersections.
<u>Landscaping</u> <u>Independent Living Units (ILUs)</u> The following concerns are noted: - <i>The proposed development does not comply with the landscape area requirements of SEPP (HSPD).</i> - <i>The justification provided by the Applicant doesn't seem particularly relevant, with reference to balcony areas and communal open space areas.</i> - <i>The minimum standards of greenery and landscaping should be provided, when considering the advancing age and decreasing mobility of future residents.</i>	In accordance with Clause 50 of SEPP (HSPD), a consent authority must not refuse consent, where a minimum of 35m² of landscaped area per Independent Living Units (ILUs) is provided. In this regard, 98 ILUs are proposed, requiring 2,200m² of landscape area. The proposed development provides 686m², which has been considered in the assessment of the application to be acceptable on its merits. For further discussion, refer to commentary above under the heading <i>Clauses 48(c) and 50(c) - Landscape Area.</i>
<u>Residential Aged Care Facility (RACF)</u> The following concerns are noted: - <i>The proposed development does not comply with the landscape area requirements of SEPP (HSPD).</i> - <i>The Applicant's SEE does not correspond in terms of landscape area requirements. Council is asked to check the different quantities.</i> - <i>An RACF is not a Residential Flat Building (RFB), and have different demographics.</i> - <i>The justification provided by the Applicant doesn't seem particularly relevant, with reference to communal</i>	In accordance with Clause 48 of SEPP (HSPD), a consent authority must not refuse consent, where a minimum of 25m² of landscaped area per Residential Aged Care Facility (RACF) bed is provided. In this regard, 88 RACF beds are proposed, requiring 3,430m² of landscape area. The proposed development provides 328m², which has been considered in the assessment of the application to be acceptable on its merits. For further discussion, refer to commentary above under the heading

<i>open space areas, the highly urbanised environment, and site constraints.</i> - <i>SEPP (HSPD) references landscaping, not communal space, and thus importance should be placed on landscaping.</i> Questions have been raised as to: - <i>Does SEPP (HSPD) take precedent over the ADG?</i> - <i>If the proposal doesn't comply, should the facility be built elsewhere?</i>	<i>Clauses 48(c) and 50(c) - Landscape Area.</i> Note: SEPP (HSPD) takes precedent over the ADG to the extent of any inconsistency, as SEPP (HSPD) is an Environmental Planning Instrument (EPI). Furthermore, the site has been found to be suitable for the proposed development.
Communal Open Space	
The following concerns are noted: - <i>The proposed development does not comply with the communal open space requirements of the ADG.</i> - <i>The SEE does not correspond in terms of communal open space requirements. Council is asked to review the different quantities.</i> - <i>The outdoor dining facilities on the rooftop appear small for people wanting fresh air and sunlight.</i> Questions have been raised as to: - <i>How many people will reside in the ILUs?</i> - <i>Can the RACF residents and visitors visit the rooftop communal open space?</i> - <i>If the proposal doesn't comply, should the facility be built elsewhere?</i>	In accordance with Design Criteria 3D-1 of the ADG, communal open space shall have a minimum area equal to 25% of the site. In this regard, the site area is 2,089.3m², requiring an area of 522.325m². The proposed development provides 754m² and is therefore compliant. Note: A maximum number of persons who will reside in the Independent Living Units (ILUs) is unknown. Furthermore, the rooftop communal open space areas are designed for use of residents and visitors of the ILUs only.
Sunlight and Daylight Access	
The following concerns are noted: - <i>The proposed development does not comply with the minimum 3 hour sunlight requirements of SEPP (HSPD).</i> - <i>An RACF is not a Residential Flat Building (RFB) and have different demographics.</i> - <i>The elderly and disabled require more sunlight and daylight, to limit the need for artificial lighting, and for health reasons.</i> - <i>The development should be located in an alternate, more suitable location, due to the site constraints listed by the Applicant as justification for the non-compliances.</i> - <i>The proposed development achieves the maximum number of apartments that may receive no direct sunlight, as per the ADG, but only barely.</i>	<u>Independent Living Units (ILUs) – SEPP (HSPD)</u> In accordance with Clause 50 of SEPP (HSPD), a consent authority must not refuse consent, where living rooms and private open spaces for a minimum of 70% of Independent Living Units (ILUs) receive a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter. In this regard, 98 ILUs are proposed, requiring 69 units to be afforded 3 hours direct sunlight in midwinter. The proposed development provides 46 units, which has been considered in the assessment of the application to be acceptable on its merits.

- <i>Council is asked to review the extent of communal open space achieving direct sunlight, as the Applicant has indicated it anticipates compliance with the ADG.</i> A question has been raised as to: - <i>Does SEPP (HSPD) take precedent over the ADG?</i>	For further discussion, refer to commentary above under the heading <i>Clause 50(e) - Solar Access.</i> <u>Independent Living Units (ILUs) – ADG</u> In accordance with Design Criteria 4A-1 of the ADG, living rooms and private open spaces for a minimum of 70% of Independent Living Units (ILUs) receive a minimum of 2 hours direct sunlight between 9am and 3pm in mid-winter. Furthermore, a maximum of 15% of ILUs can receive no direct sunlight between 9am and 3pm in mid-winter. In this regard, 98 ILUs are proposed, requiring 69 units to be afforded 2 hours direct sunlight in midwinter, as per the above criteria, with a maximum of 15 units receiving no direct sunlight in midwinter. The proposed development provides 75 units achieving 2 hours sunlight as per the above criteria, and 13 units receiving no direct sunlight, and is therefore compliant. <u>Communal Open Space – ADG</u> In accordance with Design Criteria 3D-1 of the ADG, developments shall achieve a minimum of 50% direct sunlight to the principal usage part of the communal open space for a minimum of 2 hours between 9am and 3pm in mid-winter. In this regard, the communal open space areas to both Level 08, and the roof level, achieves 50% direct sunlight for at least 2 hours in midwinter, as per the above criteria, and is therefore compliant. Note: SEPP (HSPD) takes precedent over the ADG to the extent of any inconsistency, as SEPP (HSPD) is an Environmental Planning Instrument (EPI). Furthermore, the site has been found to be suitable for the proposed development.
Separation / Acoustic and Visual Privacy	
The following concerns are noted:	<u>Visual Privacy</u>

- <i>The proposed development does not comply with the minimum building separation requirements of the ADG for the RACF component.</i> Questions have been raised as to: - <i>Is it acceptable to treat our disadvantaged demographic in the RACF in this regard?</i> - <i>Aren't facilities supposed to be built to certain standards?</i> - <i>Is visual privacy maintained for neighbouring properties when they are developed?</i> - <i>How will the noise emanating from the eateries and adjacent pub affect future residents?</i>	In accordance with Design Criteria 3F-1 of the ADG, Separation between windows and balconies is to be provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows: - Up to 12m (4 storeys), 6m to habitable rooms and balconies, and 3m to non-habitable rooms. - Up to 25m (5-8 storeys), 9m to habitable rooms and balconies, and 4.5m to non-habitable rooms. - Over 35m (9+ storeys), 12m to habitable rooms and balconies, and 6m to non-habitable rooms. In this regard, the proposed development has been found to comply with the above criteria, with the exception of the south facing Levels 02, and 04 to 08, and west facing Level 02, which has been considered in the assessment of the application to be acceptable on its merits, subject to a condition of consent, which has been imposed within the draft notice of determination at Attachment 3, requiring the glass of windows / balustrading to be opaque. For further discussion, refer to commentary above under the heading <i>Clause 3F-1 - Visual Privacy</i>. <u>Acoustic Privacy</u> An Acoustic Report prepared by an appropriately qualified acoustic consultant has been submitted with the development application. The Acoustic Report has considered road traffic noise, rail noise, noise intrusion from existing commercial premises surrounding the site, and noise emissions from proposed mechanical plant. The Acoustic Report has detailed the proposed development meets the relevant acoustic requirements and criteria. Council's Environmental Health Unit has assessed the provided Acoustic Report in conjunction with the proposal to
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	be satisfactory in maintaining acoustic privacy, subject to conditions, which have been imposed within the draft notice of determination provided as Attachment 3 to this report.
Height	
The following concerns are noted: - <i>The proposed development complies with the maximum building height requirements of the HLEP, when assessed with the design excellence bonus, however, the height calculations provided by the Applicant appear to be incorrect.</i>	In accordance with Clause 4.3 of the HLEP, the subject site benefits from a Height of Buildings (HOB) development standard of 86m. Pursuant to Clause 6.11 of the HLEP, the consent authority must consider if the development exhibits design excellence, and if so, the development may exceed the HOB development standard by up to 10%. Consequently, the proposal has been considered by the Cumberland DEP, who have deemed the development to exhibit design excellence. In this regard, the proposed development benefits from a maximum height of 94.6m. Noting the above, the proposed development has been designed to a height of 93.925m and is therefore compliant. Note: The floor to ceiling heights on Level 01 are conditioned to be 3.3m, in accordance with the Apartment Design Guide (ADG), resulting in an increased height of 0.6m, with an overall height of 93.895m, in compliance with the HLEP.
Clothes Drying Facilities	
The following concerns are noted: - <i>The proposed development does not contain clothes drying facilities. Furthermore, the screening of balconies is not proposed.</i> - <i>The proposed development does not provide external drying areas at a rate of 3m of line per dwelling, as per the HDCP.</i> - <i>By way of condition of consent, clothes drying facilities should be provided on each balcony, below the balustrade, and mechanical drying appliances should be provided in each unit.</i> A question has been raised as to:	In accordance with Schedule 3, Clause 19 of SEPP (HSPD), the Independent Living Units (ILUs) must have a laundry that has provision for the installation of an automatic washing machine and clothes dryer. In this regard, a condition of consent has been imposed within the draft notice of determination at Attachment 3, to ensure compliance with the above control. Note: A fix screen is not designed for clothes drying facilities.

- <i>Will fixed screen be proposed for clothes drying facilities?</i>	
Accessibility	
The following concerns are noted: - <i>The SEE does not reference the standards concerning accessibility, usability and adaptability of the ILUs as per SEPP (HSPD).</i>	<u>Accessibility</u> An Access Report prepared by an appropriately qualified access consultant has been submitted with the development application. The Access Report has considered ingress and egress, paths of travel, circulation areas, accommodation and sanitary facility and their compliance with relevant statutory guidelines, including Australia Standard AS1428, the Building Code of Australia, and Disability (Access to Premises - Building) Standards 2010. The Access Report has detailed the proposed development can readily achieve the accessibility requirements pertaining to external site linkages, building access, common area access, accommodation, sanitary facilities and parking. <u>Adaptable Housing</u> Adaptable housing plans have been submitted with the application, which identify all Independent Living Units (ILUs) as been adaptable and complying with Australia Standard AS4299.
Fire Engineering	
<i>The SEE identifies a Fire Engineering Statement has been prepared, which lists some design features that do not meet the prescriptive requirements of the BCA in relation to fire safety.</i>	A condition of consent has been imposed within the draft notice of determination at Attachment 3, to ensure the development complies with the Building Code of Australia, which includes provision for fire safety.
General	
The following concerns are noted: - <i>The development in the Merrylands Town Centre is a fait accompli, with a possible lack of foresight and consideration as to whether this site is the best location for the development.</i> - <i>Any new development is going to be around for many years to come, and inappropriate, or less than desirable amenity, should not be permitted.</i>	The lodgement of a development application does not ensure a development is fait accompli. The proposed development has been assessed to maintain reasonable amenity in accordance with the relevant controls and design criteria applicable, and the site has been found to be suitable for the proposed development.

Submission 2	
Overshadowing	
<i>Overshadowing from this development will block the natural light to all our windows at 2 McFarlane Street, Merrylands.</i>	In accordance with Part C, Clause 3.5 of the HDCP, developments shall ensure that access to daylight is maintained to private open spaces and habitable rooms of existing and proposed surrounding buildings, to comply with this DCP. In this regard, solar access diagrams have been submitted, which demonstrate that adjoining properties will not be unreasonably overshadowed between 9am and 12pm in mid-winter. Note: Based upon the orientation of the site, the north facing windows, and 3 of the 4 east facing windows of the adjoining building at 2 McFarlane Street, Merrylands, are unaffected by the proposal. Furthermore, the proposed development has significantly reduced the extent of overshadowing expected to be experienced to adjoining properties and the public domain, when compared to the building envelope envisaged by the HLEP. Where additional overshadowing is proposed beyond that envisaged by the HLEP building envelope, the shadow cast is largely limited to small areas of rooftop and the public domain.
Property Damage	
<i>We do not want trucks and other vehicles involved in the development to be accessing the building site through Reyes Lane, as the constant movement of trucks and the earthworks for the development, will cause cracks in our building.</i>	The use of Reyes Lane for site access for demolition and construction of the development is unavoidable. A condition of consent has been imposed within the draft notice of determination at Attachment 3, requesting: - The persons causing the excavation to preserve and protect neighbouring buildings from damage, and if necessary, underpin and support the adjoining buildings. - Dilapidation reports be prepared for adjoining and neighbouring

	buildings that may be subject to potential damage as a result of any building works being undertaken
Vehicular Access	
<i>We will be prevented from gaining easy vehicular or other access to our property for a lengthy period.</i>	No information has been submitted to suggest vehicular or other access will be limited to adjoining properties for periods of time.
Traffic	
<i>Traffic will become more congested because of trucks going into and out of the development site.</i>	A Traffic Impact Assessment (TIA) has been submitted with the development application, which considers traffic generation. Council's Development Engineer has assessed the submitted TIA and considers the proposed development supportable on the grounds of traffic generation, when considering prevailing traffic conditions, and the capacity of the street network. In this regard, the traffic generated by the development is not expected to adversely affect the performance of the road network or key intersections.
Access	
The following concerns are noted: - <i>We will lose business if the development is approved, because clients and customers will find it more difficult to access our property.</i> - <i>Will Council provide free parking for our tenants, for us and for other occupants of buildings around the development, should the development be approved?</i> - <i>Are our tenants, as well as ourselves, going to be compensated for loss of work because of limited access to our property?</i>	No information has been submitted to suggest vehicular or other access will be limited to adjoining properties for periods of time.
Wind Tunnel	
<i>Wind tunnel effect.</i>	In accordance with Part M, Clause 4.1 of the HDCP, a wind effects report shall be

	submitted with development application for buildings 41 metres or greater in height. In this regard, a Pedestrian Wind Environment Statement has been submitted with the development application, which considered the likely impact of the proposed design on the local wind environment, and on the critical outdoor areas within and around the subject development. The Pedestrian Wind Environment Statement has found that pedestrian comfort and safety can be impacted within the communal areas around the subject development. Subsequently, recommendations to address the potential wind effects have been provided, and wind tunnel testing recommended to be undertaken at a later detailed design stage, which has been imposed as a condition of consent within the draft notice of determination at Attachment 3.
Sewerage and Drainage	
<i>Sewerage and drainage would be adversely affected.</i>	No information has been submitted to suggest sewerage and drainage will be adversely affected.
Crane	
<i>We do not want a crane swinging over our property.</i>	The swing of a crane or hoist over private property can only occur when approval has been granted by the affected property owner.
Emergency Access	
<i>How can such a development be approved for residential aged care? What if there is a fire? How do you expect to get out of the building quickly?</i>	A condition of consent has been imposed within the draft notice of determination at Attachment 3, to ensure the development complies with the Building Code of Australia, which includes provision for fire safety.
Submission 3	
Parking	
The following concerns are noted: - <i>The SEE confirms the proposed development will rely on its proximity to Stockland Merrylands to help with overflow car parking. This is not an acceptable solution to satisfy forecast parking demand.</i>	The proposed development has been found to comply with the required number of car parking spaces, pursuant to SEPP (HSPD) and the HDCP, and therefore not require the use of adjoining sites for overflow car parking. Refer to a detailed breakdown above under the heading <i>On-Site Parking</i> .

- <i>In addition to impacts on Stockland's shopping centre customers, there is a risk that the use of parking at Stockland Merrylands will impact on the availability of parking at the dedicated public parking. This has been provided at Stockland Merrylands as a requirement by the Development Approval of Stockland Merrylands. This has the potential to significantly impact commuters, reducing public transport usage, and leading to a poor outcome for the broader community.</i>	
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Table 10 – Comments on Submission/s Received (Source: Cumberland Council, 2020)

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.

CUMBERLAND LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN 2020

This part of the Act relates to the collection of monetary contributions from Applicants, for use in developing key local infrastructure. The subject development requires the payment of contributions in accordance with the Cumberland Local Infrastructure Contributions Plan 2020.

In accordance with the currently indexed rates, the current rate of the required contribution is **\$345,519**. The draft notice of determination at Attachment 3 includes a recommendation to reflect the above contributions.

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.

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, the subject site is suitable for the development, and the proposal is considered to be in the public interest.

The proposed development is appropriate located within the B4 Mixed Use zone under the provisions of the HLEP, and is consistent with the zone objectives. The development however proposes a variation to the Floor Space Ratio (FSR) development standard pursuant to the HLEP, landscape area, deep soil zones, and solar access development controls pursuant to SEPP (HSPD), visual privacy, and ceiling heights design criteria pursuant to the Apartment Design Guide (ADG), and awnings, setbacks, street wall heights, and upper level setbacks development controls pursuant to the HDCP. 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.

RECOMMENDATION

1. **That the Clause 4.6 variation request to vary the Floor Space Ratio (FSR) development standard, pursuant to the HLEP, be supported.**
2. **That development application DA2020/0308 seeking *demolition of existing structures and construction of a 24 storey mixed use development comprising retail and commercial premises, an 88 bed registered aged care facility, 98 independent living units, basement car parking and public domain works* at 215, 229-239 Pitt Street, Merrylands, be Approved, subject to the conditions contained in the draft notice of determination contained in Attachment 3 of this report.**
3. **Persons whom have lodged a submission in respect to the application be notified of the determination of the application.**

ATTACHMENTS

Attachment 1 – Architectural Plans

Attachment 2 – Clause 4.6 Variation Statement

Attachment 3 – Draft Notice of Determination

Attachment 4 – SEPP 65 Apartment Design Guide Compliance Assessment

Attachment 5 – SEPP (Housing for Seniors and People with a Disability) 2004 Compliance Assessment

Attachment 6 – SEPP (Infrastructure) 2007

Attachment 7 – Holroyd Local Environmental Plan 2013 Compliance Assessment

Attachment 8 – Holroyd Development Control Plan 2013 Compliance Assessment

Attachment 9 – Submissions x 3

Attachment 10 – Design Excellence Certificate