

**TO:** Sydney Central City Planning Panel meeting of 10 June 2021

**SUBJECT:** 14-22 Mary Street AUBURN NSW 2144

**APPLICATION No:** DA2020/0542

<b>Application lodged</b>	7 October 2020
<b>Applicant</b>	Rolz Group Pty Ltd
<b>Owner</b>	Labesu Pty Limited
<b>Application No.</b>	DA2020/0542
<b>Description of Land</b>	14-22 Mary Street AUBURN NSW 2144, Lot 41 DP 89118, Lot 1 DP 194169, Lot 42 DP 738824, Lot 1 DP 742938, Lot 40 Sec 7 DP 982836
<b>Proposed Development</b>	Demolition of existing structures and construction of a 12-storey mixed use building comprising 4 ground floor retail spaces, a boarding house development containing 101 boarding rooms and 84 residential apartments over 4 levels of basement parking, including landscaping and associated site improvement works
<b>Site Area</b>	2,286.00 m <sup>2</sup>
<b>Zoning</b>	B4 Mixed Use
<b>Disclosure of political donations and gifts</b>	Nil disclosure
<b>Heritage</b>	Not heritage listed or in Heritage Conservation Area but in the vicinity of 2 items
<b>Principal Development Standards</b>	FSR - Complies Permissible: Base FSR 5:1 ARHSEPP bonus (20% of Boarding House FSR) 0.32:1 Proposed: 5.22:1  Height of Building – Does not comply Permissible: 38m Proposed: 41.1m
<b>Issues</b>	Height, bulk and scale, non-compliance with DCP Site cover, building envelope and deep soil requirements, overshadowing

## SUMMARY

1. Development Application No. DA2020/0542 was received on 22 September 2020 for the demolition of existing structures and construction of a 12-storey mixed use building comprising 4 ground floor retail spaces, a boarding house development containing 101 boarding rooms and 84 residential apartments over 4 levels of basement parking, including landscaping and associated site improvement works.
2. The application was publicly notified to occupants and owners of the adjoining properties for a period of 14 days between 14 October 2020 and 28 October 2020. In response, 6 submissions were received.
3. The applicant was requested to provide further information to respond to a number of concerns by way of letter date 3 February 2021 and a subsequent meeting with Council on 11 February 2021. Further information was submitted at various times between 16 March and 19 May 2021.
4. The primary variations to development controls are as follows:

Control	Required	Provided	% variation
Height	Max 38m	41.1m	8.15%
Site cover	Max 50%	60% (RFB component only)	20%

5. *All other matters under s4.15 have been considered and the proposal has been found to be satisfactory, subject to appropriate conditions.*
6. *The application is recommended for conditional approval subject to the conditions, including deferred commencement conditions relation to stormwater, as provided in the attached schedule.*
7. *The application is referred to the Panel as pursuant to State Environmental Planning Policy (State and Regional Development) 2011 the proposal has a Capital Investment Value (CIV) of more than \$30M.*
8. *The application has been assessed by a consultant planner – Brett Brown of Ingham Planning Pty Ltd.*

## REPORT

### SUBJECT SITE AND SURROUNDING AREA

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The site is located on the southern side of Mary Street, Auburn and sits on the south-eastern corner of Mary Street and Park Road intersection. This is in the SW corner of the Auburn Town Centre. The site comprises 5 separate residential properties commonly known as 14, 16, 18, 20 & 22 Mary Street, Auburn and are legally described as Lot 42 DP 738824, Lot 41 DP89118, Lot 40 Sec 7 DP 982836, Lot 1 DP 742938 and Lot 1 DP 194169 respectively. No 18 contains a 2 storey brick and tile residence whilst on the remaining lots are single storey brick and tile residences. There are some large existing non-native trees on the rear boundary of Nos 14-16 Mary Street (see **Figures 1, 2 and 3**).

The land slopes gently from west down to east with a low point generally in the middle of Nos 14 and 16 where there is a stormwater inlet into a large Sydney Water drain that cuts diagonally across beneath these two properties.

The surrounding area is mixed in character, being at the interface of the B4 Mixed Use Zone (to the north and east of the site), the R4 High Density Residential Zone (to the south of the site) and the R2 Low Density Residential Zone (to the west of the site). The built form ranges from the large scale mixed use development opposite the site in Mary St of up to 12 storeys (see **Figure 4**), to 3 storey walk-up flats to the south (see **Figure 5**) and single storey detached dwellings opposite in Park Street (see **Figure 6**).

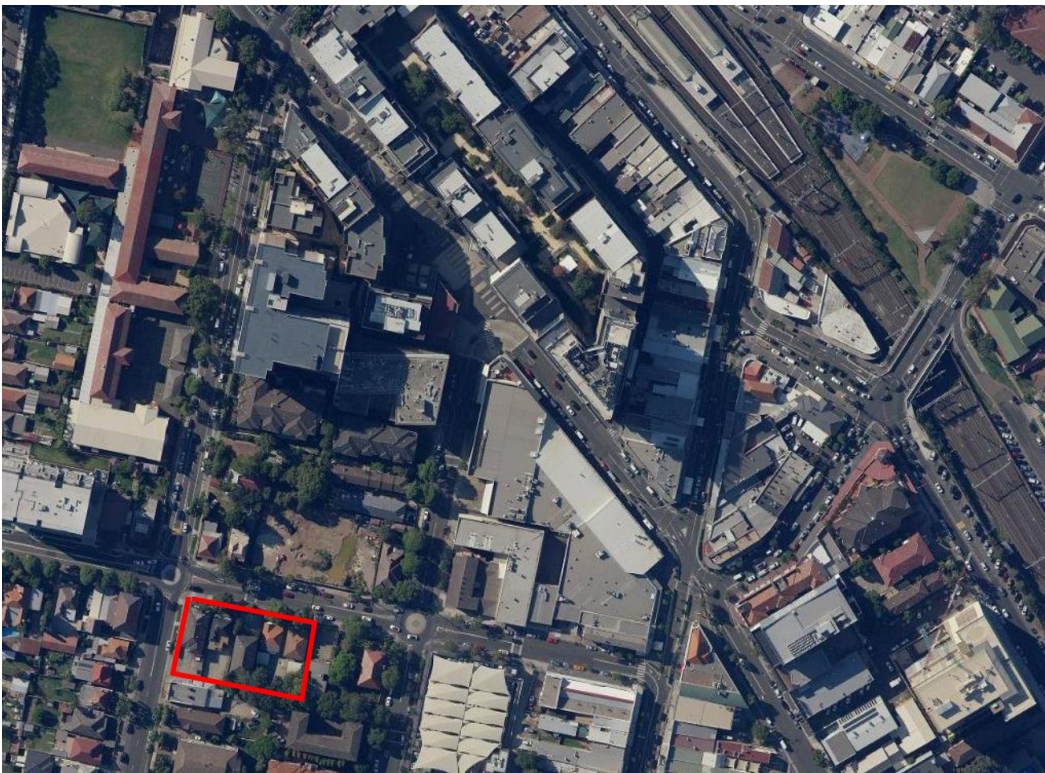


Figure 1 – Locality Plan of subject site



Figure 2 – Aerial view of subject site



Figure 3 – Mary Street view of subject site

## DESCRIPTION OF THE PROPOSED DEVELOPMENT

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Council has received a development application for

- Demolition of all existing structures onsite;
- Remediation of contaminated land in accordance with the recommendations of submitted Remediation Action Plan;
- Construction of a twelve (12) storey building with a maximum building height of 41.1m and a maximum Floor Space Ratio of 5.22:1;
- Provision of a four-level basement car parking comprising 179 car spaces in the following configuration:
  - Basement Level 4 will comprise of 52 car spaces (including 4 disabled spaces) along with lift/stair access and storage space;
  - Basement Level 3 will comprise of 54 car spaces along with lift/stair access and storage space.
  - Basement Level 2 will comprise of 53 car spaces (including 2 disabled spaces) along with lift/stair access and storage space.
  - Basement Level 1 will comprise of 20 car spaces (including 9 disabled spaces) along with bicycle and motorcycle parking, lift/stair access and storage space.
- Ground floor level will comprise of 4 commercial tenancies fronting Mary Street with a combined GFA of 689m<sup>2</sup>, residential and boarding house lobbies, waste storage rooms, loading area, bicycle parking and the entrance to the basement carparking provided on the Park Road frontage.
- Floors one to three comprise 101 boarding house rooms (including the manager's room), common room and associated communal open space area and common break out areas with a GFA of 3,695m<sup>2</sup>.
- Floors four to eleven comprise a mix of residential units with a GFA of 7,539m<sup>2</sup> and includes 84 apartments in the following configuration:
  - 15 x 1-bedroom units;
  - 52 x 2-bedroom units; and
  - 17 x 3-bedroom units.
- Provision of residential communal open space on the rooftop comprising 605m<sup>2</sup>.

## HISTORY

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DA-32/2017 for the redevelopment of part of the subject (18-22 Mary Street, Auburn) was approved by the Sydney Central City Planning Panel on 21 December 2017. This involved the demolition of existing structures and the construction of a 12 storey mixed use apartment building containing a three storey basement car park, a ground floor comprising three commercial/retail tenancies at 18-22 Mary Street, Auburn.

## APPLICANTS SUPPORTING STATEMENT

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The applicant has provided a Statement of Environmental Effects prepared by The Planning Hub dated 24 August 2020 in support of the application. Numerous other reports were submitted which assess the environmental impacts of the proposal.

## CONTACT WITH RELEVANT PARTIES

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The assessing officer has undertaken a site inspection of the subject site and surrounding properties and has been in regular contact with the applicant throughout the assessment process.

## INTERNAL REFERRALS

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### Development Engineer

The development application was referred to Council's Development Engineer for comment who has advised that the development proposal is generally satisfactory however there are matters relating the relocation of the Sydney Water stormwater infrastructure that need to be addressed by way of deferred commencement conditions before the consent becomes operable.

Environment and Health

The development application was referred to Council's Environment and Health Officer who provided the following comments.

**CONTAMINATION**

The submitted Site Auditor Advice Letter concludes that further vapour sampling is required to be undertaken during future works to confirm the risks of potential vapour intrusion. The Auditor also recommends that following demolition, further investigations should be completed to ensure there are no further sources of contamination and that the current data gaps are addressed once the buildings that are currently obstructing more comprehensive sampling have been removed. The Auditor recommends that demolition proceeds so that access to the proposed soil boring and monitoring wells can be completed.

As the original RAP has recommended a long-term Environmental Management Plan (EMP) be implemented to ensure the site remains suitable for the proposed development, the EHU will recommend that a Site Auditor be engaged for this site to prepare a Site Audit Statement making specific reference to the recommendations in the RAP including the proposed long-term (active) EMP, which will then need to be recorded on the land title.

**NOISE/ACOUSTICS**

A Noise Impact Assessment (NIA) prepared by Rodney Stevens Acoustics, dated 6 April 2021 with reference R160748R3 has now been supplied with the application.

The below table shows the Project Specific Trigger Noise Levels for nearby residential receivers potentially impacted by the proposed development. The noise levels highlight in bold are the adopted criteria for each time period as they are the most stringent out of the amenity and intrusive criterion. These criteria are 57 dB (Day), 53 dB (Evening) and 48 dB (Night).

Table 4-1 Project Specific Trigger Noise Levels

Receiver	Time of Day	ANL <sup>1</sup> L <sub>Aeq</sub> (15min)	Measured		Project specific Noise Levels	
			RBL <sup>2</sup> L <sub>A90</sub> (15min)	L <sub>Aeq</sub> Noise Level)	Intrusive L <sub>Aeq</sub> (15min)	Amenity <sup>3</sup> L <sub>Aeq</sub> (15min)
Residential	Day	60	52	63	<b>57</b>	63
	Evening	50	51	60	56	<b>53</b>
	Night	45	46	59	51	<b>48</b>
Commercial	When in use	65	-	-	-	<b>65</b>

Note 1: ANL = "Acceptable Noise Level" for residences in Urban Areas.

Note 2: RBL = "Rating Background Level".

The loading bay is proposed to be used between 7.00am and 10.00pm, which should therefore not impact sleep disturbance time periods. Table 5-1 below shows that all of the loading dock operations (based on worse-case scenarios) are projected to comply with the project specific noise trigger levels for every time period at each nearby residential receiver.

Table 5-1 Predicted Noise Levels At Sensitive Receivers.

Receiver	Period	Calculated Noise Level $L_{Aeq}$ – dB(A)	Criteria	Compliance
R1: Residential (9 Park Road)	Day	42	57	Yes
	Evening	42	53	Yes
	Night	42	48	Yes
R2: Residential (19-23 Mary Street)	Day	22	57	Yes
	Evening	22	53	Yes
	Night	22	48	Yes
C1: Commercial (10-12 Mary Street)	When in use	35	65	Yes
C2: Commercial (26 Park Road)	When in use	47	65	Yes

Mechanical plant/equipment has not yet been determined. The NIA states that the criteria set out in Table 4-1 (above) will be met through the use of conventional noise control methods such as selection of equipment on the basis of quiet operation and, where necessary, providing enclosures, localised barriers, silencers and lined ductwork.

It is recommended that an additional noise impact assessment be carried out once mechanical plant/equipment has been selected at the detailed design CC stage.

A Construction Noise and Vibration Management Plan has also been undertaken as part of the NIA which is found to be adequate. All recommendations within the NIA will be conditioned to be complied with at all stages of the development.

#### ENVIRONMENTAL (WATER/AIR QUALITY)

Due to the extensive contamination identified in the DSI and the fact that deep excavation is proposed to a depth of approximately 15 m, a dewatering management plan will be required to appropriately dispose of any groundwater encountered/ stormwater accumulated during excavation and construction.

As the DSI has identified above acceptable Sydney Water and ANZECC levels of certain contaminants (i.e. Trichloroethene (TCE) and vinyl chloride) that cannot be treated onsite, it is expected that contaminated groundwater and stormwater will be proposed to be disposed of off-site at an NSW EPA licensed waste facility.

Due to the size of the proposed development, a site-specific dust management plan and sediment and erosion control plan (for large sites) will be required to be implemented for demolition, excavation and construction stages.

#### Recommendation:

The proposal is considered satisfactory to the Environmental Health Officer subject to conditions included in the recommendation of this report.

#### Landscape Architect/Officer

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

### Waste Management

The development application was referred to Council's Waste Management Officer for comment who has advised that the development proposal is satisfactory subject to conditions of consent included in the recommendation of this report.

### Design Excellence Panel (DEP)

The DEP assessed the original proposal and raised a number of concerns that were included in the letter sent to the applicant on 3 February 2021. Amendments were made to the proposal attempting to address the DEP's issues. One of the amendments was to modulate the Mary Street façade to further reduce the bulk and scale of the building. As can be seen in **Figure 4**, the central element has been lowered and a darker colour used for differentiation. Notwithstanding this, in their review of the amended plans, the DEP were still not prepared to support the proposal. Whilst no written comments were provided, mark-ups were made to the plans (see **Figure 5**). These are significant amendments that cannot be required by condition. In any event it is considered that the reduction in height would be difficult to justify as it would result in large parts of the building being well below the permitted height and the reduction in floor space would also reduce the FSR to well below that permitted. The potential reallocation of floor space to the corner indicated on the mark-up is problematic as the noted 'design excellence process' is not available to the subject site and the impacts of the additional height may be unreasonable.

It is considered that the amended proposal allows for a reasonable variation in the building heights across the site and that the design will have an appropriate appearance in the surrounding streetscapes.



Figure 4 – Mary Street view of original proposal (left) and amended proposal (right)

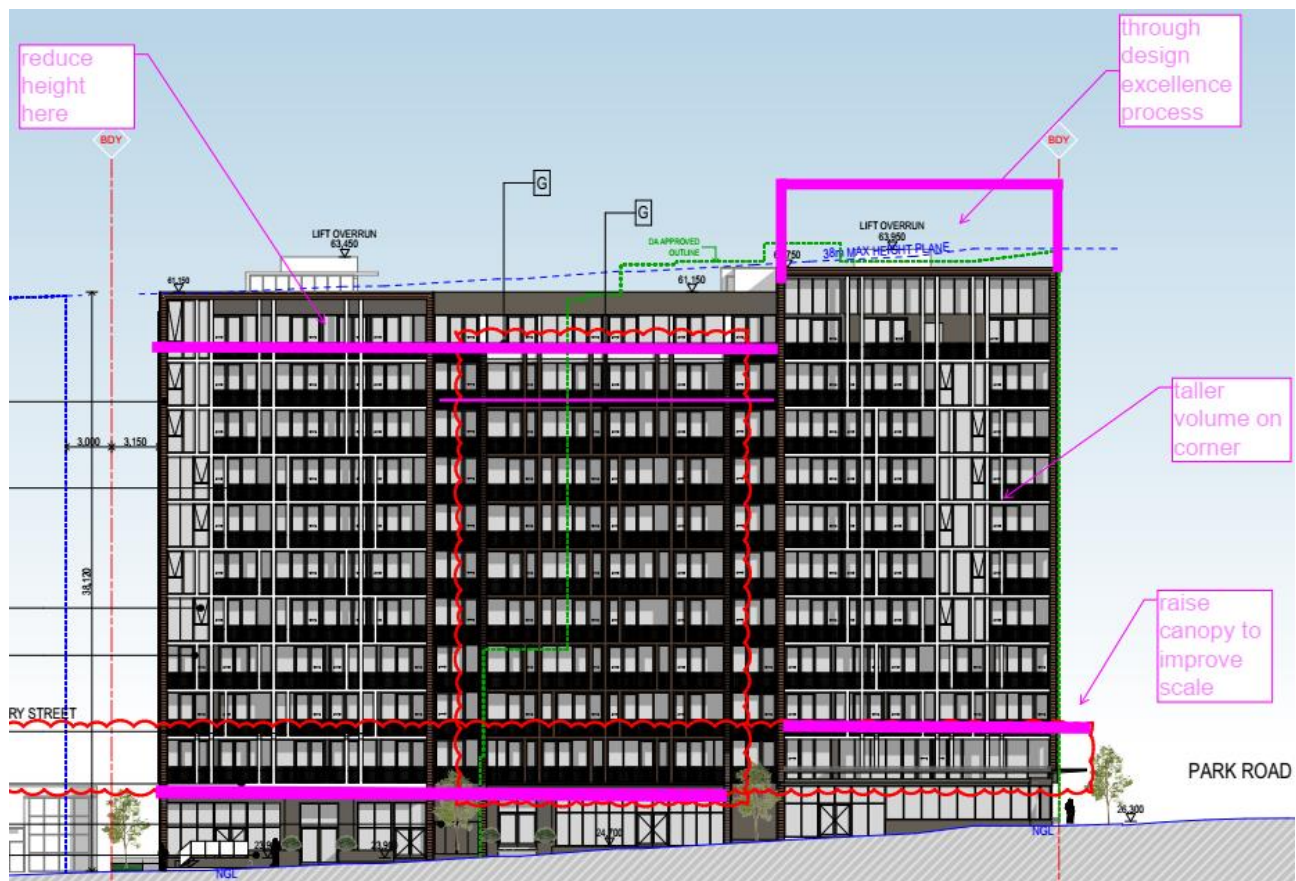


Figure 5 – Design Excellence Panel mark-ups of amended design

## EXTERNAL REFERRALS

### Ausgrid

Ausgrid were consulted provided the following response:

*Ausgrid does not have any objections for the proposed development. The applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network assets.*

These comments will be provided as advice in any consent granted.

## PLANNING COMMENTS

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

#### State Environmental Planning Policies

The proposed development is affected by the following State Environmental Planning Policies:

#### **(a) State Environmental Planning Policy (State and Regional Development) 2011**

Development of a type that is listed in Schedule 7 of SEPP (State and Regional Development) 2011 is defined as 'regional significant development'. Such applications require a referral to a Sydney District Panel for determination as constituted by Part 3 of Schedule 2 under the Environmental Planning and Assessment Act 1979. The proposed development constitutes 'Regional Development' as it has a Capital Investment Value (CIV) which exceeds the \$30 million threshold. While Council is responsible for the assessment of the DA, determination of the Application will be made by the Sydney Central City Planning Panel.

**(b) State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)**

Clause 7 of SEPP 55 requires Council to be satisfied that the site is suitable or can be made suitable to accommodate the proposed development. The matters listed within Clause 7 have been considered in the assessment of the development application.

Matter for Consideration	Yes/No
Does the application involve re-development of the site or a change of land use?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
In the development going to be used for a sensitive land use (e.g.: residential, educational, recreational, childcare or hospital)?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does information available to you indicate that an activity listed below has ever been approved, or occurred at the site? acid/alkali plant and formulation, agricultural/horticultural activities, airports, asbestos production and disposal, chemicals manufacture and formulation, defence works, drum re-conditioning works, dry cleaning establishments, electrical manufacturing (transformers), electroplating and heat treatment premises, engine works, explosive industry, gas works, iron and steel works, landfill sites, metal treatment, mining and extractive industries, oil production and storage, paint formulation and manufacture, pesticide manufacture and formulation, power stations, railway yards, scrap yards, service stations, sheep and cattle dips, smelting and refining, tanning and associated trades, waste storage and treatment, wood preservation	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the site listed on Council's Contaminated Land database?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the site subject to EPA clean-up order or other EPA restrictions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has the site been the subject of known pollution incidents or illegal dumping?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does the site adjoin any contaminated land/previously contaminated land?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Has the appropriate level of investigation been carried out in respect of contamination matters for Council to be satisfied that the site is suitable to accommodate the proposed development or can be made suitable to accommodate the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
As noted in the comments from Council's Environmental Health Officer above, the site is contaminated and there needs to be further investigations once the existing buildings are demolished. However, it is concluded that the site can be made suitable for the proposed use subject to the recommendations in the submitted documentation.	

**(c) Statement Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65)**

SEPP 65 applies to the development as the building is 3 storeys or more and contains more than 4 dwellings. A design statement addressing the design quality principles prescribed by SEPP 65 was prepared by the project architect. Integral to SEPP 65 is the Apartment Design Guide (ADG), which sets benchmarks for the appearance, acceptable impacts and residential amenity of the development.

Following a detailed assessment of the proposal against the provisions of SEPP 65 and the ADG, the proposal is generally considered compliant and therefore performs satisfactorily with respect to these provisions. A comprehensive assessment against SEPP 65 and the ADG is contained in **Appendix A**. The areas of non-compliance are discussed below.

3F Visual Privacy - the proposed setback to the eastern boundary complies with these provisions as, whilst the setback is less than 6-9m as required for windows to habitable rooms, these windows are provided with privacy screens to ensure that future redevelopment of the adjoining land will achieve adequate privacy.

The setback of Level 4 to the southern boundary is less than the 9m required to the proposed balconies. The plans could be amended to comply however this would simply unnecessarily reduce the amenity of these apartments. Adequate privacy is provided by the provision of planter boxes and so the proposed 1.8m high privacy screens, (if the applicant so desires), can be deleted. It is also noted that such an outcome was supported in the previously approved DA for 18-22 Mary Street.

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

The proposal does not exceed the biodiversity offsets scheme threshold. Therefore, the proposed vegetation removal is considered acceptable. Please refer to the DCP compliance table at **Appendix D** for further discussion.

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

BASIX Certificate 789149M-05 issued on 12 August 2020 prepared by Outsource Ideas P/L has been submitted with Council and is considered to be satisfactory.

**(f) State Environmental Planning Policy (Affordable Rental Housing) 2009**

The proposal includes a boarding house component that is subject to the provisions of Part 2 Division 2 of this SEPP. A comprehensive assessment against the relevant provisions is contained in **Appendix B** and this assessment indicates full compliance with the requirements of the SEPP.

**(g) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (Deemed SEPP)**

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

Local Environmental Plans

**Auburn LEP 2010**

The provisions of this LEP are applicable to the development proposal. The only non-compliance with the LEP relates to building height and this is addressed by way of the applicant's request to breach the control under Clause 4.6 of the LEP and the following comments. The other relevant provisions of the LEP are addressed in **Appendix C**.

**Clause 4.6 – Variation to Max Building Height**

Clause 4.6 allows the consent authority to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. The consent authority may grant the exception as the Secretary's concurrence can be assumed where clause 4.6 is adopted as per the Department of Planning Circular PS 18-003, dated 21 February 2018.

The applicant has submitted a written request to vary the development standards for the maximum building height standard. Having regard to various case law established by the Land and Environment Court of NSW in matters such as *Wehbe v Pittwater Council* [2007] NSWLEC 827, *Four2five P/L v Ashfield Council* [2015] NSWLEC 9, *Randwick City Council v Micaul Holdings P/L* [2016] NSW LEC7, *Initial Action Pty Ltd v Woollahra Council* [2017] NSWLEC 1734, 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?

Applicant's justification:

- *To provide a mixture of compatible land uses*

*The proposed development provides a compatible land use that is consistent with the future character of the Auburn Town Centre. It proposes a high density residential and commercial development designed to contribute to the vitality of the town centre by providing affordable rental housing and commercial floor space in an accessible location.*

- *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*

*The proposed development provides high density mixed-use development in an accessible location that maximises public transport patronage and encourages non-vehicular transport.*

- *To encourage high density residential development*

*The proposal consists of a high-density mixed-use development that is consistent with the future character of the area, whilst providing for the housing needs of the wider community.*

- *To encourage appropriate businesses that contribute to economic growth*

*The proposed development will generate demand and opportunities for businesses to service the area and contribute to the economic growth of the area. The commercial tenancies within the development will provide additional floor space for businesses in the growing Auburn Town Centre.*

- *To achieve an accessible, attractive and safe public domain*

*The proposed development contributes to creating an accessible, attractive and safe public domain. The development will provide opportunities for passive surveillance and create a vibrant street.*

Planner's comment: The above comments are agreed with. The proposal provides for a suitable mix of high density residential and commercial uses in a highly accessible location.

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

Applicant's justification:

- *To establish a maximum height of buildings to enable appropriate development density to be achieved*

*The proposal consists of a high-density mixed-use development that meets the desired future character of the area. The height exceedance is due to the built form responding to the natural characteristics of the site and the provision of a high amenity communal open space that allows the development to provide a high-density development whilst providing appropriate amenity to residents. The area of exceedance does not contain any habitable residential space and the area of exceedance has been designed to ensure it is not visually prominent or readily apparent from the public domain.*

- *To ensure that the height of buildings is compatible with the character of the locality*

*The height of the proposed development is consistent with the changing character and desired future character of the Auburn Town Centre. The proposed development provides a unique opportunity to provide a development that occupies the majority of the street block and will provide an activated and integrated streetscape that is consistent with the desired future character of the area.*

Planner's comment: The above comments are agreed with. The variation is minor and does not contribute to any significant increase to the bulk and scale of the building beyond that that can be expected from the relevant controls.

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

Applicant's justification: The applicant relies on the conclusion that the proposal meets the objectives of the height standard despite the non-compliance as the reason why upholding the standard is unreasonable and unnecessary in the circumstances.

Planner's comment: This reason is one of the reasons put forward in *Wehbe* as appropriate and as discussed above, it is agreed that the proposal does meet the objectives of the height standard.

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 justification:

Planner's comment: The grounds put forward by the applicant are considered sufficient, including 'lack of impact' which as noted in *Initial Action*, can be a 'sufficient ground'. As noted elsewhere in this assessment, the impacts of the proposal are considered to be satisfactory.

Conclusion:

The applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6 subclause (3) and is further satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The justification provided is satisfactory and having considered the application on its merit, the exception to the maximum building height development standard is considered acceptable in this instance.

As noted above, the comments of the Design Excellence Panel (DEP) in relation to height are not agreed with and it is considered that the amended scheme introduces a suitable variation in perceived height and bulk at the Mary Street frontage (see **Figure 4**).

#### **The provisions of any proposed instrument that is or has been the subject (EP&A Act s4.15 (1)(a)(ii))**

##### **(a) Draft State Environmental Planning Policy (Environment)**

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

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

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

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.

##### **(b) Draft Cumberland Local Environmental Plan (Draft CLEP)**

The Draft Cumberland Local Environmental Plan (Draft CLEP) has been prepared by Cumberland 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 local government area, those being:

- Holroyd Local Environmental Plan 2013,
- Parramatta Local Environmental Plan 2011, and
- Auburn Local Environmental Plan 2010.

The current planning controls for the subject site, as contained within Auburn LEP 2010 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 Auburn DCP 2010 provides guidance for the design and operation of development to achieve the aims and objectives of the Auburn LEP 2010.

A comprehensive assessment and compliance table is contained in **Appendix D**.

The non-compliances with the DCP are addressed below.

#### Residential Flat Buildings (RFB's)

These controls only apply to the RFB component of the building and do not necessarily take into account the different character that results from development in the Mixed Use zone.

Site cover – The RFB component has a site cover of around 60%, which is not significantly greater than the 50% requirement of the DCP. It is consistent with other development in the Auburn town centre and will achieve the relevant performance criteria for the standard as discussed below:

*P1 Ensure that new development and alterations and additions to existing development result in site coverage which allows adequate provision to be made on site for infiltration of stormwater, deep soil tree planting, landscaping, footpaths, driveway areas and areas for outdoor recreation.*

*P2 Minimise impacts in relation to overshadowing, privacy and view loss.*

*P3 Ensure through-site links for pedestrians are incorporated where applicable.*

Comment – that part of the site outside the RFB site cover is used for outdoor recreation, driveway and loading areas and for deep soil planting. Whilst greater deep soil would typically be provided, the site is constrained by an existing major stormwater drain that limits the area available. In the circumstances the requirements of P1 are considered to be satisfied. In relation to P2, the proposal will not have any unreasonable impacts in regard to these matters. In regard to P3, there is no need for a through site link in this case.

Building envelope – the proposal exceeds the suggested footprint dimensions of 25x45m and the max area of 850sqm. However as noted above these controls have not been designed with regard to the character of mixed use development. There are no specific controls relating to the mixed use zone which restrict the building envelope of development. In any event, the proposal is considered to meet the performance criteria relating to this issue as discussed below.

*P1 The height, bulk and scale of a residential flat building development is compatible with neighbouring development and the locality. Residential flat buildings:*

- *addresses both streets on corner sites;*
- *align with the existing street frontages and/or proposed new streets; and*
- *form an L shape or a T shape where there is a wing at the rear.*

Comment – the proposal is consistent with the above as the built form is: compatible with neighbouring developments and the locality; addresses both Mary and Park Streets, aligns with these streets; and does not have a rear 'wing'.

Building depth – the proposed depth is 25.5m for the RFB component, slightly exceeding the 24m requirement. This includes balconies and overall the amenity of the apartments is satisfactory having regard to the AD requirements discussed above. It is also offset by the reduced depth of 18.5m in the central part of the building.

Deep soil area – the proposal provides around 7% of deep soil area which is consistent with the ADG requirements. In a mixed use context such as this and given the constraints of the major stormwater infrastructure across the site, the level of non-compliance is considered to be reasonable. There are opportunities for 10m high trees along the site boundary, consistent with the performance criteria of this control.

Solar amenity – The submitted documentation demonstrates that whilst some existing dwellings to the south of the site will lose solar access, the requirement that where solar access is less than required by the ADG not be reduced by more than 20%, is achieved, with only a 7% reduction. The analysis of the submitted DA for 26-32 Park Road indicates full compliance.

### Local Centres

Ground floor ceiling heights – the floor levels of the building step down along Mary Street from west to east. The required ceiling height is not met by the western tenancies however given that they are at least 3m and stepping of the building would not be a positive outcome, the minor non-compliance is considered to be satisfactory.

### Tree preservation

Tree preservation – the proposal necessitates the removal of a number of large trees. Whilst this is unfortunate, they are located in the SE corner of the site where major changes to the existing significant Sydney Water stormwater infrastructure is required and there is no feasible solution where the trees can be retained. Council's Landscape Officer has raised no objection to the removal of these trees and the submitted landscape plan indicates suitable replacement planting.

### **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)(iii))**

There is no draft planning agreement associated with the subject Development Application.

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

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

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

The environmental, social and economic impacts of the proposal have been assessed elsewhere in this report and it is concluded that the impacts are not unreasonable.

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

The subject site and locality are not known to be affected by any natural hazards with the except of flooding which has been addressed elsewhere. The site is zoned for high density development and is ideally located for such 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 (Council website) ☒ Mail ☒ Sign ☒ Not Required ☐

In accordance with Council's Notification requirements contained within the Auburn DCP 2010, the proposal was publicly notified for a period of 14 days between 14 October 2020 and 28 October 2020. The notification generated 6 submissions in respect of the proposal with none disclosing a political donation or gift. The issues raised in the public submissions are summarised and commented on as follows:

1. Issue: Traffic and parking impacts.

Planner's comment: The submitted traffic assessment has been reviewed by Council and concludes that there are not unreasonable adverse impacts. The proposal provides for more parking than the minimum required and so the demand for on-street parking will be less than is permitted by the relevant controls.

2. Issue: Excessive density

Planner's comment: The proposal provides for less floor space than is permitted and so is within the density that can be expected in this location for this type of development.

3. Issue: Inadequate boarding house managers

*Planner's comment:* The proposal complies with the required management for a boarding house of this size.

4. *Issue:* Heritage impacts

*Planner's comment:* The proposal improves the relationship of the site with the heritage item on the opposite corner of Park Road compared to the previously approved scheme. In relation to the item on the corner of Harrow Road and Mary Street, there are no direct impacts, and the scale of the building is consistent with the relevant controls.

5. *Issue:* Wind impacts

*Planner's comment:* The submitted wind impact assessment indicates that the proposal will not result in unreasonable wind impacts.

6. *Issue:* Inadequate open space for boarding house

*Planner's comment:* The proposal provides for areas in excess of the SEPP requirements and is satisfactory in this regard.

7. *Issue:* Loss of trees/lack of deep soil area

*Planner's comment:* The loss of existing vegetation is unfortunate however results from the need to accommodate large scale Sydney Water stormwater infrastructure through the site and its realignment. Replacement tree planting is proposed where it can be reasonably accommodated.

8. *Issue:* Loss of character

*Planner's comment:* It is agreed that the character of the proposed development is different from the character of the existing buildings on the site. However the controls allow significant redevelopment of this land and so a significant change to the character has been foreshadowed in creating these controls. The proposal is consistent with the scale of development envisaged for this town centre location.

9. *Issue:* Social impacts

*Planner's comment:* There is no evidence to suggest that the type of development proposed will result in adverse social impacts. The issues associated with historical form of boarding houses, which typically housed vulnerable people within the community, are not likely to occur here as there is no requirement for affordability other than being smaller and generally of less amenity than typical apartments. Further a Plan of Management has been prepared in order to minimise the disturbance from the proposed boarding house on uses both within the development and in the surrounding neighbourhood.

10. *Issue:* Sydney Water stormwater drain

*Planner's comment:* The proposal includes provision for the relocation of this drain within the site and also in the circumstance that the adjoining properties at 26-28 Park Road are redeveloped.

11. *Issue:* Overshadowing on 26-28 Park Road

*Planner's comment:* The proposal will result increased overshadowing on this property however the current DA for this site indicates that solar access will be primarily achieved by the east and west facing apartments within the development, not the apartments that are orientated toward the subject site. The proposal will not result in this adjoining proposed development failing to meet the required solar access requirements.

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

In view of the foregoing analysis it is considered that the development, if carried out subject to the conditions set out in the recommendation below, will have no significant adverse impacts on the public interest.

## **CUMBERLAND LOCAL INFRASTRUCTURE CONTRIBUTION PLAN 2020**

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

### Comments:

The development requires the payment of contributions in accordance with Council's Section 7.11 Contributions Plans.

The calculation is based on:

- 15 x 1 bed apartments
- 52x2 bed apartments
- 17x3 bed apartments
- 101 boarding rooms
- A credit of 5x3 bed houses

The current fee payable is \$ \$1,835,198. This figure is subject to indexation as per the relevant plan. The recommendation includes a condition requiring payment of the contribution prior to issue of a Construction Certificate.

## **DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

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The applicant and notification process did not result in any disclosure of Political Donations and Gifts.

## **CONCLUSION**

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The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*, the relevant SEPPs and/or SREPs, Auburn LEP and DCP and is considered to be satisfactory for approval subject to conditions.

The proposed development is appropriately located within the B4 zone under the relevant provisions of the Auburn LEP, however variation in relation to the LEP height control and built form controls under the Auburn DCP are sought.

Having regard to the assessment of the proposal from a merit perspective, Council may be satisfied that the development has been responsibly designed and provides for acceptable levels of amenity for future residents. It is considered that the proposal successfully minimises adverse impacts on the amenity of neighbouring properties. Hence the development, irrespective of the departures noted above, is consistent with the intentions of Council's planning controls and represents a form of development contemplated by the relevant statutory and non-statutory controls applying to the land.

For these reasons, it is considered that the proposal is satisfactory having regard to the matters of consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, and the development may be approved subject to conditions.

## **RECOMMENDATION**

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1. That Development Application No. DA2020/0542 for Demolition of existing structures and construction of a 12-storey mixed use building comprising 4 ground floor retail spaces, a boarding house development containing 101 boarding rooms and 84 residential apartments over 4 levels of basement parking, including landscaping and associated site improvement works on land at 14-22 Mary Street AUBURN NSW 2144 be deferred commencement approved subject to attached conditions listed in the attached schedule.
2. Persons whom have lodged a submission in respect to the application be notified of the determination of the application.

## **ATTACHMENTS**

1. Draft Notice of Determination
2. Architectural Plans
3. Stormwater/Engineering Plans
4. Submissions Received
5. DEP minutes (original scheme)
6. Applicant response to DEP comments and other matter raised
7. Submitted CI4.6 request prepared on behalf of applicant
8. Locality Map
9. Appendices A, B, C and D