

TO: Sydney Central City Planning Panel

SUBJECT: 4-12 Railway Street LIDCOMBE NSW 2141

APPLICATION No: DA2021/0092

Application lodged	22 February 2021
Applicant	Pheonix Builders Pty Ltd
Owner	Lidcombe Property (NSW) Pty Ltd
Application No.	DA2021/0092
Description of Land	4-12 Railway Street LIDCOMBE NSW 2141 Lot 1 DP 397, Lot 6 DP 397, Lot 7 DP 397, Lot 8 DP 397, Lot 38 DP 222712, Lot 100 DP 793305, Lot 101 DP 1248142
Proposed Development	Construction of four (4) mixed-use buildings ranging in height from 2 to 18 storeys, comprising commercial/retail uses and 301 residential apartments over four (4) basement car park levels accommodating 514 car spaces, site remediation, landscaping works, and associated Stratum subdivision
Site Area	5,707m ²
Zoning	B4 Mixed Use and RE1 Public Recreation
Disclosure of political donations and gifts	Nil disclosure
Heritage	The subject site is not heritage listed and is not within a heritage conservation area. The site is located in proximity to Rookwood Cemetery and Necropolis to the east, which is listed on the State Heritage Register (Listing No. 00718) and the Lidcombe Signal Box at Railway Street, between Mark and East Streets (south side of railway lines) which is of local heritage significance (Item No: A56).
Principal Development Standards	FSR Permissible: 5.3:1 Proposed: 5.21:1 Height of Building Permissible: Building A - 45 metres Building B – 45 metres & 55 metres Building C – 45 metres & 48 metres Building D – 55 metres Proposed: (to lift overrun) Building A – 42.87 metres Building B – 57.8 metres Building C – 48.35 metres Building D – 8.2 metres
Issues	Building height exceedances of Building B and C; ADG building separation non-compliance

SUMMARY

1. Development Application No. DA2021/0092 was received on 22 February 2021 for the construction of four (4) mixed-use buildings ranging in height from 2 to 18 storeys, comprising commercial/retail uses and 306 residential apartments over four (4) basement car park levels accommodating 456 car spaces, site remediation, landscaping works, and associated subdivision.
2. As part of the assessment of the application, the design of the development was amended, which resulted in a reduction to the number of residential apartments proposed, from 306 to 301 and increase to the number of car parking spaces from 456 to 514 spaces. As a result of the design changes the development for which consent is sought comprises the construction of four (4) mixed-use buildings ranging in height from 2 to 18 storeys, comprising commercial/retail uses and 301 residential apartments over four (4) basement car park levels accommodating 514 car spaces, site remediation, landscaping works, and associated Stratum subdivision.
3. The application was publicly notified to occupants and owners of the adjoining properties for a period of fourteen (14) days between 17 March 2021 and 31 March 2021. In response, no submissions were received.
4. The subject site is not heritage listed and is not within a heritage conservation area. The site is located in proximity to Rookwood Cemetery and Necropolis to the east, which is listed on the State Heritage Register (Listing No. 00718) and the Lidcombe Signal Box at Railway Street, between Mark and East Streets (south side of railway lines) which is of local heritage significance (Item No: A56). The impact of the proposed development on these items has been considered and is considered satisfactory.
5. Variations are sought to the maximum 45 metre, 48 metre and 55 metre building heights applicable to the site pursuant to Clause 4.3 of the Auburn Local Environmental Plan 2010. It is acknowledged that the portions of Buildings B and C that exceed the maximum building heights do not comprise any habitable floor area. The Clause 4.6 variation request is considered worthy of support.
6. The application is referred to the Sydney Central City Planning Panel (SCCPP) for determination as the Capital Investment Value (CIV) of the development exceeds \$30 million.
7. The application is recommended for deferred commencement approval subject to the conditions as provided in **Attachment 1**.

REPORT

SUBJECT SITE AND SURROUNDING AREA

The subject site comprises seven lots, as detailed in the following table and is known as 4-12 Railway Street, Lidcombe.

Land Parcel	Address
Lot 1 DP 397	4 Railway Street, Lidcombe
Lot 100 DP793305	6-8 Railway Street, Lidcombe
Lot 6 DP 397 Lot 7 DP 397 Lot 8 DP 397 Lot 101 DP 1248142 Lot 38 DP 222712	10-12 Railway Street, Lidcombe

The site comprises a developable area of 5,707m² (excluding Lots 7 & 8 in DP 397 which are to be dedicated to Council for open space) and a primary frontage to Railway Street of 75.59 metres. The site also maintains a secondary frontage to Raphael Street of 100.6 metres.



Figure 1: Aerial view of the subject site, with Lots 7 and 8 in DP 397 shaded blue (Source, Nearmap, 2021)

Demolition works have been undertaken on the site in accordance with the CDC approval issued for the demolition of structures on the site (CDC2017/359). The site is clear of structures, with the exception of temporary structures and stockpiles.

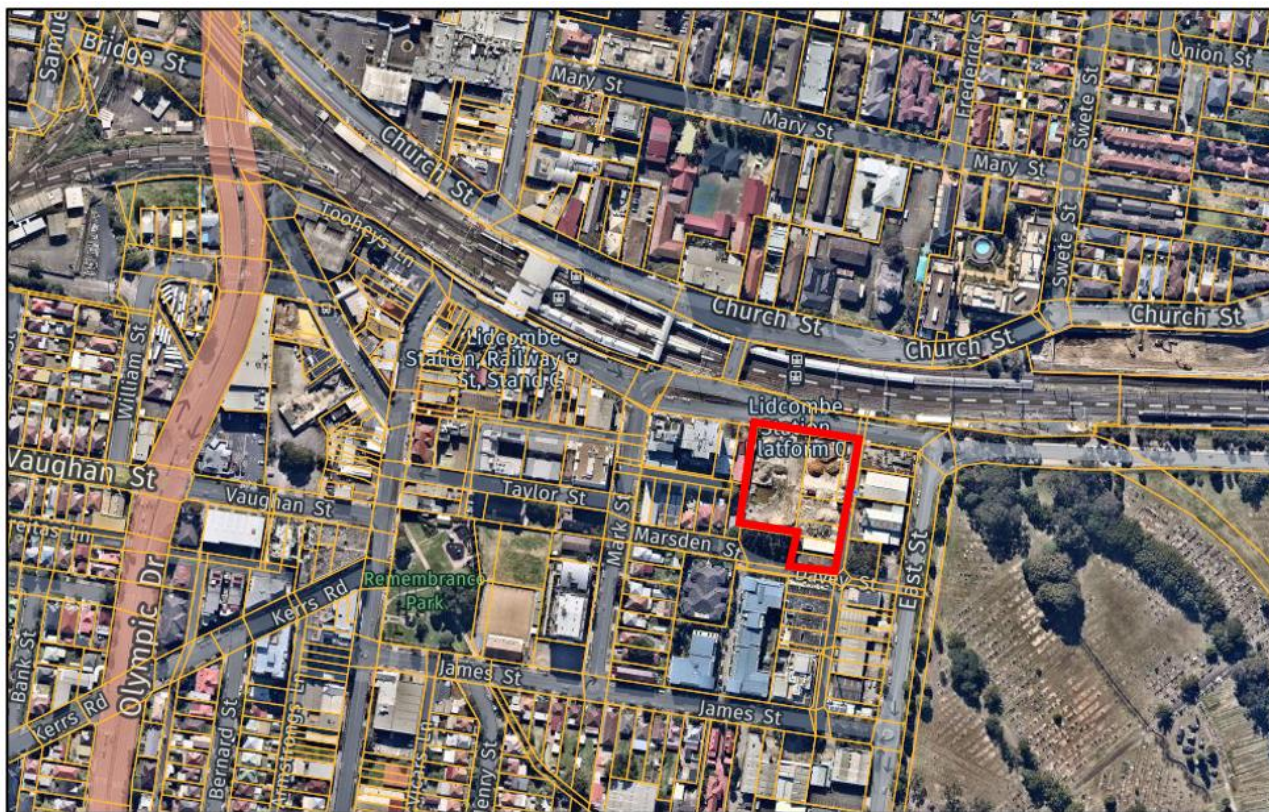


Figure 2 – Site & Surrounding Locality (Source: Nearmap, 2021)

The subject site is located along the eastern fringe of the Lidcombe Town Centre, as delineated in the Auburn Development Control Plan 2010. Immediately to the north of the site is the railway corridor. To the east of the site is a mix of existing industrial land uses, including a headstone manufacturing business and the existing Jewish Reserve. Further to the east of the site, on the eastern side of East Street is the Rookwood Cemetery.

There is a residential flat building currently under construction to the south of the site at 9-15 Raphael Street, Lidcombe and a recently constructed residential flat building at 21-23 James Street, Lidcombe. Immediately to the west of the site is the existing Friends Park and a mix of established low to medium density residential development. Further west of the site, at 20 Railway Street, Lidcombe is a recently constructed 11 storey mixed use building. The locality is currently in the process of transitioning to higher density commercial and residential built forms.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

Council has received a development application seeking consent for the construction of four (4) mixed-use buildings ranging in height from 2 to 18 storeys, comprising commercial/retail uses and 301 residential apartments over four (4) basement car park levels accommodating 514 car spaces, site remediation, landscaping works, and associated Stratum subdivision.

Excavation for land remediation

It is noted that demolition works on the site have been undertaken in accordance with the CDC approval for the site. The development application has been accompanied by a

Remediation Action Plan (RAP) for the remediation of contaminated land. Conditions of consent have been recommended to address the remediation and validation of the site for the proposed development.

Construction

The development proposes the construction of four (4) buildings above four (4) levels of basement car parking.

A total of 27 commercial tenancies are proposed across the ground floor of Buildings A, B, C and D and also on Level 1 of Building D.

A total of 301 residential units are proposed across Buildings B, C and D, with the following unit mix:

- 79 x 1 Bedroom Unit (26.2%)
- 190 x 2 Bedroom Unit (63.1%)
- 32 x 3 Bedroom Unit (10.7%)

The gross floor areas (GFA) of the various components of the development are summarised below:

Residential GFA	26,303m ²
Commercial GFA	3,460m ²
Total GFA	29,763m²

Communal open space is proposed on the Level 1 podium (1,107m²) and also on the rooftop of Building B (847m²).

Four (4) levels of basement car parking are proposed to service the development providing a total of 514 car parking spaces, as follows:

- 335 residential spaces;
- 61 residential visitor spaces;
- 117 commercial/retail spaces; and
- 1 x car wash bay.

Vehicular access to the basement is gained via a driveway off Raphael Street. A separate access driveway is proposed to the loading bay off Raphael Street. No vehicular access is proposed off the site's Railway Street frontage.

The construction of the basement and buildings is proposed to be undertaken in stages as follows:

STAGE	WORKS
1	Construction of: <ul style="list-style-type: none"> • basement levels 1-4; • Ground Floor Level of Buildings A, B, C and D; and • Building D
2	Construction of: <ul style="list-style-type: none"> • Building A; and • Level 1 communal open space area.

3	Construction of: <ul style="list-style-type: none"> • Building B.
4	Construction of: <ul style="list-style-type: none"> • Building C.

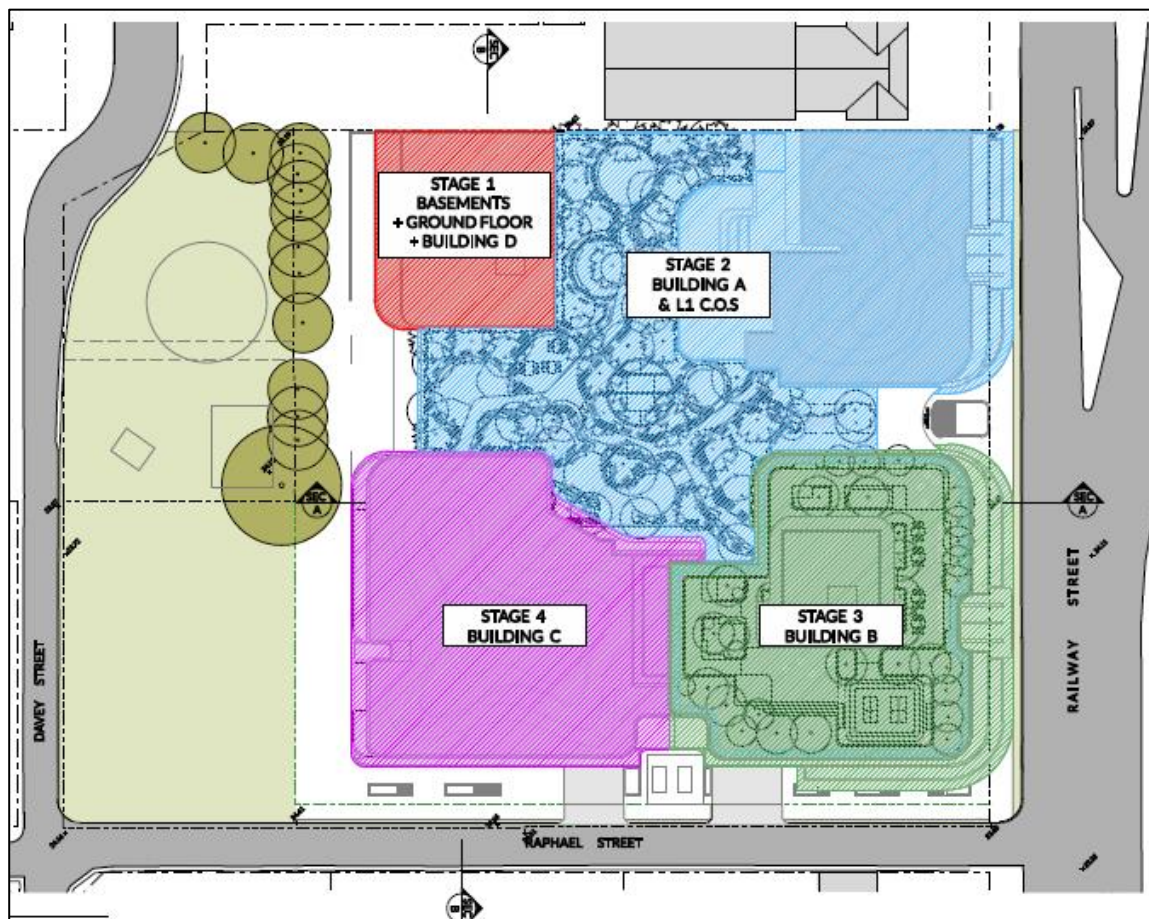


Figure 3 – Extract of proposed Staging Plan (Source: Loucas Architects, 2021)

Subdivision

The development also includes a Stratum subdivision to create five (5) lots. It is acknowledged that Stratum Lot 105 as proposed for the airspace above Building D is not supported by Council. A condition of consent has been recommended noting this and requesting a revised Subdivision Plan removing proposed Stratum Lot 105.

Dedication of land

As part of the executed Voluntary Planning Agreement (VPA) for the site Lots 7 and 8 in DP 397 are to be dedicated to Council for the purpose of open space, as an expansion of the existing Friends Park to the west. The works required prior to dedication of the land will be undertaken in accordance with the executed VPA.

The VPA also includes the dedication of a 2.5 metre wide strip of land along the site's Raphael Street frontage for road widening. The works form part of this development consent.

HISTORY

On 5 December 2017 a Complying Development Certificate (CDC) approval (CDC2017/359) was issued by a Private Certifier for the demolition of existing structures on 4-12 Railway

Street, Lidcombe, pursuant to the provisions of Part 7 (Demolition Code) of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

Demolition works have been undertaken on the site and the site is clear of structures, with the exception of temporary structures and stockpiles.

On 31 June 2020 a Planning Proposal (PP) seeking to amend the maximum building height and introduce a floor space ratio bonus for the site was gazetted. The amendments resulted in the current 45 metre, 48 metre and 55 metre building heights applicable to the site and also the bonus 0.3:1 floor space ratio provision afforded if the floor space ratio for the part of the buildings used for non-residential purposes is not less than 0.6:1. A Voluntary Planning Agreement was also executed in conjunction with the PP. The application of these provisions has been discussed in detail in the following sections of this report.

On 24 August 2020 a pre-lodgement meeting was held with Council staff and the Applicant. As part of the pre-lodgement process, comments were provided relating to planning, engineering, environmental health, and waste matters, to be considered prior to the lodgement of a development application. As part of the pre-lodgement process, the development proposal was also referred to the Cumberland Design Excellence Panel for comment, the comments of the Design Excellence Panel are discussed in detail in the following sections of this report.

APPLICANTS SUPPORTING STATEMENT

The applicant has provided a Statement of Environmental Effects prepared by City Plan dated February 2021 and was received by Council in support of the application.

CONTACT WITH RELEVANT PARTIES

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

Development Engineer

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

Environment and Health

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

Landscape Architect

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

Tree Management Officer

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

Design Excellence Panel

The development application was referred to the Cumberland Design Excellence Panel (DEP) in accordance with the Cumberland Design Excellence Panel Policy, which requires any development proposal incorporating buildings with a height greater than 25 metres to be referred to the DEP for comment.

It is noted that the development proposal was referred to the DEP, prior to the lodgement of the development application, as part of the pre-lodgement process. The development proposal was considered by the DEP at the 5 August 2020 meeting and comments were provided to the Applicant to address as part of the development application process.

The development application has subsequently been considered by the DEP at the 19 May 2021 meeting and the following comments were provided:

The Panel appreciates the effort, including detailed built form, architectural and other technical studies undertaken by the Applicant in addressing many of the issues raised at Pre-lodgement stage. The comments broadly fall into the category of design refinements and design issues that have emerged in developing the design from Design Concept to DA stage. The Panel recommends that the Applicant review and amend the proposal to address the following issues:

- The 6m deep soil zone is clearly indicated. The location of the new footpath linking the proposed arcade across Friends Park (potentially replanned) to Davey Street needs to be coordinated with Council/Council's Landscape Consultant. A new pathway on the same axis as the new arcade (or on a dynamic angle) may be more visually legible. A 4-6m wide path would be ideal. The clarity of access may warrant the removal of 1 or 2 existing trees, replaced elsewhere in the park with new planting of advanced trees.*
- It is noted that Council's plans for the new combined Dedicated Park and Friends Park have not advanced since the Pre-lodgement concept design. Nonetheless a clear generous pedestrian pathway through the park aligning with the new arcade should be provided.*
- Once Raphael Street is widened to its final two-way configuration a 4m setback to the building will remain to provide a footpath and landscaping. In the proposal the footpath is blocked by a substation and a series of raised planter boxes. Sometimes only 1m, or less, of footpath remains. It is recommended that the obstacles (substation and raised planters) are setback a continuous minimum 2m, to allow for a wider footpath along this street frontage.*
- The tree and raised planter box at the Railway Street Main Entry is not supported. These elements add unnecessary clutter and obstacles at the main pedestrian entry. An open uncluttered design approach is recommended.*

- *The central skylight is supported however the horizontal glass roof is a lost opportunity. It is recommended to explore a glazed roof that is domed or conical that would create a sense of space beneath it when experienced from the arcade. This would also make it a more interesting feature from units above, better for maintenance and less accessible.*
- *The proposed mall height appears inconsistent with allowing the landscape strategy inside the malls to succeed at the scale indicated. The concept design shows a continuous landscaped laneway intending to draw the green outside into the mall in a laneway character. However, given the skylight is on mostly shaded and enclosed to the elements above further details should be provided to demonstrate how the proposed mall tree strategy is sustainable.*
- *The security shutters to the Mall ends are unacceptable as a design element. There are numerous alternatives to gating the mall out of hours in an elegant and design integrated way that can define the defensible space both by implication and as physical structure when not in operation. It is recommended that further investigation is undertaken and additional details are provided.*
- *The colonnade that runs along the south of the building at the interface with Dedicated Park, at Retail Tenancies 8, 9 and 10, is narrow – perhaps 1.5m clear width. It is recommended to widen this to a minimum clear width of 2.5-3.0m to provide a better pedestrian connection from Raphael Street through to the arcade.*
- *The amended awning extent and the inability to retain the existing trees along Railway Street is noted. The Panel is concerned by the narrow clear width of the Railway Street footpath at approx. 2.5m. It is recommended that the building is setback at ground level a further 0.5m to allow for a 3.0m continuous minimum clear width footpath to be provided.*
- *Whilst the Building B rooftop garden will provide an important and quality COS which will receive sunshine year-round, it appears to the Panel to be a lost opportunity to not consider providing accessible gardens for the rooftops of Buildings A and C.*
- *The Panel raises concerns about the L1 podium roof garden, regarding the proximity of the pedestrian pathways and the circular gathering places, to the bedrooms and living areas of the L1 apartments including path to C1.07 Living Rm, Comm.6 to BBQ Pavilion, and path to B1.01 and B1.08 unit's bedrooms.*

In response to the above issues, amended documentation was submitted to the DEP for further consideration. After undertaking an electronic review of the amended documentation, the following response was received from the DEP on 17 August 2021:

While the Panel still supports this development in principle, the design quality and on the whole the further design development undertaken, it is disappointed that a number of the design issues raised have not been fully addressed. None-the-less the Panel is satisfied that this DA proposal has the potential to meet the criteria for design excellence, and requests that the Applicant address the above design recommendations (applied as conditions to the satisfaction and approval of Council's Assessment Planner) in the finalisation of the DA documentation.

Following is a list of the outstanding matters raised by the DEP and Council's response to the matters raised:

DEP Comment	Council Response
The 6m deep soil zone is clearly indicated. The location of the new footpath linking the	The proposed landscape plans have been reviewed by Council's Landscape

<p>proposed arcade across Friends Park (potentially replanned) to Davey Street needs to be coordinated with Council/Council's Landscape Consultant. A new pathway on the same axis as the new arcade (or on a dynamic angle) may be more visually legible. A 4-6m wide path would be ideal. The clarity of access may warrant the removal of 1 or 2 existing trees, replaced elsewhere in the park with new planting of advanced trees.</p> <p>The building Architect is required to coordinate the site building and landscape design with the landscape design by Council for this important interface with the adjoining park. This should be a Condition of the final DA approval.</p>	<p>Architect who had advised that the two (2) proposed pathways leading into Friends Park from the development are not supported in the current locations, given that these paths conflict with existing play equipment.</p> <p>It is acknowledged that Friends Park will be redeveloped in the future, noting the age of the existing equipment.</p> <p>A condition of consent has been recommended that requires the preparation of a Tree Management Plan for those trees interfacing with the open space and the development site. This plan is to inform the location of a new three (3) to four (4) metre wide pedestrian pathway, to provide linkage to the parkland in direct alignment to the rear main entry of the development. The proposed pedestrian pathway location and design is to be subject to consultation with Council's Landscape Architect and is to be finalised prior to the issue of any Construction Certificate for the development.</p> <p>This condition is considered to satisfactorily address the DEP issue.</p>
<p>It is noted that Council's plans for the new combined Dedicated Park and Friends Park have not advanced since the Pre-lodgement concept design. Nonetheless a clear generous pedestrian pathway through the park aligning with the new arcade should be provided, and comments for Issue 1 above addressed.</p> <p>Unfortunately, there has been no progress on this issue. It is recommended that a Condition be placed on the Applicant that the coordination with the adjoining park design by Council is addressed prior to final approval.</p>	<p>See above comments.</p>
<p>It is still not clear on the plans whether Raphael Street will be one way or two way, and whether the 2.5m dedication will include the footpath and nature strip or will become asphalt road surface. In</p>	<p>The road widening works are to be undertaken in accordance with the executed VPA for the site. A condition of consent has been recommended requiring the detailed design of the road widening of</p>

<p>the latter case the pedestrian pathway width is unsatisfactory – impacted by obstacles including the raised planter boxes, trees and seats and by the two substations.</p>	<p>Raphael Street to be finalised, in consultation with Council's Engineering department, prior to the issue of any Construction Certificate for the development. It is noted that Raphael Street is to be two-way along the site's frontage, where the road widening is applicable.</p>
<p>The amended awning extent and the inability to retain the existing trees along Railway Street is noted. The Panel is concerned by the narrow clear width of the Railway Street footpath at approx. 2.5m. It is recommended that the building is setback at ground level a further 0.5m to allow for a 3.0m continuous minimum clear width footpath to be provided.</p> <p>Not adequately actioned. The conflict of the awning with the Railway Street tree canopies suggests the trees are not feasible and is not acceptable. Modify awning and setback strategy to allow for street tree growth.</p>	<p>Advice has been sought from Council's Tree Officer in relation to the potential conflict between the awning and street trees. Council's Tree Officer has advised that the proposed tree species, i.e., Water Gum, is suitable for the location and will not conflict with the awning.</p>
<p>Whilst the Building B rooftop garden will provide an important and quality COS which will receive sunshine year-round, it appears to the Panel to be a lost opportunity to not consider providing accessible gardens for the rooftops of Buildings A and C.</p> <p>No design changes evident. It is disappointing that this opportunity has not been actioned. It is noted that the non-accessible roofs are a "Future Solar Panels Location". The provision of solar panels should form part of the DA submission – due to the need for them to be visually integrated with the building design. Maintenance access should be provided to these roofs – it is unclear in the current plans how this is achieved.</p>	<p>It is acknowledged that the development provides communal open space compliant with the ADG requirement for the site.</p> <p>It is also noted that solar panels do not form part of this development application.</p>
<p>The Panel raises concerns about the L1 podium roof garden, regarding the proximity of the pedestrian pathways and the circular gathering places, to the bedrooms and living areas of the L1 apartments including B1.01 (Bedroom 3)</p>	<p>Council has considered the DEP comments in relation to the proximity of the bedroom windows to the pathways and seating nooks and the following comments are provided:</p>

<p>and B1.08 (Bedroom 2), and proximity of seating nook to A1.05 bedroom.</p>	<ul style="list-style-type: none"> • B1.01 – whilst it is noted that this window is in proximity to the pathway from the building to access the podium open space, the window is considered to be sufficiently removed from the nearest seating nook, where people would be likely to gather. In addition, the proposed planting in front of the window is considered an acceptable buffer between the public space and bedroom window. • B1.08 - whilst it is noted that this window is in proximity to the pathway from the building to access the podium open space, the window is considered to be sufficiently removed from the nearest seating nook, where people would be likely to gather. In addition, the proposed planting in front of the window is considered an acceptable buffer between the public space and bedroom window. • A1.05 – The proximity of this window to the nearest seating nook is noted, it is acknowledged that this window has been designed to be a highlight window, so as to mitigate potential privacy impacts to the bedroom. This is considered to be an acceptable mitigation measure.
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The DEP have also raised an issue with minor inconsistencies between the landscape documentation and architectural plans, a condition of consent has been recommended requiring the coordination of these documents to ensure consistency, prior to the issue of any Construction Certificate for the project.

As discussed above, the development is respectfully considered to be satisfactory having regard to the DEP matters raised.

A copy of the DEP comments and Applicant's responses are provided at **Attachment 4**.

EXTERNAL REFERRALS

Sydney Trains

The development application was referred to Sydney Trains in accordance with the provisions of Clauses 85 and 86 of State Environmental Planning Policy (Infrastructure) 2007, noting the proposed development is adjacent to a railway corridor, with excavation proposed to a depth of at least 2 metres within 25 metres of the rail corridor. Sydney Trains

has assessed the application and provided concurrence subject to conditions of consent, including a deferred commencement condition, these conditions have been included in the recommended conditions at **Attachment 1**.

Transport for NSW

The development application was referred to Transport for NSW (TfNSW) for comments, pursuant to Clause 104 of State Environmental Planning Policy (Infrastructure) 2007, as the development provides in excess of 200 car parking spaces. TfNSW has assessed the application and has provided correspondence advising that TfNSW raises no objection to the development.

TfNSW have provided advisory comments for Council's consideration relating to the layout of the car parking spaces and compliance with the relevant Australian Standards, sight distances for the driveway and pedestrian safety. These matters have been considered by Council's Development Engineer and have been addressed through the recommended conditions of consent at **Attachment 1**.

Ausgrid

The development application was referred to Ausgrid for comment and correspondence has been received advising that Ausgrid raises no objection to the proposed development.

Sydney Water

The development application was referred to Sydney Water for comment and correspondence has been received advising the Sydney Water raises no objection to the proposed development.

NSW Police

The development application was referred to NSW Police for comment, who have provided comments in relation to the application of Crime Prevention Through Environmental Design (CPTED). These matters have been considered in the assessment of the application and where applicable, conditions of consent have been recommended to address street numbering, lighting, landscaping, fire and safety measures and car parking.

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) in excess of 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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the site adjoin any contaminated land/previously contaminated land?	<input type="checkbox"/> Yes <input checked="" 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 checked="" type="checkbox"/> Yes <input type="checkbox"/> No
<p>A Detailed Site Investigation (DSI) prepared by EI Australia, has been submitted with the development application. The DSI concludes that deep excavation and soil disturbance across the site is expected and based on the findings, the site can be made suitable for the proposed development on completion of the recommendations made on page ii (executive summary) of the DSI. The recommendations include the preparation and implementation of a Remediation Action Plan.</p> <p>A Remediation Action Plan prepared by EI Australia, has been submitted and the preferred approach to be taken in order to make the site suitable for the proposed use involves excavation and off-site disposal of impacted fill materials, according to the corresponding waste classification. It also needs to be noted that the area of 4 Railway Street (Lot 1 in DP 397) was not assessed in the submitted DSI and Stage 2 of the RAP recommends that additional sampling of fill and soils are needed following demolition of the building existent in the area.</p>	

Matter for Consideration	Yes/No
Council's Environmental Health Officer has reviewed the DSI and RAP and advised that the development is suitable for the site and recommended standard conditions of consent relating to remediation and validation and protocols for the management any unexpected finds during the development of the site.	

(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.

The proposal is generally compliant with the provisions of SEPP 65 and the ADG, with the exception of building separation distances.

These variations are discussed below.

ADG Requirement	Variation Discussion			Satisfactory												
Objective 3F-1 Visual Privacy Design Criteria Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows: <table><tr><th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table>	Building height	Habitable rooms and balconies	Non-habitable rooms	up to 12m (4 storeys)	6m	3m	up to 25m (5-8 storeys)	9m	4.5m	over 25m (9+ storeys)	12m	6m	Building Elevation	Level	Separation Distance	Yes
	Building height	Habitable rooms and balconies	Non-habitable rooms													
	up to 12m (4 storeys)	6m	3m													
up to 25m (5-8 storeys)	9m	4.5m														
over 25m (9+ storeys)	12m	6m														
West (side) Building A	Level 1 to Level 12	Built to boundary and no windows on western elevation bedrooms on Levels 1 to 10.														
East (side) Building B	Level 1 Level 2 – Level 16	4m setback to proposed site boundary (post dedication of road widening) 5m setback to proposed site boundary (post dedication of road widening)														

	<table border="1"> <tr> <td data-bbox="667 172 834 477">East (side) Building C</td><td data-bbox="834 172 962 477">Level 1 – Level 14</td><td data-bbox="962 172 1145 477">5m setback to proposed site boundary (post dedication of road widening)</td></tr> </table>	East (side) Building C	Level 1 – Level 14	5m setback to proposed site boundary (post dedication of road widening)	
East (side) Building C	Level 1 – Level 14	5m setback to proposed site boundary (post dedication of road widening)			
	<p>It is acknowledged that the land opposite the site, on the eastern side of Raphael Street is currently zoned IN2 Light Industrial, pursuant to the provisions of the Auburn Local Environmental Plan 2010 (ALEP 2010). It is noted that this land use zoning is proposed to be maintained in the Draft Cumberland Local Environmental Plan.</p> <p>Notwithstanding, should the land to the east of the site be zoned for residential development in the future, the proposed building setbacks to the eastern property boundary are considered acceptable given the separation afforded by the Raphael Street carriageway.</p> <p>Currently Raphael Street maintains a width in the order of 4.5 metres, which is to be widened by 2.5 metres as part of the proposed development, through the dedication of land in accordance with the executed VPA. The proposed eastern boundary setback of Buildings B and C, ranging from between 4 metres and 5 metres, coupled with the final width of Raphael Street, in the order of 7 metres is considered an acceptable outcome having regard to building separation; should the land to the east ever be zoned and developed for residential development.</p>				

	<p>Internally, the development provides the following building separation distances:</p> <p>Level 1 Buildings A and D – 13.27m Buildings A and B – 8m & 22.42m Buildings A and C – 18m Buildings B and C – 22.94m Buildings C and D – 11.3m</p> <p>Level 2 – Level 9 Buildings A and C – 18m</p> <p>Level 10 – Level 12 Buildings A and C – 24m</p> <p>Level 2 – Level 11 Buildings A and B – 8m & 22.42m Buildings B and C – 22.94m</p> <p>Level 12 Buildings A and B – 8m Buildings B and C – 22.94m</p> <p>Level 13 – Level 14 Buildings B and C – 22.94m</p> <p>The distance between the tower elements of Building A and Building B is 8 metres, for Level 1 to Level 12. To avoid blank walls, the facades have been articulated with precast concrete panelling and thin vertical windows. To ensure that privacy issues are mitigated the windows have been designed to comprise translucent glass. The variation to the ADG requirement is considered acceptable on merit.</p> <p>The distance between the tower elements of Building A and Building C is greater than 18m on Level 1 to Level 9 and then increases to 24m on Level 10 to Level 12. There is a minor non-compliance on Levels 8 and 9 as the ADG requires a minimum 24m building separation. Given that the windows on these two levels of Buildings A and C are not</p>	
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	<p>directly opposite each other and are angled, the potential for visual impacts is mitigated, this non-compliance is considered acceptable on merit.</p> <p>The distance between Building B and Building C is 22.94m on Level 1 to Level 14. This is short of the ADG numerical requirement by 1.06m for Level 9 - Level 14. The shortfall to the upper levels is only to the short side of the balconies on the northern elevation of Building C to the bedroom windows (one on each level) on the southern elevation of Building B. The offset of the balconies and bedroom windows mitigates the potential for overlooking. The minor numerical non-compliance is considered to be acceptable on merit.</p>	
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A comprehensive assessment against SEPP 65 and the ADG is contained at **Attachment 6** to this Report.

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

The provisions of the ISEPP 2007 have been considered in the assessment of the development application.

e.g., Clause 45 - Development likely to affect an electricity transmission or distribution network

The subject development occurs within 5 metres of an overhead electricity power lines. As such, the Consent Authority is required to give written notice to an electricity supply authority. The development application was referred to Ausgrid, who advised that Ausgrid does not have any objections for the proposed development.

Clause 85 – Development adjacent to railway corridors

The subject site is adjacent to a railway corridor, and as such, the development application was referred to Sydney Trains, who have assessed the application and provided General Terms of Approval, which have been included in the recommended conditions of consent at **Attachment 1**.

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

The proposed development involves excavation to a depth of at least 2 metres below ground level (existing), on land within 25 metres (measured horizontally) of a rail

corridor and as such, the development application was referred to Sydney Trains, who have assessed the application and provided General Terms of Approval, which have been included in the recommended conditions of consent at **Attachment 1**.

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

The subject site is adjacent to a rail corridor and is likely to be adversely affected by rail noise and vibration. As such, an Acoustic Report has been submitted, which has been referred to Council's Environmental Health Officer for comment, who advised that the proposed development satisfactory, subject to standard acoustic conditions of consent, which have been included in the recommended conditions of consent at **Attachment 1**.

Clause 104 – Traffic generation developments

The proposed development is defined as 'Traffic Generating Development' pursuant to Schedule 3 of the ISEPP, as the development proposes in excess of 200 car parking spaces. The application was referred to Transport for NSW (TfNSW) who have assessed the application and advised that no objection to the proposed development.

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

BASIX Certificate No. 1161888M_03 dated 10 February 2021 prepared by Certified Energy has been submitted with Council and is considered to be satisfactory.

Regional Environmental Plans

The proposed development is affected by the following Regional Environmental Plans:

(a) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005

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.

(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 SREP is not directly relevant to the proposed development).

Local Environmental Plans

(a) Auburn Local Environmental Plan 2010

The provisions of the Auburn Local Environmental Plan 2010 (ALEP 2010) are applicable to the development proposal. It is noted that the development generally achieves compliance with the key statutory requirements of the ALEP 2010 and the objectives of the B4 Mixed Use and RE1 Public Recreation land use zones applicable to the site.

i. Permissibility: -

The proposed development is defined as a 'shop top housing' development and is permissible in the B4 Mixed Use land use zone, with consent.

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

DEVELOPMENT STANDARD	COMPLIES	DISCUSSION
4.3 Height of Buildings Maximum 45 metres, 48 metres and 55 metres	N	<p>Buildings A (42.87 metres) and D (8.2 metres) are compliant with the applicable maximum 45 metre building height.</p> <p>Building B maintains a maximum building height of 57.8 metres to the top of the lift overrun, where a maximum building height of 55 metres is applicable. This equates to a numerical variation of 2.8 metres to the maximum 55 metre building height (5% variation).</p> <p>There is also a building height exceedance of the maximum 45 metre building height applicable to the western portion of Building B. A maximum building height of 54.09 metres is proposed comprising unenclosed balconies, which have been designed to further articulate and balance the façade of the building. The variation equates to an exceedance of 9.09 metres (20% variation). Please refer to Figure 4 following this Table.</p> <p>No portions of Building B that exceed the maximum building height comprise habitable floor space.</p> <p>Building C maintains a maximum building height of 48.35 metres to the top of the lift overrun, where a maximum building height of 48 metres is applicable. This equates to a numerical variation of 0.35 metres to the maximum 48 metre building height (0.7% variation).</p> <p>There is also a building height exceedance of the maximum 45 metre building height applicable to the western portion of Building C. A maximum building height of 48 metres is proposed comprising unenclosed balconies. The variation equates to an exceedance of 3</p>

		<p>metres (6.6% variation). Please refer to Figure 4 following this Table.</p> <p>No portions of Building C that exceed the maximum building height comprise habitable floor space.</p>
<p>4.4 Floor space ratio 5:1 maximum floor space ratio</p> <p>Plus 0.3:1 bonus if the floor space ratio for the part of the buildings used for non-residential purposes is not less than 0.6:1.</p> <p>Total maximum FSR 5.3:1</p>	Y	<p>The development provides a total non-residential gross floor area (GFA) of 3,460m², which equates to a total FSR of 0.6:1.</p> <p>The development maintains a total gross floor area of 29,763m².</p> <p>The total GFA equates to an FSR of 5.21:1.</p>
4.6 Exceptions to development standards	-	<p>Refer to the following Clause 4.6 variation discussion in relation the building height departures of Buildings B and C and the Clause 4.6 request at Attachment 8 to this Report.</p>
5.1A Development on land intended to be acquired for public purposes	Y	<p>It is acknowledged that Lots 7 and 8 in DP 397 are to be dedicated for public open space in accordance with the executed Voluntary Planning Agreement; consistent with the RE1 zoning of the land.</p>

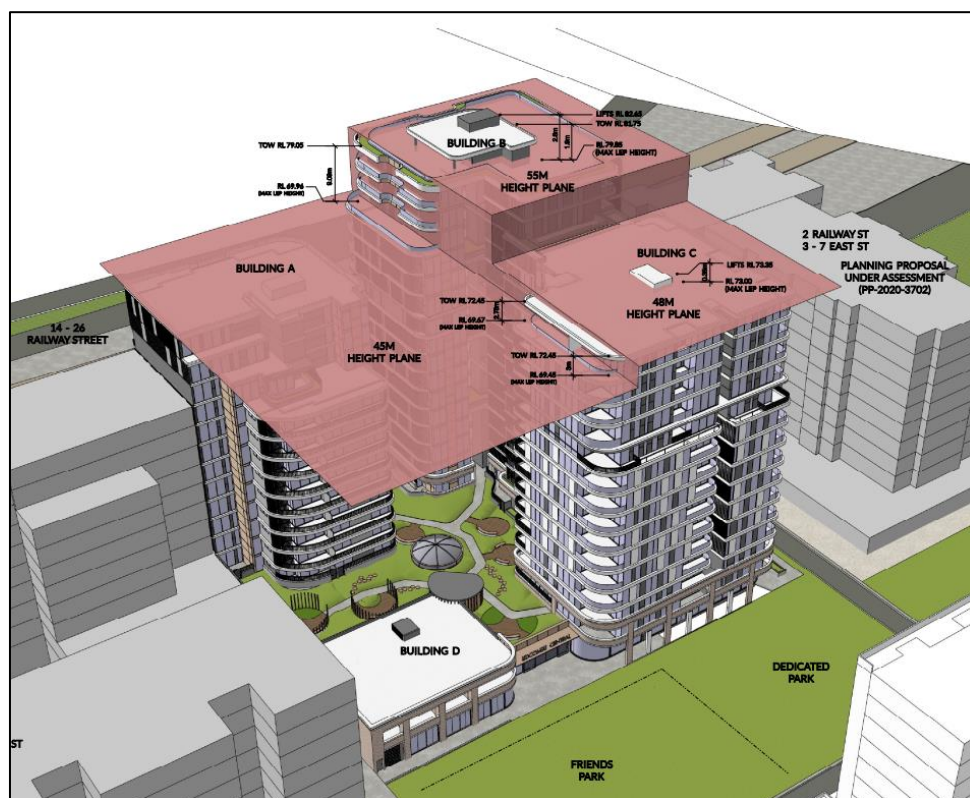


Figure 4 – Extract of proposed Height Plan Diagram (Source: Loucas Architects, 2021)

Clause 4.6 – Variation to Height of Building (HOB)

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

The applicant has submitted a written request to vary the development standard for maximum building height. Based on various case laws established by the Land and Environment Court of NSW such as *Four2five P/L v Ashfield Council* [2015] NSWLEC 9, *Randwick City Council v Micaul Holdings P/L* [2016] NSW LEC7 and *Zhang and anor v Council of the City of Ryde* [2016] NSWLEC 1179, 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:

- The development includes a range of compatible uses including commercial / retail units and residential apartments.
- The proposed mix of land uses is located within walking distance to the Lidcombe train and bus interchange, which will encourage alternative modes of transportation.

- The proposal achieves the planned density for the site in a high-density residential development which makes a positive contribution to the locality.
- The development includes a range of non-residential land uses, which will not only activate the streetscape, but will also provide services and local job opportunities for the local community.
- The development includes public domain and streetscape improvements, including the widening of Raphael Street and the expansion of Friends Park.

Planner's comment:

The proposal provides a mixed-use development within the Lidcombe town centre, in an accessible location in proximity to the Lidcombe Railway Station and public transport. The development provides commercial tenancies on the ground floor of Buildings A, B and C as well as on the ground and first floor of Building D, to contribute to the economic growth of the area. The high-density residential development provides a diverse housing choice, with a mix of one, two and three bedroom units. The development contributes to the creation of an attractive and safe public domain, through the design of the development and its interface to the open space to the south.

Despite the numerical departures from the maximum building height development standard, the development remains consistent with the objectives of the B4 Mixed Use zone.

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

Applicant's justification:

- The proposed height variations achieve the objectives of the standard as an appropriate development density is achieved. The proposed height of the modified development is compatible with its existing and future context and will not result in any adverse impacts to surrounding properties.
- It should be noted that the development application was preceded by a planning proposal and voluntary planning agreement. The planning proposal facilitated the dedication to Council, at no cost, of approximately 889m² public open space in return for additional development rights equal to the land being dedicated.
- The proposal is consistent with the floor space ratio control which now applies to the site and which indicates the appropriate development density for the site.
- The maximum floor space ratio for the site is 5.3:1. The site area of the site is 5,707m². Accordingly, the maximum permissible GFA on the site is 30,247m².
- The originally lodged proposal has been amended in accordance with Council recommendations to ensure that no habitable floorspace is located above the height of building controls for the site. The overall total GFA has been reduced from 30,185m² (as lodged) to 29,744m² (as amended). The proposed total GFA is 503m² less than permitted and equates to an FSR of 5.2:1.
- The built form is also compliant with the site specific setbacks of the Auburn Development Control Plan.
- The proposed variations to the development standard do not prevent the objectives of the development standard being achieved.

Planner's comment:

The portion of the building exceeding the maximum building height, i.e., lift overrun and balconies, do not have the potential to minimise the visual impact, disrupt views or the loss of privacy or solar access to existing development, including the open space land and is not

incompatible with the character of the locality. The development is considered to be consistent with the building height objectives of the ALEP 2010.

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

Applicant's justification:

Strict adherence to the height of building control would undermine the first and second objective of the control in so much as it would prevent an appropriate development density from being achieved on the site. Strict adherence would prevent the recently created FSR development standard from being achieved, noting that the floor space ratio standard reflects "appropriate development density" according to the first objective of the floor space ratio development standard in clause 4.4 of the Auburn Local Environmental Plan. Strict adherence would also require additional building mass to be located in the southwestern corner of the site which, while it would comply with the height of building and floor space ratio development standards, would increase overshadowing of Friends Park contrary to the desired character of the locality and the second objective of the height of building control.

For this reason, strict compliance with the numerical height of building control is unreasonable.

Planner's comment:

The lift overrun and balcony portions of Buildings B and C that exceed the maximum building height do not comprise any habitable floor area and are not capable of being converted to habitable floor area. The numerical variances sought, are considered to be reasonable, in that they do not add any unnecessary bulk to the building, given the minor nature of the numerical departure. It is acknowledged that the transfer of the non-compliant portions of the building to the western portion of the site, whilst resulting in compliance with the development standard, would conflict with the solar access requirements for Friends Park and the portion of open space to be dedicated.

In the circumstances of the case, compliance with the development standard is unreasonable.

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:

- Pursuant to the Auburn Development Control Plan and Draft Cumberland Development Control Plan, a minimum of 50% of direct sunlight is required to be provided to Friends Park between 12.00pm till 2.00pm. The architects investigated a parallel north - south building configuration as recommended by the Cumberland Design Excellence Panel which would comply with the height control, but this causes increased overshadowing to Friends Park.
- As recommended by Council, the design (as lodged) has been amended to ensure that no gross floor area is located above the height of building controls.
- Increased building separation is provided between Building A and B and only unenclosed balconies which do not comprise gross floor area are located in the area where the 45m height control applies.
- The amended massing arrangement allows for the bulk of the building mass to be focused on the corner of Railway Street and Raphael Street, which minimises overshadowing to Friends Park while also creating a focal point. The proposed

development ensures that a minimum of 50% of Friend Park achieves direct sunlight between 12.00pm and 2.00pm. It should be noted that it is not possible to provide 50% of direct sunlight at 3.00pm as it is overshadowed by existing buildings.

- As demonstrated above, the variation of the height of building development standard achieves a better urban design outcome. In this regard the proposed variation is consistent with the third and the seventh objects of the *Environmental Planning and Assessment Act 1979* in so much as the variation promotes the orderly and economic use of land, and good design and amenity of the built environment.
- As requested by Council, both at pre-lodgement and post-lodgement, multiple design options have been considered to ensure that adverse impacts to adjoining developments are minimised. The proposed development (as amended) does not comprise any habitable floor space above the height of building control. The proposed height variations facilitate access to high quality communal open space and private open space.
- We submit that for all of the above reasons there are sufficient environmental planning grounds to justify the variation.

Planner's comment:

For the reasons detailed above, 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 subclause (3). Council is further satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the height of building development standard and the objectives for development within the B4 Mixed Use and RE1 Public Recreation land use zones in which the development is proposed to be carried out.

It is the view of Council Officers that justification provided is satisfactory and having considered the application on its merit, the exception to the maximum building height development standard is considered acceptable in this instance.

The relevant matters to be considered under the ALEP 2010 for the proposed development are detailed in the Table at **Attachment 7** to this Report.

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 part B4 Mixed Use and part RE1 Public Recreation land use zoning of the site does not change under the Draft CLEP. The current FSR of 5:1 and current maximum building heights of 45 metres, 48 metres and 55 metres are also retained in the Draft CLEP.

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

The Auburn Development Control Plan 2010 (ADCP 2010) provides guidance for the design and operation of development to achieve the aims and objectives of the ALEP 2010.

A comprehensive assessment and compliance table is contained in **Attachment 9** to this Report.

The following table highlights non-compliances with the DCP, which relate primarily to site coverage, rear setback, and deep soil provision. The variations sought are considered satisfactory on merit in this instance.

Clause	Control	Proposed	Satisfactory
RESIDENTIAL FLAT BUILDINGS			
2.4.3 Rear setback	Rear setbacks shall be a minimum of 10m from the property boundary.	The development maintains a minimum rear setback of 6 metres, to the proposed rear boundary of the site with the open space (post dedication).	Yes

		<p>Given that the rear boundary of the site interfaces with existing and proposed public open space and the design of the development having regard to the potential for overlooking of the public space, the proposed minimum rear setback is considered acceptable on merit.</p> <p>Further, it is noted that Section 15.12 (Site 7 – Marsden Street) of the Local Centres part of the ADCP 2010 relevantly provides control D5:</p> <p><i>D5 New buildings are to be setback a minimum of 4m from all open space uses and the new boundaries of Davey Street and Raphael Street created after the dedication described in control D2 and D3 above.</i></p> <p>It is acknowledged that the proposed 6 metre rear building setback to the existing and proposed public open space is in excess of the minimum 4 metres required by this site specific control.</p>	
3.3 Deep soil zone	A minimum of 30% of the site area shall be a deep soil zone.	A deep soil provision (with minimum dimension of 3m) of 410sqm is provided, which equates to 7.18% of the site. This provision of deep soil is compliant with the minimum 7% required by the ADG.	Yes

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))

Concurrent with the Planning Proposal process, a Voluntary Planning Agreement (VPA) has been executed for the site between Cumberland City Council and Lidcombe Property (NSW) Pty Limited.

Schedule 3 (Designated Land) and Schedule 4 (Works) of the VPA identifies the following items, to be dedicated to Council and the associated works to be completed prior to dedication:

Item	Works	Timing of Dedication
Lots 7 & 8 in DP 397	Removal of all existing structures Importation of 80/20 soil mixture at a depth level of 300mm Land levelled to an acceptable standard Laying of turf	The earlier of: 1. The issue of the first Subdivision Certificate or Occupation Certificate issued in respect of the development; 2. Two (2) months after Completion of the Road Widening Works; and 3. 30 June 2021.
Road Widening Land (2.5 metres in width)	Including, but not limited, pathways, street trees, service augmentation and relocation, street lighting, road works, drainage, signage and intersection upgrades with Designated Land, to a minimum public purpose standard or as detailed in the development approval and plans.	1. The issue of the first Subdivision Certificate or Occupation Certificate issued in respect of the development; 2. Two (2) months after Completion of the Road Widening Works; and 3. 30 June 2021.

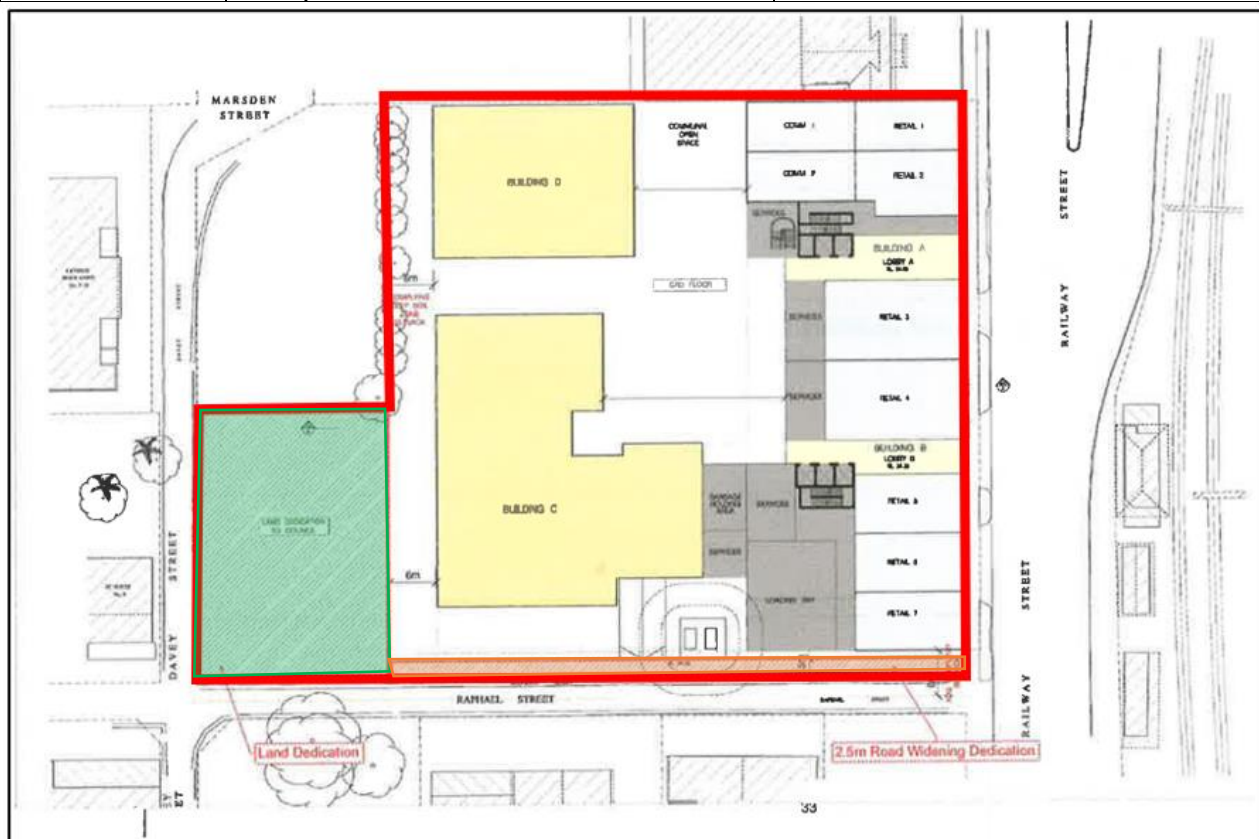


Figure 4: VPA Annexure 1 – Location Plan extract Lots 7 & 8 shaded green and road widening shaded orange (Source: Planning Agreement 4-12 Railway Street, Lidcombe, Marsdens Law Group)

Upon the lapsing of 30 June 2021, it was resolved to amend the VPA to change the reference from 30 June 2021 to 30 June 2022. The amended VPA and supporting documents were placed on public exhibition for 28 days from Friday 30 July 2021 to Thursday 26 August 2021 and no submissions were received. The VPA amendment has been executed on 9 September 2021.

Conditions of consent have been recommended to ensure the development is undertaken in accordance with the provisions of the VPA, including engineering conditions to address the final design of the road widening, in consultation with Council, prior to the issue of any Construction Certificate for the development.

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))

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 (online) ☒

Mail ☒

Sign ☒

Not Required ☐

In accordance with Council's Notification requirements contained within the ADCP 2010, the proposal was publicly notified for a period of fourteen (14) days between 17 March 2021 and 31 March 2021. No submissions were received in respect of the proposed development.

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 CONTRIBUTIONS PLAN 2020

The development does not require the payment of contributions, as Clause 4.1 of the executed Voluntary Planning Agreement excludes the application of Section 7.11 and Section 7.12 of the *Environmental Planning and Assessment Act 1979* to the development.

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

CONCLUSION

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*, SEPP 55, SEPP 65, ISEPP, SREP 2005, ALEP 2010 and ADCP 2010 and is considered to be satisfactory for deferred commencement approval.

The proposed development is appropriately located within the B4 Mixed Use and RE1 Public Recreation land use zones under the relevant provisions of the ALEP 2010. The proposal is generally consistent with all statutory and non-statutory controls applying to the development. Non-compliances with the ADG and Council's controls have been discussed in the body of this report. The development is considered to perform adequately in terms of its relationship to its surrounding built and natural environment, particularly having regard to impacts on adjoining properties.

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

RECOMMENDATION

- 1. That the variations to the maximum 48 metre and 55 metre building height development standards, as contained in Clause 4.3 of the Auburn Local Environmental Plan 2010 be approved, as the Applicant's Clause 4.6 request has adequately addressed the matters at Clause 4.6(3) and the development will be in the public interest as it is consistent with the objectives of the height standard and the objectives of the B4 Mixed Use zone.**
- 2. That Development Application No. DA2021/0092 for the construction of four (4) mixed-use buildings ranging in height from 2 to 18 storeys, comprising commercial/retail uses and 301 residential apartments over four (4) basement car park levels accommodating 514 car spaces, site remediation, landscaping works, and associated Stratum subdivision, on land at 4-12 Railway Street, LIDCOMBE NSW 2141 be granted deferred commencement approval, subject to conditions listed in Attachment 1.**

ATTACHMENTS

1. Draft Notice of Determination
2. Architectural Plans
3. Landscape Plans
4. DEP Comments
5. SEPP 65 ADG Assessment Table
6. ALEP 2010 Assessment Table

- 7. Clause 4.6 Variation Request
- 8. ADCP 2010 Assessment Table