

TO: Sydney Central City Planning Panel

SUBJECT: 51 Rawson Street AUBURN NSW 2144

APPLICATION No: DA2021/0132

Application lodged	18 March 2021
Applicant	Redcape Hotel Group C/- Urbis
Owner	Mahf Custodian Pty Ltd
Application No.	DA2021/0132
Description of Land	51 Rawson Street AUBURN NSW 2144 Lot 1 DP 655963, Lot 1 DP 978290
Proposed Development	Alterations and additions to the existing building (Keighery Hotel), demolition of select structures, and construction of a 15 storey mixed use building comprising 96 residential units, ground floor retail tenancy and basement car parking
Site Area	2,191m ²
Zoning	B4 Mixed Use
Disclosure of political donations and gifts	Nil disclosure
Heritage	The Keighery Hotel is a heritage item of local significance in accordance with Schedule 5 of the Auburn LEP 2010 (I16). The site is not in the vicinity of any other heritage item and is not within a heritage conservation area
Principal Development Standards	<u>FSR</u> Permissible: 5:1 Proposed: 4.74: 1 <u>Height of Building</u> Permissible: 38 metres Proposed: 55 metres
Issues	Heritage, variation to maximum building height, submission

SUMMARY

- Development Application No. DA2021/0132 was received on 18 March 2021 for alterations and additions to the existing building (Keighery Hotel), demolition of select structures, and construction of a 15 storey mixed use building comprising 96 residential units, ground floor retail tenancy and basement car parking.*
- The application was publicly notified to occupants and owners of the adjoining properties for a period of fourteen (14) days between 19 May 2021 and 2 June 2021. In response, one (1) submission was received.*

3. *The site is identified as a heritage item of local significance pursuant to the provisions of Schedule 5 (Environmental heritage) of the Auburn Local Environmental Plan 2010. The subject site is identified as I16 – “Keighery Hotel”.*
4. *A variation is sought to the maximum 38 metre building height applicable to the site pursuant to Clause 4.3 of the Auburn Local Environmental Plan 2010. The building maintains a maximum building height of 55 metres, a variation to the maximum building height of 17 metres or 44.7%. A written request to contravene the height development standard has been submitted under Clause 4.6 of the Auburn Local Environmental Plan 2010.*
5. *The application is referred to the Panel as the proposal has a Capital Investment Value (CIV) in excess of \$30 million.*
6. *The application is recommended for approval subject to the conditions as provided in **Attachment 1**.*

REPORT

SUBJECT SITE AND SURROUNDING AREA

The site is located at 51 Rawson St, Auburn and is legally described as Lot 1 DP978290 and Lot 1 DP655963. The site maintains a total area of 2,191m² and frontages to Rawson Street (45.7 metres) and Station Road (47.8 metres).



Figure 1 – The Site (Source: Nearmap, 2021)

Current improvements on the site include a two storey brick and tile roof building known as the “Keighery Hotel” and an area of at-grade parking, with access to the carpark currently gained via a driveway off Station Road. Two (2) retail tenancies are located within the southern frontage of the site at its boundary with Rawson Street, these are currently occupied by a real estate business. Over the years there have been various alterations and additions to the Keighery Hotel building, including the addition of an outdoor gaming lounge area and associated office and amenities to the rear of the building, adjoining the car parking area. These additions to the original building are distinguishable by the render finish and steel roofing.

The Keighery Hotel is a heritage item of local significance in accordance with Schedule 5 of the Auburn Local Environmental Plan 2010 (L16).



Figure 2: The Locality (Source: Nearmap, 2021)

The subject site is located within the Auburn Town Centre and in the order of 200 metres walking distance to the Auburn Train Station, to the west of the site. Opposite the site, on the south-western side of Rawson Street is the Auburn Memorial Park public open space. Adjoining the site to the north-west is an existing row of shops ranging in height from single to double storey occupied by a range of businesses including a tax agent, bakery, butchery and chemist. Adjoining the site to the north-east at 2-4 Station Road, Auburn is an existing four (4) storey shop top housing development. Further south at 6-8 Station Road, Auburn is a recently constructed 12 storey shop top housing development. Opposite the site to the east at 45 Rawson Street, Auburn is an existing 5-7 storey shop top housing development. Opposite the site to the south at 3-5 Station Road, Auburn is a double storey commercial building with a range of tenancies including a jewellery shop, sweets shop, chartered accountant and solicitors.

The locality is largely characterised by high density residential development and commercial development, reflective of the character of the Auburn Town Centre.

DESCRIPTION OF THE PROPOSED DEVELOPMENT

Council has received a development application for alterations and additions to the existing “Keighery Hotel” building and the demolition of select structures, and construction of a 15 storey mixed use building comprising 96 residential units, ground floor retail tenancy, and basement car parking.

Alterations and additions to Keighery Hotel

- The proposal involves the retention of the Keighery Hotel building and the restoration of the dilapidated areas such as the first floor interior.
- Demolition of the utilitarian wing which currently houses the kitchen, the outdoor gaming area, associated structures including the northern entry and associated at grade carpark landscaping.
- The demolition of these structures is to facilitate the construction of the basement carpark.

- Minor partial demolition to the building interior with removal of some internal walls to provide an accessible bed and bath on the first floor, a vestibule for the upper landing, and installation of a lift.
- Construction of new ground floor facilities including a new open-air gaming room and foyer to the rear, male, female and accessible toilets, kitchen, cool room and landscaping.
- Installation of a hydrant booster to the eastern elevation.



Figure 3 – Extent of demolition outlined in red (Source: Nearmap, 2021)

Construction

- Excavation and construction of a four (4) level basement carpark with access to be gained via a driveway from Station Road.
- The basement carpark provides a total of 141 car parking spaces to service the uses on the site:
 - 88 residential spaces;
 - 20 residential visitor spaces;
 - 32 hotel spaces; and
 - 1 retail space.
- Upon completion of the construction of the basement carpark, the new open-air gaming room for the hotel will be constructed at ground level.
- Construction of a 15 storey mixed use building comprising:
- 96 residential units:
 - 26 x 1 bedroom;
 - 53 x 2 bedroom; and
 - 17 x 3 bedroom.
- 1 retail tenancy at the ground level fronting Station Road.
- The ground level area separating the Keighery Hotel from the mixed use building comprises a covered outdoor terrace area with an outdoor bar. This area is to be used in conjunction with the Keighery Hotel. Access to this area is proposed to be managed with a 2.4 metre high palisade sliding gate at the Station Road frontage. It is noted that access to the residential lobby and retail tenancy is not impacted by the security gate.

The Keighery Hotel will continue to operate in accordance with the existing liquor licence; no changes are proposed to the operation of the hotel.

HISTORY

Council's records indicate several Development Applications for alterations and additions to the Keighery Hotel building from the late 1980s through to 2009, a summary of these approvals is provided below:

- CC1988/8652 Alteration to hotel
- DA1990/305 Alterations to existing hotel
- DA1998/31 Renovate Hotel to provide gaming area
- DA2001/322 Repairs to existing awning
- DA2003/358 Development consent granted on 9 December 2003 for the construction of a mixed development building containing one shop and 31 dwellings at the rear of the existing hotel and alterations and additions to the hotel. The consent has lapsed.
- DA2007/383 Development consent granted on 25 August 2008 for alterations and additions to existing hotel, including demolition of outbuildings, extension of carpark and landscaping. A Construction Certificate was issued on 4 February 2009 and the works were undertaken.
- M2007/383/A Modification application to amend DA2007/383 to increase the size of the outdoor gaming area and internal layout modifications.
- M2007/383/B Modification application to amend DA2007/383 to modify conditions limiting the use of the outdoor gaming area.

On 3 December 2020, a pre-lodgement meeting was held with Council staff and the Applicant to discuss a proposal for alterations and additions to the "Keighery Hotel" and construction of a 14 to 15 storey mixed use building comprising 96 residential units and ground floor retail tenancies over basement car parking (PL2020/0074). As part of the pre-lodgement advice issued Council raised the following matters for consideration:

- The timing of the lodgement of the development application after the gazettal of the Draft Cumberland Local Environmental Plan (Draft CLEP), noting that the development has been designed to achieve the maximum 55 metre building height proposed under the Draft CLEP.
- Engineering comments relating to car parking, traffic, stormwater and loading/unloading.
- Waste comments in relation to bin size requirements.
- Environmental health comments relating to acoustics, hazardous material survey and floor plans to demonstrate compliance with the Food Standards Code and AS4674-2004.
- Design Excellence Panel comments in relation to laneway amenity, apartment entry, visual character and landscape.

On 14 September 2021 a briefing was held with the Sydney Central City Planning Panel (SCCPP) to discuss DA2021/0132 and the following was advised by the SCCPP:

The Panel considers the updated Cumberland LEP, regarding which gazettal is imminent, to be 'certain and imminent', therefore applicable to the determination of the application.

The Panel considers the current LEP to be effectively abandoned in procedural terms. As such, the Panel does not support a requirement for the applicant to withdraw and re-lodge the DA and would regard such action as unnecessary.

The referral of development application to the SCCPP for determination has proceeded on the above basis.

APPLICANTS SUPPORTING STATEMENT

The applicant has provided a Statement of Environmental Effects prepared by Urbis dated February 2021, 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.

Tree Officer

The development application was referred to Council's Tree 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.

Heritage Committee

The development application was referred to the Cumberland Heritage Committee for comment and no comments were received.

Design Excellence Panel

The proposal was referred to the Cumberland Design Excellence Panel (CDEP) at the pre-lodgement and development application stages, 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. The CDEP have advised that the proposal is satisfactory, subject to a recommended condition of consent.

Pre-Lodgement

As part of the pre-lodgement process the proposal was referred to the CDEP for consideration at the meeting held on 12 November 2020. As part of this review, the CDEP provided comments which raised various design matters to be incorporated into the future development application lodgement:

- Laneway amenity;
- Apartment entry design;
- Visual character;
- Visual separation between existing and proposed buildings; and
- Landscaping including deep soil provision.

Development Application

On 21 July 2021 the development application proposal was considered by the CDEP and comments were provided for further consideration, including:

- Laneway amenity and viability of the retail tenancies anchoring or supporting the active open spaces between the hotel and new buildings;
- Laneway space being devoid of landscaping;
- CPTED concerns for the laneway outside of business hours;
- The ground floor apartment entry size and functionality appears tight;
- Rearrangement of Retail Tenancy A to improve the apartment foyer entry relationship to Station Street;
- More detail is required in relation to finishes;
- Various built form design considerations; and
- Landscape considerations including deep soil provision.

The Applicant subsequently provided amended concept plans which were electronically referred back to the CDEP for review and comment. On 15 September 2021, the following comments were received from the CDEP for incorporation into the final plans:

- *Revised vehicular access to basement looks contorted and would need traffic engineer to check swept paths particularly around corner of switch room, and conflict with service loading dock where the louvres over the driveway must demonstrate how they prevent overlooking.*
- *Ground level residential foyer is still a bit tight, could use some social interaction element (eg. bench along wall) and would be improved with reduction in retail tenancy.*
- *The 'outdoor bar' space is now enclosed on all sides except at the east entry where a CPTED response is required to address deep corridor, and egress to Station St may require a gate closer to street after hours?*
- *Need to have detail of 'urban art' input to blank external walls, and 'pre finished panel' details on the material, fixings, panel sizes etc. to assess the impact of this approach.*
- *Based on Council's advice regarding the laneway connection and future connectivity, use of the outdoor area as a beer garden makes sense, but with the roof over may mean this area is it now counted as FSR.*
- *The 'glass roof' may be a successful acoustic barrier for 'outdoor bar' space, but more detail required on the roof design, an acoustic report and a management plan for the space to limit evening use to say 10.00pm.*

- *Changes to apartments 101,201 layouts are noted, but in addition to possible noise and smoke impacts the Panel requested these apartments be reduced in size to create a consistent negative space above the heritage item.*
- *The low canopy over the 'outdoor bar' space makes little sense with regards to the separation from the heritage form, and the apartment tower form above that may still overshadow and overwhelm the space below.*
- *Cleaning of the glazed roof could be problematic and if so become solid, and with the Tank and store forming a wall at the west end this would further reinforce the enclosure of the 'outdoor bar'.*
- *If the canopy should float over at a high level to reduce the enclosed feeling, this would be at up to 3 levels to the undercroft of the residential floor over and require clarification of any potential impacts that are unacceptable.*

In response to the above comments, the Applicant submitted final amended architectural plans which were subsequently electronically referred back to the CDEP for final consideration. On 12 October 2021 comments were received from the CDEP advising the following:

The Panel has reviewed and liaised to report on the latest DA amendments for 51 Rawson Street, Auburn and deems that majority of issues have been adequately addressed, and advises that:

- 1. Design changes to units 1.01 and 2.01 are a positive outcome for the project, and address concerns about the amenity and privacy on those levels.*
- 2. The courtyard space that has changed from being a new laneway to an outdoor bar for the hotel is supported, but the quality of space for an enclosed area would benefit from additional height to create a better volume relationship with the Hotel.*
- 3. The glazed roof over the outdoor is beneficial but an increased height of the space would be recommended (restricted to below the hotel roof apex) to create a more voluminous space that would acknowledge the separation between the tower and hotel masses as was the original intent.*
- 4. While the outdoor bar space is also noted as mechanically ventilated, with a loftier height this may allow some partially louvred solution for a passive ventilation option subject to addressing any acoustic issues.*

Subject to the above items being conditions of the DA as appropriate, the Panel does not need to further review this submission.

Council sought additional advice in relation to a condition of consent to address items 3 and 4 above. The CDEP provided the following sketches, which has been translated into a recommended condition of consent requiring the glazed roof over the covered outdoor terrace to be raised to provide a minimum 4.8 metre height from ground level and to slope from under the sill of the corridor windows to the green roof of the outdoor gaming area, to ensure there is good run-off for collected rainwater and scope for the introduction of adjustable louvres in the vertical face.

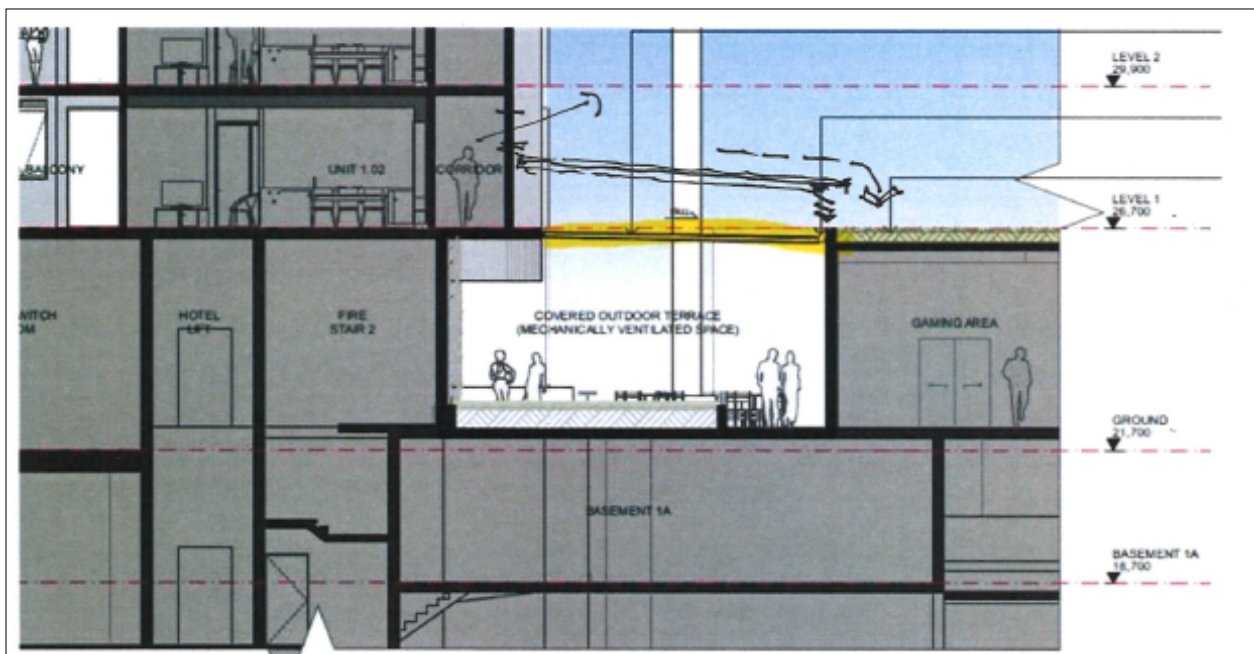


Figure 4 – CDEP markup of amendment (Source: A. Raadik, 2021)

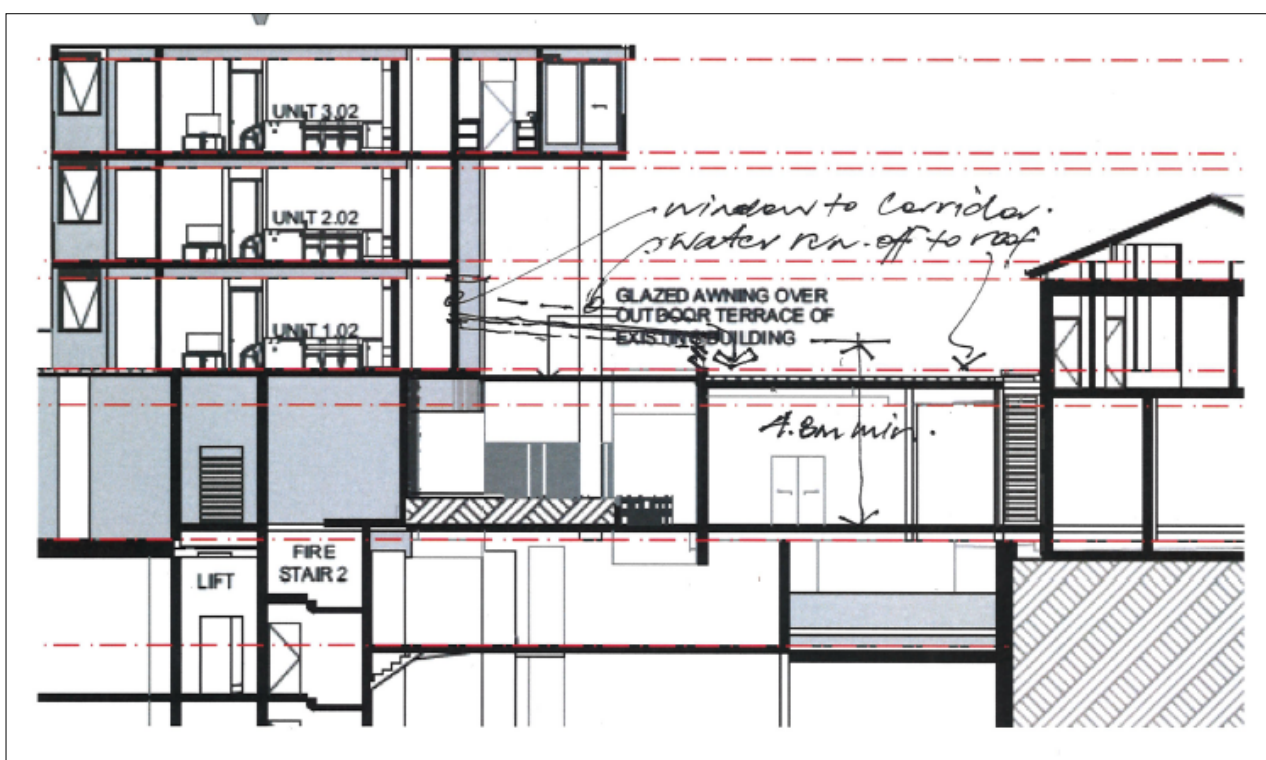


Figure 5 – CDEP markup of amendment (Source: A. Raadik, 2021)

A condition of consent requiring amended architectural plans to address the above, prior to the issue of any Construction Certificate has been included in the recommended conditions of consent at **Attachment 1**.

A copy of the CDEP correspondence is provided at **Attachment 8**.

EXTERNAL REFERRALS

Ausgrid

In accordance with the provisions of Clause 45 of State Environmental Planning Policy (Infrastructure) 2007 the development application was referred to Ausgrid who do not have any objections for the proposed development. Ausgrid requirements have been included as an advisory condition at **Attachment 1**.

Transport for NSW

The application is subject to clause 104 as the proposal triggers the requirements for traffic generating development listed in Schedule 3 of the ISEPP. The development application was referred to Transport for NSW (TfNSW) who advised that both Rawson Street and Station Road, at this location, are regional classified roads under the care and control of Council. TfNSW has determined it more appropriate for Council to consider and determine if proposed arrangements for the development are acceptable from a network perspective (i.e. acceptable in terms of safety and efficiency). Council's Development Engineer has reviewed the proposed traffic and parking arrangements for the development and these are considered satisfactory, subject to the recommended conditions of consent at **Attachment 1**.

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.

Heritage Consultant

Council engaged the services of an independent heritage consultant to undertake a peer review of the Statement of Heritage Impact (SoHI) prepared by GBA Heritage which accompanied the development application (**Attachment 5**).

Upon review of the SoHI, the following additional information was requested and the Applicant subsequently provided additional information which was reviewed by the heritage consultant.

Initial Peer Review Comments	Applicant's Response	Final Peer Review Comments
<i>A Historical Archaeology Assessment should be conducted to support the statements of GBA Heritage that the potential for archaeological deposits is low.</i>	Historical Archaeological Impact Assessment (HAA) provided (Attachment 6).	<i>This has been drafted by Urbis and Niche can support the conclusion of that report.</i>

<p><i>A Visual Impact Statement (VIS) that addresses the potential impacts to the heritage significance of the exterior of the hotel. This should address both the architectural feature on Station Street and overall concept designs. It should also be conducted to support some of the conclusion made in the SoHI by GBA Heritage.</i></p> <p><i>The VIS should also make recommendations/suggestions for the use of other materials regarding the architectural feature that are sympathetic in colour to the exterior of the hotel as well as more sympathetic designs in form and shape (i.e. less curvature and more linear designs).</i></p> <p><i>If no other design options are appropriate, the SoHI should address the relevant statement made in the Statement of Heritage Impact guideline: "The following sympathetic solutions have been considered and discounted for the following reasons:"</i></p>	<p>Visual Impact Statement (VIS) provided (Attachment 7).</p>	<p><i>A visual impact assessment was conducted by Urbis and the concept design were updated by Integrated Design Group. These reports and amendments addressed the above recommendations within the relevant legislation and guidelines therefore Niche can support these reports and designs.</i></p>
<p><i>An Unexpected Finds Procedure for the proposed works should be clarified in either the SoHI or the HAA.</i></p>	<p>The HAA includes an Unexpected Finds Procedure.</p>	<p><i>Relevant during the proposed works.</i></p>
<p><i>All further assessments and documentation can be appendices to the SoHI as this report is of a good standard and largely addresses the requirements set out in the guidelines.</i></p>	<p>HAA and VIS provided under separate cover.</p>	<p><i>Has been addressed to the extent that new reports have been drafted to support the SoHI.</i></p>

In conclusion, the heritage consultant has endorsed the SoHI prepared by GBA Heritage, the concept designs prepared by Integrated Design Group and support the conclusions made by Urbis in the Historical Archaeological Impact Assessment and Heritage Setting –

View Analysis reports for the listed heritage property - The Keighery Hotel at 51 Rawson Street, Auburn.

The recommendations of the SoHI and the HAA have been included as conditions of consent relating to the implementation of an archaeological induction for all relevant construction personnel prior to the commencement of works, an Unexpected Finds Procedure during works and photographic archival recording of the heritage item prior to demolition and also prior to the issue of the final Occupation Certificate.

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 not specifically affected by any relevant 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* (EP&A Act). 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

Matter for Consideration	Yes/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 type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>A Detailed Site Investigation Report prepared by Douglas Partners has been provided. The report undertook soil and ground water sampling. Benzo(a)pyrene had elevated levels that exceeded the ecological criteria in three (3) boreholes. The elevated levels of benzo(a)pyrene are located within the existing car park which will be demolished and excavated for the future basement carpark.</p> <p>The report justifies the exceedance of benzo(a)pyrene by relying on research conducted by Cooperative Research Centre for Contamination Assessment and Remediation of the Environment (CRC Care), specifically the CRC Care Technical Note No. 39 titled 'Risk-based Management and Remediation Guidance for Benzo(a)pyrene' (March 2017). The CRC Care recommend a criteria level of 33mg/kg.</p> <p>Council bases its decision-making process on the National Environment Protection Measure 2013 (NEPM 2013) and statutory guidelines. The fact sheet provided by CRC Care is not a peer reviewed and published article and therefore cannot be accepted by Council as justification for exceeding the criteria established by the NEPM 2013.</p> <p>A Remediation Action Plan (RAP) prepared by Douglas Partners was also submitted with the application. The RAP proposes two options for remediation being 1) excavation and off-site disposal to landfill or 2) onsite containment. The RAP does not indicate which method is preferred. Given that the contaminated area will be excavated, offsite disposal is the appropriate method. The RAP contains an unexpected finds protocol.</p>	

Matter for Consideration	Yes/No
<p>Council requested an addendum to the RAP confirming the preferred method of remediation by excavation and disposal to address the elevated levels of benzo(a)pyrene.</p> <p>An addendum was provided which did not address the above and continued to reference the CRC Care upper limit for benzo(a)pyrene to justify an exceedance of the limit set by the NEPM 2013 and stated that the site is suitable for the proposed use. The use of non-statutory material to justify exceedance of a limit set by the NEMP is not supported. In order to address this, a condition has been recommended by Councils Environmental Health Unit specifying the preferred remediation method to be adopted.</p>	

(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 communal open space, deep soil zone, building separation distances and solar access to living rooms and private open space.

These variations are discussed below.

ADG Requirement	Variation Discussion	Satisfactory
<p>Objective 3D-1 Communal and Public Open Space</p> <p>Design Criteria Communal open space has a minimum area equal to 25% of the site.</p> <p>Required: $25\% \times 2,191\text{m}^2 = 547.75\text{m}^2$</p>	<p>The development proposes a total communal open space provision of 427.4m^2, which equates to 19.5% of the site area.</p> <p>Communal open space has been provided in the form of roof terraces across two (2) levels of the building, being levels 14 and 15. These spaces have been designed to maximise views to the Auburn Memorial Park to the south as well as to provide a sense of residential activation to the urban street wall character when viewed from the park. The spaces have been designed to facilitate both active and passive recreation for residents.</p> <p>The variation to the provision of communal open space is considered acceptable on merit, having regard to</p>	Yes

	the quality and functionality of the communal open space areas.													
<p>Objective 3E-1 Deep Soil Zones</p> <p>Design Criteria Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² - 1,500m²</td><td>3m</td></tr> <tr> <td>greater than 1,500m²</td><td>6m</td></tr> <tr> <td>greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	less than 650m ²	-	7%	650m ² - 1,500m ²	3m	greater than 1,500m ²	6m	greater than 1,500m ² with significant existing tree cover	6m	<p>A deep soil provision (with minimum dimension of 3m) of 27.47m² is provided in the western-most corner of the site, where there is an existing tree to be retained. This area of deep soil equates to 1.3% of the site area.</p> <p>Considering the retention of the existing Keighery Hotel building on the site and the requirement for a basement carpark for the development, the minimal deep soil provision across the site is considered acceptable on merit.</p> <p>The development has included the provision of landscape areas to the roof terrace which allow for the planting of medium sized trees in more substantial planter boxes, and a green roof over the refurbished outdoor gaming room.</p>	Yes
Site area	Minimum dimensions	Deep soil zone (% of site area)												
less than 650m ²	-	7%												
650m ² - 1,500m ²	3m													
greater than 1,500m ²	6m													
greater than 1,500m ² with significant existing tree cover	6m													
<p>Objective 3F-1 Visual Privacy</p> <p>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:</p> <table border="1"> <thead> <tr> <th>Building height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <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> </tbody> </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	<p>The development provides a zero boundary setback to the north-western boundary and a partial zero boundary setback to the north-eastern boundary. For that part of the north-eastern boundary not subject to the zero boundary setback, for Level 1, the balconies of the units facing the side boundary maintain a 6.5 metre setback from the boundary.</p> <p>For Levels 2 and 3, the balconies of the north-western most units maintain a 6.5 metre setback, with the remaining building walls maintaining a 9 metre setback to the boundary.</p>	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												

	<p>For Levels 4 to 14, the balconies and building walls maintain a 9 metre setback to the boundary.</p> <p>The development does not achieve the minimum 12 metre building separation distance required for those units above 25 metres.</p> <p>In order to mitigate potential overlooking impacts from those units, the design of the building incorporates angled walls and orients the units to the north which facilitates access to north light while directing views away from the neighbouring site to maintain visual privacy for the adjoining site.</p> <p>On this basis, the variation from the required 12 metre building separation for that part of the building above 25 metres is considered acceptable on merit.</p>	
<p>Objective 4A-1 Solar and Daylight Access</p> <p>Design Criteria Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</p> <p>Required: 70% x 96 units = 68 units minimum</p>	<p>59 of the 96 units (61.4%) receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter.</p> <p>This variation has been considered on merit, noting the retention of the existing Keighery Hotel building on the site and the impact of this on the developable area and design of the new building. The development has also been designed to maximise the outlook of the development to the Auburn Memorial Park.</p> <p>For those units that do not achieve the required sunlight, the design of the development has incorporated large glazed doors off living areas that face either the street, or open sky to the south over Auburn Memorial Park.</p> <p>The proposed variation is considered acceptable on merit.</p>	Yes

A comprehensive assessment against SEPP 65 and the ADG is contained at **Attachment 9** 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.

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 do not have any objections for the proposed development. Ausgrid requirements have been included as an advisory condition at **Attachment 1**.

Clause 101 – Frontage to classified road

The application is subject to clause 101 of the ISEPP as the site maintains frontages to Rawson Street and Station Road, both of which are regionally classified roads. Council has considered the provisions of Clause 101 and note that the proposed vehicular access off Station Road is acceptable as it will not adversely impact the safety, efficiency and ongoing operation of Station Road and Rawson Street. The development has been designed to consider acoustic impacts.

Clause 104 – Traffic generation developments

The application is subject to clause 104 as the proposal triggers the requirements for traffic generating development listed in Schedule 3 of the ISEPP. The development application was referred to Transport for NSW (TfNSW) who advised that both Rawson Street and Station Road, at this location, are regional classified roads under the care and control of Council. TfNSW has determined it more appropriate for Council to consider and determine if proposed arrangements for the development are acceptable from a network perspective (i.e. acceptable in terms of safety and efficiency). Council's Development Engineer has reviewed the proposed traffic and parking arrangements for the development and these are considered satisfactory, subject to the recommended conditions of consent at **Attachment 1**.

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

BASIX Certificate No. 1095773M dated issued on 15 March 2021 prepared by Makao Group 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 (ALEP 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.

i. Permissibility:-

The proposed development is defined as 'shop top housing' and is permissible in the B4 Mixed Use land use zone, with consent. The existing established use of the Keighery Hotel as a 'pub' is also permissible with consent in the B4 Mixed Use land use zone.

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

retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following;

- (a) (Repealed)
- (b) cellar door premises,
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (la) specialised retail premises,
- (m) timber yards,
- (n) vehicle sales or hire premises,

but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

pub means licensed premises under the Liquor Act 2007 the principal purpose of which is the retail sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

DEVELOPMENT STANDARD	COMPLIES	DISCUSSION
4.3 Height of Buildings Maximum 38 metres	N	The building maintains a maximum building height of 55 metres, a variation to the maximum building height of 17 metres or 44.7%. It is acknowledged that the building has been designed to achieve the maximum 55 metre building height proposed under the Draft Cumberland Local Environmental Plan, which is pending gazettal.
4.4 Floor space ratio Maximum 5:1	Y	The development provides a total gross floor area of 10,405.2m ² which equates to a total floor space ratio of 4.74:1.
4.6 Exceptions to development standards	-	<p>The building maintains a maximum building height of 55 metres, a variation to the maximum building height of 17 metres or 44.7%.</p> <p>Refer to the following Clause 4.6 variation discussion in relation the building height departure and the Clause 4.6 request at Attachment 11 to this Report.</p>
5.10 Heritage Conservation	Y	<p>The site is identified as a heritage item of local significance pursuant to the provisions of Schedule 5 (Environmental heritage) of the ALEP 2010. The subject site is identified as I16 – “Keighery Hotel”.</p> <p>The development application has been accompanied by a Statement of Heritage Impact (SoHI) prepared by GBA Heritage to determine the suitability of the design and the heritage impact of the proposal, in accordance with Clause (5) of the ALEP 2010.</p> <p>The SoHI relevantly concludes that:</p>

		<p><i>In the context of the precinct and with the ensured restoration of the heritage item, the proposal is supported by GBA Heritage as having an acceptable heritage impact.</i></p> <p><i>We recommend the following:</i></p> <ul style="list-style-type: none"> <i>• The curtilage of the Keighery Hotel's heritage listing should be reduced to exclude the rear car park.</i> <i>• A photographic archival recording should be undertaken before, during and after construction works.</i> <p>As part of the assessment of the development application, Council engaged an independent heritage consultant to undertake a peer review of the SoHI.</p> <p>The heritage consultant has endorsed the SoHI by GBA Heritage, the concept designs prepared by Integrated Design Group and support the conclusions made by Urbis in the Historical Archaeological Impact Assessment and Heritage Setting – View Analysis reports for the listed heritage property - The Keighery Hotel at 51 Rawson Street, Auburn.</p> <p>Refer to the table at the External Referrals section of this Report for a detailed discussion.</p> <p>Having regard to the provisions of Clause 5.10(4), Council has considered the effect of the proposed development on the heritage significance of the Keighery Hotel and the development is considered to satisfy the objectives of Clause 5.10.</p>
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ii. **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 contravene 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 proposal integrates a mixture of compatible land uses including residential accommodation, ground floor retail uses, and retains the existing pub use. These uses are compatible given their complementary functions and are typical of development within the B4 (Mixed Use) Zone.
- The site is a highly accessible location within Auburn town centre. The proposal will maximise public transport patronage and encourage walking and cycling to the site, and the provision of bicycle parking within secure locations within the development.
- The proposal is highly consistent with this objective in that it proposes a residential building comprising 96 units ranging from one bedroom to three bedrooms.
- Many and varied employment opportunities (direct and indirect jobs) will be generated during marketing, construction, fit-out, and operation of the development.

Planner's comment:

The proposal provides a mixed use development within the Auburn Town Centre, in an accessible location, in proximity to the Auburn Railway Station and public transport. The development retains the existing Keighery Hotel and provides a retail tenancy on the ground floor of the mixed use building, to contribute to the economic growth of the area. The development provides high density residential development to meet the housing needs of the locality. The proposal contributes to the creation of an attractive and safe public domain, through the design of the building and opportunities for passive surveillance afforded by the design.

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 site is located with the Auburn town centre, which is undergoing a period of transition in terms of heights in line with the draft CLEP controls.

Specifically, the draft CLEP seeks to increase the maximum height of building control from 38m to 55m in the immediate vicinity of the site. This includes land within the same block as the site including 2-4 Station Road located directly to the north of the site, buildings fronting Rawson Road to the west, and the Auburn Sports Club fronting Northumberland Road to the west.

The proposal seeks a height of 55m which complies with the draft CLEP control applicable to the site.

Council have noted that the primary focus of the strategy and proposed planning controls is to better align built form controls to enable a broader range of building design options to be realised within the town centre. The Proposal is entirely consistent with this objective in that it seeks to deliver a built form that complies with the draft control and has been the subject of the Cumberland Design Excellence Panel process.

In addition, the proposal complies with the maximum floor space ratio control of 5:1 applicable to the site, ensuring that an appropriate density is achieved in line with the objectives of the development standards.

Planner's comment:

The development is consistent with the building height objectives of the Draft Cumberland Local Environmental Plan. The Draft Cumberland Local Environmental Plan is in the final stages of being finalised for gazettal and is considered to be imminent and certain.

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

Applicant's justification:

Notwithstanding the non-compliance with the building height control, development on the subject lot is consistent with the scale and intensity of the future character of the Auburn Town Centre in that it complies with the draft CLEP building height control. It is reasonable to assume that adjoining land can be developed in accordance with the new controls. Therefore, a compliant scheme on the subject lot would present as an inconsistency with the scale and intensity of the emerging future character of the town centre.

Strict compliance with the building height development standard could defeat or thwart the achievement of underlying objectives of the control, consequentially creating an adversely disproportionate impact to the community.

In the specific circumstances of the development, the Draft CLEP seeks to amend the height of building standard applicable to the subject site, and therefore is a statutory matter for consideration in the assessment of the DA. Relevant to the subject lot, the draft planning instrument increases the building height development standard to 55 metres (under clause 4.3). The proposed building height of 55 metres utilises the new height of building control of clause 4.3 of the Draft CLEP.

Through the drafting, public exhibition, and finalisation of the planning proposal, the Draft CLEP to increase the height of building development standard was maintained.

Planner's comment:

On 14 September 2021 a briefing was held with the SCCPP and the following was advised by the SCCPP:

The Panel considers the updated Cumberland LEP, regarding which gazettal is imminent, to be 'certain and imminent', therefore applicable to the determination of the application.

The Panel considers the current LEP to be effectively abandoned in procedural terms. As such, the Panel does not support a requirement for the applicant to withdraw and re-lodge the DA and would regard such action as unnecessary.

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:

There is an absence of environmental harm arising from the contravention and sufficient environmental planning grounds to justify contravening the building height development standard for the following reasons:

- The proposed development achieves a superior planning outcome compared to a 'compliant' scheme and better achieves the objectives of the height standard.
- The variation does not diminish the development potential of adjacent land for the reason that the proposal has been designed to be compliant with the draft planning controls that will apply.
- While there are visual and overshadowing impacts anticipated to adjoining land as a consequence of the proposal, it is considered that these impacts are reasonable in the context of the existing and proposed controls applying to the site and the wider Auburn Town Centre.
- The proposal complies with the maximum permitted FSR control that applies to the subject lot (5:1), demonstrating that, notwithstanding the non-compliance with the building height control, it is highly consistent with what could be reasonably expect in terms of site layout design and land use intensity of the site. The variation to the height of building control does not result in any additional floor area or intensity of development within the site compared to what is currently envisaged for the site.

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 land use zone in which the development is proposed to be carried out. The Draft Cumberland Local Environmental Plan is in the final stages of being finalised for gazettal and is considered to be imminent and certain.

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 10** 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 land use zoning of the site, i.e. B4 Mixed Use does not change under the Draft CLEP. The maximum FSR of 5:1 also does not change under the Draft CLEP. The current maximum building height of 38 metres under the ALEP 2010 increases under the Draft CLEP to 55 metres.

The Draft CLEP has been publicly exhibited and submitted to the Department of Planning and Environment for consideration. In this regard, the Draft CLEP has been considered in the assessment of this Application.

It is acknowledged that the proposed development has been designed to achieve the maximum 55 metre building height and a Clause 4.6 variation request to contravene

the current 38 metre maximum building height under the ALEP 2010 has been submitted with the Application.

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 12** to this Report.

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

Clause	Control	Proposed	Satisfactory
RESIDENTIAL FLAT BUILDINGS			
3.3 Deep soil zone	D1 A minimum of 30% of the site area shall be a deep soil zone.	<p>A deep soil provision (with minimum dimension of 3m) of 27.47sqm is provided in the western-most corner of the site, where there is an existing tree to be retained. This area of deep soil equates to 1.3% of the site area.</p> <p>Considering the retention of the existing Keighery Hotel building on the site and the requirement for a basement carpark for the development, the minimal deep soil provision across the site is considered acceptable on merit.</p> <p>The development has included the provision of landscape areas to the roof terrace which allow for the planting of medium sized trees in more substantial planter boxes, and a green roof over the refurbished outdoor gaming room.</p>	Yes

LOCAL CENTRES			
14.4 Laneways	<p>D1 Redevelopment within the Auburn Town Centre shall make provision for the creation of new laneways as shown in Figure 4.</p> <p>Laneway to traverse the subject site</p>	<p>The ADCP 2010 identifies the requirement for a laneway to traverse the subject site.</p> <p>There is an existing portion of public laneway off Northumberland Road (to the south-west of the subject site) which provides rear access to 63, 65, 67, 69, 71 and 73 Rawson Street.</p> <p>There are existing private ROW arrangements in place for the 53-55, 57-59 and 61 Rawson Street properties.</p> <p>Refer to Figures 6 and 7 below.</p> <p>The continuation of the existing public laneway through the 53-55, 57-59 and 61 Rawson Street properties (and the subject site), would serve to dissect these sites, impacting the future orderly development of these sites.</p> <p>Access for servicing of the properties to the west, i.e. 63, 65, 67, 69, 71 and 73 Rawson Street, 53-55, 57-59 and 61 Rawson Street can be achieved without the requirement for a laneway through the subject site.</p> <p>It is also acknowledged that the CDEP raised concerns in relation to the function and safety of the proposed public laneway design which formed part of the pre-lodgement</p>	Yes

		<p>rendition of the development.</p> <p>Based on discussions with Council's Strategic Planning and Engineering teams it has been resolved that the proposed laneway identified in Figure 4 of Section 14.4 (Laneways) of the Local Centres part of the ADCP 2010 is not required and no objection is raised by Council to a variation of this control as part of the proposed development.</p>	
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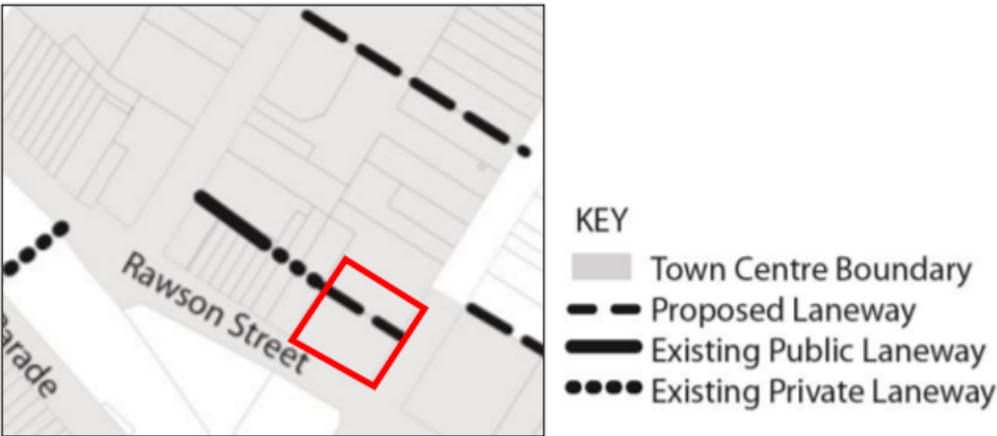


Figure 6 – Extract of Figure 4 of Section 14.4 (Laneways) of the Local Centres part of the ADCP 2010 – subject site outlined in red (Source: ADCP 2010)

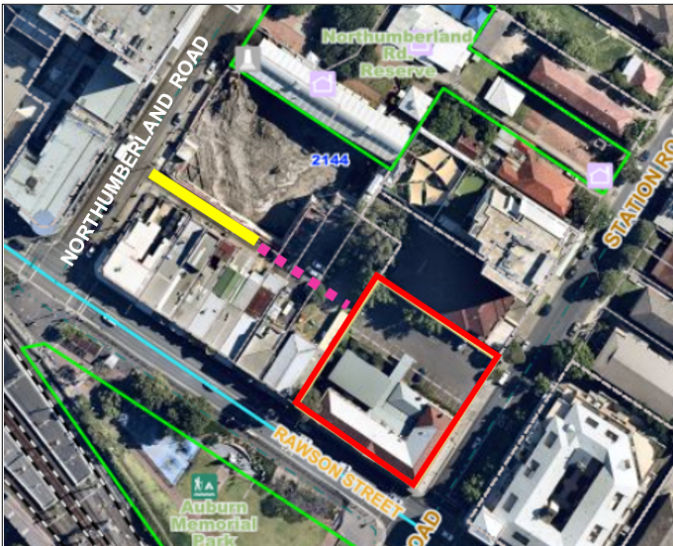


Figure 7 – Subject site outlined in red, solid yellow line denotes existing public laneway from Northumberland Road and dotted pink line denotes existing private right of way (Source: Intramaps, 2021)

The provisions of any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4 (EP&A Act s4.15(1)(a)(iia))

There is no 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))

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 Auburn DCP 2010, the proposal was publicly notified for a period of fourteen (14) days between 19 May 2021 and 2 June 2021. The notification generated one (1) submission in respect of the proposal, which did not disclose a political donation or gift. The issues raised in the public submission are summarised and commented on as follows:

Issue	Comment
<p><i>The Keighery Hotel is an extremely valuable local heritage site in a very prominent location, opposite the Railway Park. However, considering the level of deterioration allowed by the owner of the property, this lack of care should not be rewarded by approval to demolish areas that have been allowed to fall into disrepair.</i></p>	<p>The development application has been accompanied by a Statement of Heritage Impact which has been peer reviewed by an independent heritage consultant who has endorsed the SoHI by GBA Heritage, the concept designs prepared by Integrated Design Group and support the conclusions made by Urbis in the Historical Archaeological Impact Assessment and Heritage Setting – View Analysis reports for the listed heritage property - The Keighery Hotel at 51 Rawson Street, Auburn.</p> <p>Refer to the table at the External Referrals section of this Report for a detailed discussion.</p>

	It is also acknowledged that the proposed development seeks to refurbish existing areas of the Keighery Hotel that are in disrepair, as discussed in the SOHI.
<i>The height is excessive and inappropriate, being taller than any surrounding buildings. While this might meet town centre heights and floorspace ratios proposed in the Draft LEP, this has not been gazetted, and has not been at all popular in any local resident consultations. A maximum of 6 storeys would be more suitable.</i>	<p>The development has been designed to align with the Draft Cumberland Local Environmental Plan provision for a maximum building height of 55 metre for the subject site and adjoining sites. The development is compliant with the existing and proposed maximum floor space ratio provisions of the Auburn Local Environmental Plan 2010 and the Draft Cumberland Local Environmental Plan, respectively.</p> <p>The design of the development has been considered by the Cumberland Design Excellence Panel from the pre-lodgement stage through to the development application stage and is considered suitable for the site.</p>
<i>The bulk of the design is not elegant or sympathetic to the area, let alone the fine aesthetics of the Keighery Hotel. Currently the low profile of the hotel presents a gentle and stately atmosphere at this important entry point to Auburn.</i>	<p>The design of the development has been considered by the Cumberland Design Excellence Panel from the pre-lodgement stage through to the development application stage and is considered suitable for the site.</p> <p>The development application has been accompanied by a Statement of Heritage Impact which has been peer reviewed by an independent heritage consultant who has endorsed the SoHI by GBA Heritage, the concept designs prepared by Integrated Design Group and support the conclusions made by Urbis in the Historical Archaeological Impact Assessment and Heritage Setting – View Analysis reports for the listed heritage property - The Keighery Hotel at 51 Rawson Street, Auburn.</p>
<i>The proposed façade design has no subtlety, is clumsy and ugly, with the ‘giant checkerboard’ affect very domineering for the area. This bold style of architecture is only ‘in character’ with similar recent development trends, with cheap attempts to add interest to dreary designs which will become dated in due course.</i>	The design of the development has been considered by the Cumberland Design Excellence Panel from the pre-lodgement stage through to the development application stage and is considered suitable for the site.

<p><i>There is no attempt to reduce the impact of such a bulky design on its low-rise neighbours, by modulating the profile and reducing the area on upper levels.</i></p>	<p>The design of the development has been considered by the Cumberland Design Excellence Panel from the pre-lodgement stage through to the development application stage and is considered suitable for the site.</p>
<p><i>The 4 levels of basement parking required by 96 apartments could damage the foundations of the Keighery Hotel.</i></p>	<p>A condition of consent requiring the preparation of a Dilapidation Report has been recommended.</p>
<p><i>The shadow diagrams indicate the Railway Park would be almost completely shaded during the morning. The increase in high-rise apartments in the vicinity means this open space is in constant use by Auburn families, who would lose this amenity.</i></p>	<p>Shadow diagrams have been submitted with the development application which identify the existing overshadowing and overshadowing of the Auburn Memorial Park; generated by the proposed development.</p> <p>The shadow diagrams demonstrate that at 9am the development will increase the existing overshadowing to the eastern portion of the Auburn Memorial Park, towards the train line. This increase is considered minor give that the western portion of the park, which is currently not shadowed, maintains solar access. At 12pm the development results in a small portion of the north-eastern corner of the park being overshadowed. and at 4pm, the development does not result in any overshadowing of the park.</p> <p>Section 8.6 (Solar amenity) of the Local Centres part of the Auburn Development Control Plan 2010 requires that development proposals will not reduce sunlight to less than 3 hours between 9.00 am and 3.00 pm on 21 June for public open space. Between the hours of 12pm to 4pm, the existing solar access to the park is maintained, with the exception of minor overshadowing to a small portion of the north-eastern corner of the park which is overshadowed at 12pm.</p> <p>Having regard to the shadow diagrams and the overshadowing requirements at Section 8.6 (Solar amenity) of the Local Centres part of the Auburn Development Control Plan 2010, the development is considered to have a satisfactory overshadowing impact on the Auburn Memorial Park.</p>

<i>Railway Park contains another valued heritage item, the War Memorial monument. The traditional Dawn Ceremonies on ANZAC Day would be deprived of any dawn under this shadow.</i>	The War Memorial monument in the Auburn Memorial Park is not identified as a heritage item in Schedule 5 (Environmental heritage) of the Auburn Local Environmental Plan 2010 and is not identified as a proposed heritage item in the Draft Cumberland Local Environmental Plan.
<i>Auburn has already exceeded any targeted population increases, so there is no need for Cumberland Council to allow more residential development.</i>	There is no prohibition on development in response to population statistics.

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 would require the payment of contributions in accordance with Cumberland Local Infrastructure Contributions Plan 2020.

In accordance with the Contribution Plan a contribution is payable, pursuant to Section 7.11 of the EP&A Act, calculated on the breakdown of units as follows:

- 26 x 1 bedroom;
- 53 x 2 bedroom; and
- 17 x 3 bedroom.

A total contribution of \$1,450,762.00 would be payable prior to the issue of a Construction Certificate.

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

CONCLUSION

The proposed development is appropriately located within the B4 Mixed Use zone under the relevant provisions of the Auburn LEP 2010. The proposal is generally consistent with all statutory and non-statutory controls applying to the development. A Clause 4.6 request has been submitted to contravene the maximum 38 metre building height under the Auburn LEP 2010. Minor non-compliances with 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.

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

- 1. That the request to contravene the maximum 38 metre building height development standard, 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. DA2021/0132 for alterations and additions to the existing building (Keighery Hotel), demolition of select structures, and construction of a 15 storey mixed use building comprising 96 residential units, ground floor retail tenancy and basement car parking on land at 51 Rawson Street AUBURN NSW 2144 be approved subject to the conditions at Attachment 1.**
- 3. 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. Landscape Plans
4. Submission Received
5. Statement of Heritage Impact
6. Historical Archaeological Assessment
7. Visual Impact Statement
8. DEP Comments & Applicant's Justification
9. SEPP 65 ADG Assessment Table
10. ALEP 2010 Assessment Table
11. Clause 4.6 Variation Request
12. ADCP 2010 Assessment Table