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20.09.2022

Cumberland City Council
16 Memorial Avenue,
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Attention: **Harley Pearman**
Executive Planner

Development: **MOD2022/0211**
224-240 Pitt Street Merrylands. NSW 2160

Proposal: **Section 4.55(2) Modification of an approved Mixed Use development**

Subject: **Request for further information**

Dear Harley,

Please accept this letter in response to the recently received, 'Request for Further Information' letter received from Council dated 8 September 2022, for the above-mentioned development.

In this regard, our responses are as follows;

Council comments.

1. ***Justification for the height increase and variation***
   Justification for the height increase has been provided however it is limited in detail and refers mainly to the outcomes of several Court appeals. The Justification should be improved in detail and content and should be adequate to allow the Panel to make an informed decision as part of the determination of the application

Development Standard	As approved (Most recent)	Proposal	Compliance
Clause 4.3 Height For the area within zone B4 Mixed use - 54 metres. For the area within zone B6 Enterprise Corridor - 42 metres.	Block A (West tower) - 62.95 metres. Approved variation 8.95 metres or 16.57%. Block B - 45.65 metres. Approved variation 3.65 metres or 8.69%.	Block A - 71.05 metres. Block B - 49.95 metres.	No - Variation is 17.05 metres or 31.5% No - Variation is 7.95 metres or 18.92%.

A building height comparison sheet is provided and confirms the height increases to be as follows, note that the figures for the height in meters & percentages provided in the table above do not match the approved plans;

Block A (maximum LEP height - 54m)
- Most recent approval – 63.22m (variation 9.22m – 17.1%)
- Proposal – 70.37m (variation 16.37m – 30.31%)
- Variation between approved & proposed – 7.15m (11.3%)

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The variation in height to Block A is attributed to various design aspects to ensure compliance is achieved.

The make-up of the height variation relates to;

- Lifting the GF level to comply with the ***design flood level*** for the site (+0.45m)
- Increasing the retail GF and commercial L1 floor to floor levels to make allowances for ***structural transfer slabs*** and service zones to promote flexibility of use as per *ADG 4C ceiling heights* (+1.8m)
- Ensuring all residential floor to floor heights comply with the ***3.1m floor to floor*** as per ADG 4C ceiling heights (+1.9m across the tower)
- Correctly indicate the ***lift overrun***

Block B (maximum LEP height - 42m)

- Most recent approval – 43.40m (variation 1.4m – 3.33%)
- Proposal – 48.75m (variation 6.75m – 16.07%)
- Variation – 5.35m / 12.3%

The variation in height to Block B is attributed to various design aspects to ensure compliance is achieved.

The make-up of the height variation relates to;

- Lifting the GF level to comply with the ***design flood level*** for the site (+0.25m)
- Increasing the retail GF floor to floor levels to make allowances for **structural transfer slabs** and service zones to promote flexibility of use as per ADG 4C ceiling heights (+0.8m)
- Ensuring all residential floor to floor heights comply with the ***3.1m floor to floor*** as per ADG 4C ceiling heights (+1.5m across the tower)
- Correctly indicate the ***lift overrun***

It should be note that the most recent approved plans do not show any RL to the lift overrun. The measure of approved building height seems to have been taken to the roof parapet level and not the lift overrun.

2. ***Justification for the Section 4.55(2) Modification Application***

The applicant considers the application to be a Section 4.55(2) modification application however detailed content and reasons is lacking. The statement of effects only addresses the outcomes of several Court Appeals. It is requested that further justification be submitted for assessment that demonstrates in detail that the application satisfies the criteria as a Section 4.55(2) modification application.

Refer to project planners letter

3. ***Floor space ratio***

Further details addressing floor space ratio is required. In this regard, detailed information on the floor space ratio split for the B4 and the B6 zone is required to ensure that no increases are occurring within the respective zones. At the present time, the floor space ratio split between the zones cannot be calculated with certainty.
Furthermore, it would be beneficial to verify the floor space ratio of that part of the development shown in Area B (Tower Building A) under Clause 4.4(2F) of the Cumberland Local Environmental Plan 2021. In this regard, the floor space ratio cannot exceed 1.7:1 for

that part of the development used for residential accommodation or tourist and visitor accommodation.
It would prove useful to ascertain existing and the changed floor space ratio under Clause 4.4(2F).
If there are any changes that results in increases or a greater variation, then a detailed justification for the changes would be required for Panel consideration.

An amended FSR sheet has been prepared taking into consideration the GFA/FSR under the various zones of B6 & B4 and consideration of the 'Area B' under Clause 4.4(2F)

B4 zone
Total GFA – 20,001.17m2
Proposed FSR – 6.84:1

B6 zone
Total GFA – 12,688.31m2
Proposed FSR – 5.59:1

Clause 4.4(2F) - Area B
Total GFA – 14,338.46m2
Proposed FSR – 4.90:1

It should be noted that previous approvals did not address the split of the various FSRs across the various zones. Under approval 2015/2220/4, the approved total GFA was 33,696.9m2 and the proposed total GFA is 32,689.5m2 – a reduction of 1,007.40m2

Refer to amended GFA calculation sheet

4. ***Design of certain apartments***
There are 4 apartments within the development that do not have appropriate light and ventilation.
This could be an architectural drawing error or if not, an alteration to the affected apartments will be required. This affects 3 apartments on the ground floor of Building C and D and apartment numbered 216 on Level 02 within Building B.
It is identified that this could be a drafting error from the previous modification approved which has been carried across to the current application. Please review the light and ventilation of the affected apartments

It has been identified that a drafting error has occurred with respect to the above. All windows to the 3 off GF apartments in Block C & D, and apartment 216 on Level 2 of Block B have been reinstated.

5. ***Storage cages***
The number of storage cages within the basement car park has been reduced from 284 to 192. It is requested that the number of approved storage cages be reinstated. Condition 37 of the development consent requires the architectural plans to be amended such that storage areas within the basement levels are allocated to individual units identified as such on plan and demonstrating compliance with the Residential Flat Design Code (Now the Apartment Design Guide) in relation to minimum size of storage areas. Storage areas should comply with Part 4G2 of the Apartment Design Guide. Furthermore, there should be no loss of amenity resulting from the changes sought.

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Refer to attached storage cage study

6. ***Landscaping comments***
The submitted landscape plan should be updated and resubmitted. Current plans do not provide sufficient information for Councils Tree Management Team to be able to assess the landscape plan fairly and accurately.
The submitted plans should clearly outline the species and be marked on the plan with botanical names and amount of trees, shrubs, ground covers to be utilised.
The plans should also outline minimum soil depths for raised planter boxes.

Refer to amended landscape drawings

7. ***Design Excellence Panel comments and critique***
Cumberland Design Excellence Panel (the Panel) comments are provided to assist both the Applicant in improving the design quality of the proposal, and Cumberland City Council in its consideration of the Development Application (DA) when it is submitted.
The nine design quality principles provided in SEPP65 Apartment Design Guide (ADG) are generally used as a datum to guide the Panel's assessment, notwithstanding that SEPP65 may not directly apply to the application.
The Panel's focus is on design excellence and, primarily, reviews the amenity of the proposal for occupants as well as the quality of the proposal in the context and setting of its location as well as its visual and environmental impact on the place in which it is located. The absence of a comment related directly to any of the ADG principles does not, necessarily, imply that the Panel considers the particular matter has been satisfactorily addressed.

Noted

DEP comments.

1. ***Urban planning contextual analysis***
The proposal requires context drawings with urban and site analysis to help explain the 'big picture' urban town centre and environmental context, and the interface with the train station, commuter carpark, adjoining developments (height and built form relationships), the relationship with the broader open space network, urban connectivity across the precinct (particularly access to the station), flood mitigation (blue and green infrastructure) including the potential 'chain of parks' and waterways, and the shopping centre and retail patterns across the existing and developing urban area.

Noted, however, the modifications being sought rare limited to improvements in the basements, ground floor plane planning and overall aesthetics of the buildings. The approved building forms and sitting on site will be retained with minor changes to the floor plans which have been part of the previous 4 approvals under this DA, in which context studies would have been completed.

2. ***Development density - Floor Space Ratio (FSR)***
The subject modification proposes an FSR of 6.475:1. This represents a small reduction in GFA (92m2) across the whole site, when compared to the most recent approved modification (2015/220/5). However, as about half the site is zoned B4 Mixed Use with a maximum FSR of 6.5:1 and half zoned B6 Enterprise Corridor with a maximum FSR of 5.0:1, it is likely that the

proposed FSR is non-compliant with CLEP 2021.
The applicant is requested to provide detailed information on the FSR split for the B4 and the B6 zones, to ensure that no increases are occurring within the respective zones, to be able to confirm compliance with CLEP 2021. At the present time, the floor space ratio split between the zones cannot be calculated with certainty.

The issue of FSR break up has been addressed in Item 3 under Council comments

3. ***Building height and overshadowing***
The Panel is concerned about the significant increase in the height of Building A, being a proposed additional height of 8.1m, above the previous approved height (Mod 2015/220/5). The proposed height is also non-compliant in relation to the CLEP 2021 maximum permitted height in the B4 zone of 54m (an exceedance of 17.05m or 31.5%).
The Panel finds that this additional height is excessive, given the already high-density nature of the development, and doesn't support the argument that the additional floor-to-floor height provided in this proposed modification, to comply with ADG and NCC minimum standards, warrants such an exceedance of the previously approved maximum building height. The Panel supports the provision of roof gardens for communal use by the apartment residents however, does not support habitable accommodation above the previously approved maximum height limit.
The proposed increase in building height for the south part of Building B of 4.3m and for Building C of 3.4m is seen as acceptable, given the scale and nature of the overrun and the history of previous approvals.

The issue of building height has been addressed in Item 1 under Council comments.

4. ***Apartment planning and visual privacy***
Whilst the proposed building-to-building setbacks are previously approved, it is noted that there are multiple ADG non-compliances and the resulting impacts on resident privacy, amenity and quality of life is a disappointing outcome that may require consideration of secondary mitigation measures such as screening and other like measures.
Although the previous DA approval covers the typical floor layout of Building B, the length of access corridors and number of units served by lift cores is well above ADG guidelines, and the Panel considers this to be an unfortunate outcome

Comments are noted, however, there are no proposed changes to the floor plans which have been part of the previous 4 approvals under this DA.

5. ***Solar access and natural ventilation***
Whilst the proposal is ADG compliant regarding natural ventilation, at 69.97% of apartments, it is however ADG non-compliant in terms of solar and daylight access - as 18.7% of apartments receive no sunlight. No more than 15% can receive no sunlight to be compliant. As the non-compliance is
previously approved, there is no scope to make changes at this point, unfortunately impacting the amenity of future residents

Comments are noted, however, in this proposal, there are no major changes to the approved floor plans for this development other than the removal of the 2 off GF apartments to Building B and as such improve the solar access and natural ventilation calculations for the development.

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6. ***Landscape and ground floor cross site links***

There was little landscape design information provided of the inner courtyard and rooftop communal open spaces. Detailed landscape plans should be provided detailing the proposed hard and soft landscape treatments proposed and the provision of adequate soil depth and volume provision to ADG standards when planting on structures is proposed.

The Panel questioned the narrow and convoluted design of the proposed north-south ground level pedestrian through-site link and the associated pedestrian path linking east around the lifts and vehicular ramp to the basement carpark. Concerns are raised regarding the narrow ramps and the awkward and tight alignment, and potential issues related to pedestrian safety and CPTED compliance.

The landscape design of the Ground Floor Level interface with the surrounding public domain and streetscapes is lacking in the documentation provided. The interface of the ground floor level of the building and the proposed commercial activities should be provided to establish a suitable activated interface for pedestrians using the surrounding streets. Scope for this interface to be much improved could be considered with a split ground floor to commercial tenancies where access at-grade or slightly above would step up inside to provide for necessary overland flow flood mitigation and much improved street activation.

Refer to amended landscape drawings

7. ***Sustainability***

Details of the proposed passive environmental measures included to improve residential amenity and minimise energy consumption should be provided to the Panel for review. Provision of clear ESD principles, and project initiatives and targets (Green Star Rating) should be provided including PV solar panels and battery storage, ceiling fans as an alternative to A/C systems, EV car spaces and infrastructure for future EV charging in the basement car parking, all electric build (no gas), and scope for 100% renewable energy contract.

Comments are noted, however, consideration should be given to the previous 4 approvals. As a matter design and of improvement to the development, certain passive measures will be included such as;

Passive environmental

- adequate natural light provided to habitable rooms

Passive solar

- tinted glass
- tiled floors to living areas
- insulated roofs, walls and floors, and seals on windows and doors
- overhangs and blinds

Minimise mechanical ventilation

- Optimise natural cross ventilation
- natural ventilation to habitable rooms and as many non habitable rooms

Other initiatives

- PV solar panels for lighting of common areas and other house services
- electrical appliances
- energy efficient air-cooling units

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- rainwater tanks.

8. ***Bicycle and car parking***
Whilst the overall car parking spaces are compliant, the split between residential, commercial and visitor car parking spaces needs to be amended to comply with the relevant standards and rates

The carparking split has been amended to reflect the following;
- **Commercial** – 67 spaces
- **Residential** – 394 spaces
- **Visitor** – 73 spaces
- **total** – 534 spaces

9. ***Resident storage provision***
The number of storage cages provided within the basement has been reduced from 284 to 187. The proposal is required to comply with the Apartment Design Guide at Part 4G2 in relation to storage cages and storage space for each apartment.

Refer to attached storage cage study

Recommendation.

Building B rooftop stairwell to non trafficable area
There is a stairwell leading to the rooftop of building B that is acting as a 15th storey addition. The stairwell results in an unsatisfactory addition to the rooftop especially given that the roof area is non trafficable. It is unclear of the stairwell could be removed.

The stairwell leading to the non trafficable roof top of Building B has been deleted
Refer to amended plans

Conditions that require attention
Condition 2 attached to the consent addresses the approved stamped plans. It is identified that an amended set of stormwater plans have been submitted.
In the original set of Civil plans approved, several of the plan sheets related to roadworks. It is requested to confirm that the following sheets are still relevant or superseded by the newer plans:
- *Sheet DAC015 Typical Site Sections.*
- *Sheet DAC016 Typical Road Sections.*
- *Sheet DAC040 Road Longitudinal Sections.*
- *Sheet DAC050 Pavement Plan.*
- *Sheet DAC060 Signage and Line marking Plan.*
- *Sheet DAC070 Services and Utilities Co - Ordination Plan.*

All these are dated 18/3/2016 and prepared by AT and L

This will be addressed by the Civil engineer

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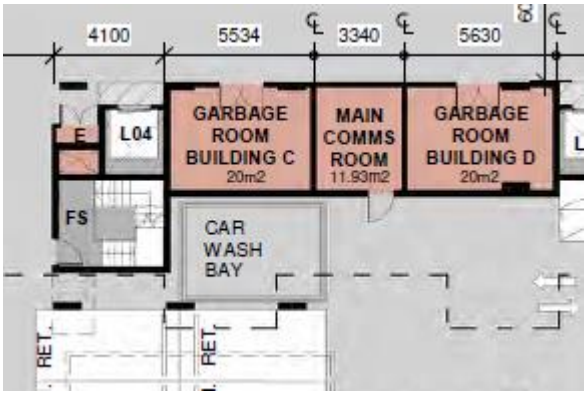
Condition 75 attached to the consent is one in which the Panel modified during the determination of the application on Wednesday 26 May 2016.
The condition requires a car wash bay to be provided to service the residents of the building.
The modified plans do not show any car wash bay being provided.
It is requested that a car wash bay be reinstated into the development to enable the condition to be complied with.
This is one condition that will be closely reviewed by the Panel and hence it is essential that it is complied with.
Council also has an updated condition covering car wash bays. It would be appropriate to advise in writing as to whether it needs to be modified so that it is consistent with the modified plans.

The plans that have been submitted and used for this assessment have proposed a car wash space. It is located on behind Garbage room of Building C + D.



Engineering issues

1. *The following engineer issues requires attention from Council engineers:*
   The flood model does not appear to have calibrated appropriately with the latest flood information obtained recently. The model must be recalibrated with the recently obtained flood information and the prediction should be based on the model. The flood information and the map shown on the figure 4 of the report is outdated. It is understood that the applicant has been provided with the latest flood information on 26/06/2022 and model should have been calibrated against the 1%AEP flood levels as per the information.

2. *Electronic copy of the models should accompany the flood report.*

3. *The assessment of the flood report is pending submission of the correctly calibrated model and the results for the pre- and post- development scenarios.*

4. *It is noted that the results (maps) for the post development scenario are included in the report. However, for better appreciation of the flooding situation the results for pre-development scenarios should also be included.*

5. *The output results such as water surface levels, ground levels, flood depth, velocity, vxd product in tabular forms are for 5%, AEP, 1%AEP and PMF for pre-development and poste development scenarios for the following locations (refer to the diagram) in addition to that shown on the figure 11 of the Food report, are required for better appreciation of the flooding impacts of the development in the surrounding area.*

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6. *The finished floor level at the ground floor must be 500 mm above the associated 1%AEP flood level. The assessment of satisfactory provision of the finished floor level is dependent on the amended floor report and the model results.*

   As the driveway slopes down into the basement, in order to prevent the flood water spilling into the basement, the access driveway must rise up from the kerb & gutter with a crest across the full width of the driveway/ ramp at the property boundary or within the site that must remain at least 500mm above the associates adjacent flood level during 1%AEP even

   This entire section will be addressed by both the Flood and Civil engineer

Stormwater Management

7. *The OSD system design should be based on the tailwater level (flood level) at the point of disposal of the site stormwater. As outlined above, the flood level is subject to the results of the amendment of the flood model with the re-calibration of the flood model to the council's latest flood information advice, the On-Site Detention (OSD) system design should be consistent with the revised flood level.*

8. *Provision of floodgate to prevent floodwater from overflowing into the basement is not supported. This will result in vehicular access issue among other issues.*

9. *The Water sensitive Urban Design (WSUD) measure must be designed to achieve the pollutant removal targe as outline in the Section 2.5/2.7 of Cumberland DCP 2021 Part G4 including the parameters outlined in the Table 5. The target provided on the report Stormwater Management Plan appears to be inconsistent.*
10. *A MUSIC model with the input data and output results must be provided supporting the achievement of the targeted removal of the pollutants outlined in the Table 5.*

11. *The pipeline arrangement indicates that initial runoff with high concentration of pollutants is being mixed with the subsequent flow which will escape in the form of overflow from the filtration chamber into the OSD system.*

    In order the filtration system to function efficiently and effectively the following arrangement should be made
    a. *Provision of high-flow bypass chamber to separate the initial flow equivalent to 1:3 month's flow that is high in concentration of pollutants and catches most of the pollutants and directs it to filtration system.*
    b. *The High-flow bypass chamber shall be sized to be not larger than 0.9m x 0.9m to work it efficiently by separating all initial flow (also termed as first flush) which is equivalent of 1:3 month's flow that catches high concentration the pollutants.*
    c. *Any flow exceeding this flow rate which is fairly clean and contains very diluted strength of pollutants are to be directed into the rainwater tank/ OSD system.*
    d. *The OSD to be designed taking account of the outflow from the filtration system that is unable to be redirected into the OSD system so that the total outflow from the site remains within the permissible limit.*
    e. *The filtration chamber capacity must be sufficient to withhold the total volume of the polluted water (first flush) that is yet to be treated and that must not be mixed up with the subsequent flow that is fairly clean and directed into the rainwater tank/ OSD system.*

12. *The design of the OSD system and WSUD system are interdependent and hence will be assessed upon the receipt of amended plan and the comments will be provided accordingly.*

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This entire section will be addressed by both the Flood and Civil engineer

Vehicle manoeuvring, parking

13. *The commercial car space requires 62 spaces. The provision of 88 spaces results in 26 spaces being in excess.*

    The carparking split has been amended to reflect the following;
    - **Commercial** – 67 spaces

14. *The residential parking requires 303 spaces. However, the plan shown provision of 395 spaces thus exceeding 91 spaces whereas the visitor's car space requires 73 spaces and there is provision only 51 spaces thus resulting in 22 spaces short fall. The shortfall must be eliminated by converting the excess residential or commercial or a combination of both groups of the car spaces into visitor's spaces.*

    The carparking split has been amended to reflect the following;
    - **Commercial** – 67 spaces
    - **Residential** – 394 spaces
    - **Visitor** – 73 spaces
    - **total** – 534 spaces

15. *The car spaces must be dimensioned appropriately.*

    The car spaces have all been dimensioned accordingly

16. *Each of the care spaces are to be appropriately numbered according to the user group of the space.*

    All car spaces have been numbered accordingly and have been identified by user group

17. *The summary of car park provision based on the user group on each basement level must be shown on each basement level. It is not convenient to count each of the parking space for each group and summarised accordingly.*

    The plans have been updated to show the summary of the car parking provisions relative to each basement level

18. *The traffic report indicates the Level of services (LOS), and the degree of saturation (DOS) are at the worst. The proposed development will further aggravate the degrading situation. Appropriate remedial measures must eb provided to alleviate the worsening situation.*

    This will be addressed by the Traffic engineer

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19. *The drawing showing the swept path diagram must be in the standard reduction scale of 1:00 or 1:200 and the reduction scale and scale bar must be shown on each of the drawing for measurement calibration.*

    This will be addressed by the Traffic engineer

20. *The driveway must be at least 6m away from the tangent point of kerb return.*

    This will be addressed by the Traffic engineer

21. *The long-section profile of the access driveway and ramp from the centre of the road to the basement level car parks through the centreline of the driveway must be provided showing the sectional length, gradient, existing ground levels and finished surface levels, headroom clearance at the critical locations such as at change of gradient or surface profiles, at the start and end of the bends etc., and comply with the requirement as per As2890.1-2004 and council policy/guidelines.*
    The long- sections must include the sections of the ramp from one level into another level

    This will be addressed by the Traffic engineer

22. *As the driveway slopes down away from the street towards the basement, the access driveway must rise up from the kerb & gutter with a crest the across the full width of the driveway on or within the boundary to prevent the street stormwater spilling into the property through the driveway. The crest must be at least 100mm higher than the associated top of the*

    This will be addressed by the Traffic engineer

23. *At almost all the bends/ turn the line of sight are being obstructed.*

24. *Swept path clearance diagram must be provided demonstration that the manoeuvring vehicle does not overrun into another car space, or structures, the swept path of another vehicle in opposite direction. The swept path clearance diagrams for the following critical locations are required.*
    a. *To and from the street to the site and up to the basement while another vehicle in opposite direction.*

    b. *From one level of basement into another level of basement while another vehicle in opposite direction.*

    c. *Entry and exit from car space at the critical location of the car spaces.*
        i. *At the beginning and end of parking rows at the parking area of basement level (car space must be numbered appropriately for clarity in referencing).*

        ii. *At the beginning and end of parking rows on basement level 2, 3 and 4*

    c. *At all the bends/ turn within circulation aisles at each level of the basement.*

    d. *Vehicle U-turning at the end of aisle. Provision of a vehicle turning area is required.*

    This entire item will be addressed by the Traffic engineer

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25. The following issues were noted

a. The doors adjacent to the circulation and parking aisle must not open outward. It rather must open inward to prevent conflict with the oncoming traffic.

Noted

b. The swept path is incomplete and is likely to overrun into the path of another vehicle in opposite direction indicating the aisle width is insufficient.

This will be addressed by the Traffic engineer

Yours sincerely,

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Jacob Yammine
(B Arch – UNSW) (JP)

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