

TO: Sydney Central City Planning Panel

SUBJECT: 224 - 240 Pitt Street Merrylands.

APPLICATION No: MOD2022/0211 (PPSSCC-377).

Application accepted	Thursday 7 July 2022.
Applicant	Merrylands 88 Development Pty Ltd.
Owner	Merrylands 88 Development Pty Ltd.
Application No.	MOD2022/0211.
Description of Land	224-240 Pitt Street Merrylands being Lot 1 in DP 1217412.
Proposed Development	Section 4.55(2) Modification application to an approved mixed use development including the alteration of floor levels, height of the buildings, revised apartment layout, reduction in the number of apartments from 365 to 363, provision of additional commercial floor space, revised plant and service areas, revised basement layout and alterations to facade treatment and communal open space areas.
Site Area	5,189.3 Square metres.
Zoning	Part B4 Mixed Use zone. Part B6 Enterprise Corridor zone.
Disclosure of political donations and gifts	Nil disclosure.
Heritage	The site is not a Heritage item and is not located in a Heritage Conservation Area.
Principal Development Standards	<p>Floor Space Ratio (CLEP 2021)</p> <p>Permissible For that area within zone B4 Mixed use - 6.5:1. For that area within zone B6 Enterprise Corridor - 5.0:1.</p> <p><u>Approved</u></p> <p>For the B4 Mixed Use zone - 7.15:1. For the B6 Mixed Use zone - 5.64:1.</p> <p><u>Proposed</u> For the B4 Mixed use zone - 6.84:1. For the B6 Enterprise Corridor zone - 5.59:1.</p> <p>Height of Buildings</p> <p>Permissible For that area within zone B4 Mixed use - 54 metres. For that area within zone B6 Enterprise Corridor - 42 metres.</p> <p><u>Approved</u></p>

	<p>For that area within zone B4 Mixed Use - 62.95 metres. For that area within zone B6 Enterprise Corridor - 45.65 metres.</p> <p><u>Proposed</u> For that area within zone B4 Mixed use - 71.05 metres. For that area within zone B6 Enterprise Corridor - 47.85 metres.</p>
Issues	<p>Floor space ratio. Height.</p>

SUMMARY

1. Modification Application 2022/0211 was accepted on Thursday 7 July 2022 being a Section 4.55(2) modification to an approved mixed use development including the alteration of floor levels, height of the building, revised apartment layout, reduction in the number of apartments from 365 to 363, provision of additional commercial floor space, revised plant and service areas, revised basement layout and alterations to facade treatment and communal open space areas.
2. The application was publicly notified to occupants and owners of the adjoining properties for a period of 21 days between Thursday 14 July and Thursday 4 August 2022. In response, Council received one submission to the modification application.
3. The variations are as follows:

Control	Required	Most recent approval	Provided	% variation
<p>Clause 4.3 - Height of Buildings.</p> <p><i>Cumberland Local Environmental Plan 2021.</i></p>	<p>For that area within zone B4 Mixed use - 54 metres.</p> <p>For that area within zone B6 Enterprise Corridor - 42 metres.</p>	<p>For that area within zone B4 - 62.95 metres.</p> <p>For that area within zone B6 - 45.65 metres.</p>	<p>Proposed 71.05 metres (Tower A).</p> <p>Proposed 47.85 metres (Tower B).</p>	<p>31.5%.</p> <p>13.92%.</p>
<p>Part 3.3 Building Envelope.</p> <p>Subpart 3.3.1 (Site amalgamation and site frontage).</p>	<p>20 storeys.</p>	<p>20 storeys.</p>	<p>Tower A is 21 storeys or 71.05 metres in height.</p>	<p>31.5%.</p>

<p>Similar requirements at Part 3.3.2 - Building and Ceiling Height.</p> <p>Part 3.8.3 - Site and Building Design (Control C3).</p> <p><i>Cumberland Development Control Plan 2021.</i></p>				
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4. The modification application is referred to the Panel as the proposal is an apartment building for which State Environmental Planning Policy 65 “Design Quality of Residential Apartment Development” applies and the modification contravenes a development standard by more than 10%.
5. The application is recommended for approval subject to conditions as recommended in the Council’s assessment report.

REPORT

SUBJECT SITE AND SURROUNDING AREA

The site is legally described as Lot 1 in DP 1217412 which is generally known as 224-240 Pitt Street Merrylands.

The subject site is located on the northern side of Terminal Place, the southern side of Gladstone Street and the eastern side of Pitt Street. Land adjoining the site to the immediate east and south east will become a new future road known as McLeod Road. The modified development does not impact upon the road reservation acquisition area as shown on Council's mapping.

The Stockland Mall shopping centre is situated to the west and located on the western side of Pitt Street. The Merrylands Railway Station is situated to the south.

The site occupies an area 5,189.3 square metres and is now subject to building works and earthworks. The site inspection of Thursday 14 July 2022 has identified significant excavation and earthworks in progress with the first building works being commenced.

The site, the subject of the modification application is situated within an area that is undergoing rapid transition with new mid rise developments and apartment buildings being constructed especially within the Neil Street precinct to the north.

The site is shown below edged in yellow.



As shown on the zoning map below, the site exhibits a split zone as follows:

- Part B4 Mixed Use zone (Western side for approximately half the site).
- Part B6 Enterprise Corridor zone (Eastern half of the site).



A site inspection of Thursday 14 July 2022 demonstrates that excavation work for the project has commenced including some preliminary building work as shown in the photos below.



DESCRIPTION OF THE DEVELOPMENT

Modification application 2022/0211 is proposing various modifications to an approved mixed use development including the alteration of floor levels, height of the buildings, a revised apartment layout, reduction in the number of apartments from 365 to 363, provision of additional commercial floor space, revised plant and service areas, revised basement layout and alterations to facade treatment and communal open space areas. In particular, the following changes are proposed:

- Amendments to each basement level in which car parking spaces, access aisles and storage cages are altered in location.
- Alterations to the ground floor retail tenancies and an increase in the retail floor space of the development.
- Modification to internal apartments and balconies.
- A reduction of two apartments within the development which will result in the development having 363 apartments instead of 365 apartments. The reduction occurs within the ground floor of Building B.
- Increase the height of the development.
- Reinstate the common open space on the rooftop of Building A which was approved

under the original consent but removed under Modification consent 2015/220/4.

- Increase the floor to floor heights of each floor from 3 metres to 3.1 metres.
- Amend the design of the façade of the building and building materials.

A synopsis of the proposed changes are outlined in the tables below comparing the original approval to the most recent modification issued and the most recent application lodged which is the subject of the report.

Block	Original approval by the Panel DA2015/220/1	Approved development Modification M2015/220/4 and 2015/220/5	Modified development MOD2022/0211	Comments
A West	20 storeys. Ground floor commercial. First floor commercial. 17 floors above as residential. Common area and access on the top floor.	20 storeys. Ground floor commercial. First floor commercial. 18 floors above as residential.	21 storeys. Ground floor commercial. First floor commercial. 18 floors above as residential. Access, toilet and common area on roof.	A common area is reinstated to the rooftop area above the 20 storey building.
B South and east	Part 11 storeys (Facing east). Part 14 storeys (Facing south). Ground floor commercial and residential. All floors above residential.	Part 11 storeys (Facing east). Part 14 storeys (Facing south). Ground floor commercial and residential. All floors above residential. Common area on the roof of the building facing east being the 11 th storey.	Part 11 storeys (Facing east). Part 14 storeys (Facing south). Ground floor commercial. All floors above residential. Common area on the roof of the building facing east being the 11 th storey.	Rooftop common area amended.
C and D North	5 storeys 1 Ground floor shop and residential. Rooftop common area.	5 storeys 1 Ground floor shop and residential. Rooftop common area.	5 storeys 1 Ground floor shop and residential. Rooftop common area.	Common area on roof is modified.

The main changes to the development being the numerical aspects of the development are shown in the table below.

Feature	Original Panel approval DA2015/220/1	Most recent modification M2015/220/5	Modified development MOD2022/0211	Change from most recent consent
Height in metres.	Block A (West tower) - 63.2 metres. Block B - 44.9 metres. Block C - 19.2 metres.	Block A (West tower) - 62.95 metres. Block B - 45.65 metres. Block C - 16.95 metres.	Block A (West tower) - 71.05 metres. Block B - 47.85 metres. Block C - 19.2 metres.	Increase of 8.1 metres. Increase of 2.2 metres. Increase of 3.4 metres.
Floor space ratio	32,701 square metres or 6.33:1.	33,695.35 square metres or 6.49:1. With floor space ratio split: <u>Previous</u> B4 zone - 7.15:1. B6 zone - 5.64:1.	Across the entire site assuming no floor space ratio split - 32,689.5 square metres or 6.299:1. With floor space ratio split: <u>Proposed</u> B4 zone 6.84:1. B6 zone 5.59:1.	Across the whole site - a reduction of 1,007 square metres is observed. Floor space ratio reduced.
Number of apartments	354 apartments comprising: Studio/1 bedroom - 105. 2 bedroom - 223. 3 bedroom -26.	365 apartments comprising: Studio/1 bedroom - 115. 2 bedroom - 219. 3 bedroom - 31.	363 apartments comprising: Studio/1 bedroom - 132. 2 bedroom - 200. 3 bedroom - 31.	Decrease of 2 apartments and unit mix altered.
Size of retail and commercial floor area	1,328 square metres (Retail). First floor commercial suite of Building A - 1,000 square metres. Total 2,328 square metres.	1,487 square metres (Retail). First floor commercial suite of Building A - 1,155 square metres. Total 2,642 square metres.	1,845 square metres (Retail). First floor commercial suite of Building A - 1,090.96 square metres. Total 2,936 square metres.	Increase of 358 square metres. Decrease of 64.04 square metres. Increase of 294 square metres.

Car parking	460 spaces: Residential - 339 spaces. Visitor - 71 spaces. Commercial / retail - 50 spaces.	536 spaces: Residential - 408 spaces. Visitor - 74 spaces. Commercial / retail - 54 spaces.	534 spaces: Residential - 394 spaces. Visitor - 73 spaces. Commercial / retail - 67 spaces.	Decrease of 2 spaces. Decrease of 14 spaces. Decrease of 1 space. Increase of 13 spaces.
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Changes to the conditions

As a result of the changes made to the development, the following conditions currently attached to the development consent and associated modification applications are required to be modified or deleted:

- Condition 2, 15a, 38 and 203 to be modified if approved.
- Condition 40A to be deleted if approved.

HISTORY

Development application 2015/220/1 was approved by the Sydney West Joint Regional Planning Panel on Wednesday 25 May 2016 for the demolition of existing structures and construction of a mixed use development containing 3 separate towers ranging in height of between 4 and 19 storeys comprising 355 apartments over 5 levels of basement parking accommodating 460 car parking spaces.

On Thursday 2 February 2017, Council under delegated authority approved a Section 4.55(1A) modification application number M2015/220/2 for various changes to the development including:

- Reconfigure the approved layout and increase the number of apartments by 3 to 358.
- Increase the commercial floor space from 2,367 square metres to 2,642 square metres being an increase of 275 square metres.
- A reduction of 1 basement level from 5 levels to 4 levels.
- An increase in the number of car parking spaces from 460 to 534.

On Tuesday 14 November 2017, Council approved a Section 4.55(1A) modification application number M2015/220/4 for alterations to the development including:

- Removal of the rooftop common open space area on Building A and reducing the overall communal open space by 787 square metres.
- Construction of an additional residential level on Building A to accommodate 7 additional apartments in lieu of the communal open space. This resulted in a 20 storey building comprising of 2 commercial floors and 18 storeys of apartments above.
- Increased the number of apartments from 358 to 365.

On Wednesday 17 April 2019, Council under delegated authority approved a Section 4.55(1A) modification application number M2015/220/5 for further changes to the development including:

- Modify the layout of the ground floor retail tenancies.
- Various internal and external modifications to apartments.
- Modify the services within the development.

Modification Application MOD2022/0211

The latest modification application was accepted by Council for assessment and determination on Thursday 7 July 2022. In addition:

- The application was presented to the Sydney Central City Planning Panel as a kick off briefing on Tuesday 2 August 2022.
- The modification application was presented to the Design Excellence Panel for discussion on Wednesday 24 August 2022.
- The applicant was notified of all the issues raised on Thursday 8 September 2022.
- A detailed submission was made to Council on Wednesday 28 September 2022.

APPLICANTS SUPPORTING STATEMENT

The applicant has provided a Statement of Environmental Effects prepared by “Think Planners” which was received by Council as part of the modification application submission.

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 modification application was referred to Council’s Development Engineer for comment who has advised that the modified development is generally satisfactory subject to conditions.

Building Surveyor

The modification application was referred to Council’s Building Surveyor for comment who has advised that the modified development is supported subject to conditions.

Environment and Health

The modification application was referred to Council’s Environment and Health Officer for comment who has advised that the modification application is satisfactory subject to conditions. An additional condition is required addressing noise and acoustics including the need for an updated acoustic report which reflects the modifications made.

Waste Management

The development application was referred to Council’s Waste Management Officer for comment who has advised that the modified development is satisfactory.

Senior Tree Management Officer

The modification application was referred to Council's Tree Management Officer for comment in relation to site landscaping and the landscape treatment of the public domain surrounding the site. The modification application is satisfactory subject to conditions.

EXTERNAL REFERRALS

Transport for New South Wales (Roads and Maritime Services)

As per correspondence of Wednesday 27 July 2022, it is advised that there is no change to the approved access arrangement or an increase to operations on site. There is no objection to the changes made as the changes are unlikely to have significant impact on the State Road network. No additional conditions are recommended for any consent issued.

Transport for New South Wales (Sydney Trains)

As per correspondence dated Thursday 3 August 2022, concurrence is granted subject to Council retaining the existing Sydney Trains conditions from the original development consent and imposing an additional condition addressing glare and reflectivity impacts from the materials proposed for the development onto the rail corridor.

Endeavour Energy

As per correspondence of Friday 29 July 2022, the modified application is supported subject to conditions. It is identified that the original development consent imposed all the relevant Endeavour Energy Conditions as recommended.

Sydney Water Corporation

As per advice of Monday 26 August 2022, no objections are raised. General advice is provided in relation to water supply needs for the modified development. It is appropriate to include the correspondence into any consent issued.

Design Excellence Panel

It is advised that at the time of the determination of the original development application, the development did not require referral to the Panel. Additionally, Council records do not show any previous involvement by the Design Excellence Panel. The referral requirements to the Panel for such developments commenced during April 2019.

The modification application was first reported to the Design Excellence Panel on Wednesday 24 August 2022 for discussion. This occurred because the modified building exceeded a height of 25 metres. The Cumberland Design Excellence Panel did not support the modified development. The Panel's comments are attached to the assessment report at Appendix E for Panel consideration.

Following from the comments provided by the Panel, the applicant has provided a response to each matter raised as demonstrated below. The applicant's response is also attached as Appendix F for Panel consideration.

Panels concern

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.

Applicants response

The modifications being sought are limited to improvements within the basements, the ground floor plane planning and overall aesthetics of the buildings. The approved building forms will be retained with minor changes to the floor plans which have been part of the previous 4 approvals in which context studies would have been completed.

Planning comment

The modification application does not change the approved building form. As shown within the assessment report, there is minor a reduction in the intensity of the development which is supported.

Panels concern

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.

Applicants response

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

B4 zone

Total GFA - 20,001.17 square metres.

Proposed FSR - 6.84:1.

B6 zone

Total GFA - 12,688.31 square metres.

Proposed FSR - 5.59:1.

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 gross floor area was 33,696.9 square metres and the proposed total GFA is 32,689.5 square metres - a reduction of 1,007 square metres.

Planning comment

At the time of the initial assessment, the floor space ratio could not be calculated with certainty and thus the figures quoted were based on the information available. A detailed assessment has now been undertaken and it is identified that the overall floor space ratio has been reduced as per the applicant's statement.

Panels concern

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 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.

Applicants response

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 ground floor level to comply with the design flood level for the site (+0.45m).
- Increasing the retail ground level and commercial L1 floor to floor levels to make allowances for the 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.

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.

Planning comment

Council staff has reviewed the height increase per floor level and it is identified that much of the increase is occurring through habitable floor areas. The increase through the habitable floor areas are:

- Tower Building A - 3.6 metres - This comprises an increase in the floor heights of 0.9 per commercial floors (2 floors resulting in 1.8m) and 1.8 metres for the internal apartments above.
- Tower Building B - 2.15 metres being the highest part of the building - This comprises an increase in the floor heights of 0.95 metre for the commercial floor and for the apartments above.

While the applicant has justified the height increases and notes that there is merit to support the change, it is Council's assessment that there is no planning or strategic merit to support the height increase attributed to the habitable floor areas.

Therefore, it is recommended that a condition of consent be imposed in this regard as below.

This action would result in a reduction in the height of Building A by at least 3.6 metres and a reduction in the height of Building B by at least 2.15 metres which in turn will reduce the variation of the height of both Towers A and B and reduce shadow impacts created by the development.

Panels concern

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.

Applicants response

The 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.

Planning comment

Various changes are being made to apartments across the development but there are no changes to street setbacks or setbacks between buildings. All the approved street and building setbacks are retained. The number of apartments accessed off a single corridor have not been altered.

Panels concern

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.

Applicants response

There are no major changes to the approved floor plans for this development other than the removal of the 2 ground floor apartments to Building B and as such, this improves the solar access and natural ventilation calculations for the development.

Planning comment

The removal of the two ground floor apartments of Building B facing north improves amenity across Building B. There is no reduction of residential amenity across the development.

Panels concern

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.

Applicants response

Modified landscape plans have been submitted addressing landscaping matters.

Planning comments

The internal courtyard across the ground floor is approved for which no change is proposed. The internal paths and landscaped areas are also approved. The landscape plans are supported by Council's Tree Management Officer.

The landscaping of the central courtyard area was last altered under modification application 2015/220/2. A comparison of the courtyard plans approved within that application and the most recent application shows the following alterations:

- There is a reduction in the amount of planter boxes being used and the pedestrian pathways through the area is more open and visible to apartments and commercial outlets. This in turn improves visibility and reduces hidden areas within the courtyard area.
- North and south and east and west linkages are improved which in turn improves the connectivity between ground floor areas and view lines towards doorways and access points. Landscaping is modified to improve view lines.

- There are now two ground floor commercial tenancies provided with improved access to the central courtyard areas.

Generally, the development retains the approved landscaping of the perimeter of the building except for minor changes to account for changes made to the building.

Panels concern

6 - 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.

Applicants response

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 and energy efficient air-cooling units.

Planning comment

In addition to the applicants statement above, an updated BASIX Certificate and NatHERS Certificate addresses sustainability matters for the development and assessed as being satisfactory.

PLANNING COMMENTS

Section 4.55(2):

Requirement	Comments
Council is satisfied that the development to which the consent as modified relates is substantially the same development as the	The applicant has provided to Council a detailed explanation as to why the

<p>development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and</p>	<p>development is substantially the same. As a summary:</p> <ul style="list-style-type: none"> • A large scale mixed use development is retained across 4 buildings. • The built form footprint including setbacks is retained as approved. • The change in the number of apartments is a reduction of 2 units or 0.55%. • The reduction of floor space ratio is 2.98% which is relatively minor. • The reduction of 2 car parking spaces is minor but there is still adequate car parking to support the development. • The vehicle access points to the development are not changing. • The number of residential storeys is not increasing. The increase in height is related to floor to floor heights and lift overruns. • The general arrangement of each level is retained. • The form, bulk and scale of the development remains largely unchanged. <p><u>Planning comments</u></p> <p>Given the above, it is considered that the principal and essential features of the original approval are maintained. For these reasons the modification is qualitative and quantitatively substantially the same development as approved.</p>
<p>Council has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being</p>	<p>The following Government Departments have been notified:</p> <ul style="list-style-type: none"> • Transport for New South Wales (Roads and Maritime Services). • Transport for New South Wales (Sydney Trains). • Endeavour Energy. • Sydney Water Corporation.

<p>consulted, objected to the modification of that consent, and</p>	<p>As previously identified, the modified development is supported subject to conditions.</p>
<p>Council has notified the application in accordance with:</p> <ul style="list-style-type: none"> (i) the regulations, if the regulations so require, or (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and 	<p>The modification application has been notified to occupants and owners of the adjoining properties for a period of Twenty one (21) days between Thursday 14 July and Thursday 4 August 2022. In response, Council received one (1) submission to the modified development.</p> <p>The submission is addressed below under the heading “Submissions made in accordance with the Act or Regulation (EP&A Act s4.15 (1)(d))”.</p>
<p>Council has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.</p>	<p>The submission received has been considered and addressed below under the heading “Submissions made in accordance with the Act or Regulation (EP&A Act s4.15 (1)(d))”.</p>
<p>Relevant matters referred to in Section 4.15(1) of the act have been taken into consideration.</p>	<p>The proposed modification is not contrary to the public interest and the likely environmental impacts of the development as modified are considered acceptable.</p>
<p>Council has considered the reasons given by the consent authority for the grant of the consent that is sought to be modified.</p>	<p>The following reasons provided by the Sydney West Joint Regional Planning Panel have been considered as part of the assessment process:</p> <p><i>1 - The proposal will add to the future supply and choice of housing within the Central Western Metropolitan Subregion and Cumberland local government area in a location with ready access to metropolitan transport services available from Merrylands Railway Station and the amenities and services available within Merrylands Town Centre. The proposed development will also contribute further commercial capacity and social vitality to the Merrylands Town Centre.</i></p> <p><u>Comment:</u> There is no change to the development that would result in a change to the reason stated above.</p> <p><i>2 - The panel has considered the applicant’s request to vary the development standards contained in Clause 4.3 (Height of Buildings) and Clause 4.4(2b) (Floor Space Ratio) of the Holroyd LEP 2013 and</i></p>

considers that compliance with these standards is unreasonable and unnecessary in the circumstances of this case as the variations while redistributing the prescribed height and FSR controls over the total site subject of the application do not increase the total Gross Floor Area otherwise achievable on this site and results in a preferred urban design solution which is consistent with and well integrated with the scale of buildings existing within and planned for this locality. It is considered the development remains consistent with the objectives of the standards and the applicable B4 Mixed Use and R4 High Density Residential zoning of the subject site.

Comment - It is identified that the planning controls for the site have changed but the concept and finished outcomes have remained the same. An integrated development for the whole site is retained within an area adjacent to services offered by the Merrylands Town Centre. The feature tower (Tower Building A) is retained at the same location. Street setbacks, building footprints are retained as per the original approval.

3 - The proposed development adequately satisfies the relevant State Environmental Planning Policies including SEPP 65 Design Quality of Residential Apartment Development and its associated Residential Flat Design Code, SEPP 55 Remediation of Land, SEPP (Infrastructure) 2007.

Comment

It is considered that the modified development adequately addresses the relevant State Policies including the Apartment Design Guide.

4 - The proposal adequately satisfies the provisions and objectives of the Holroyd LEP 2013 and the Holroyd DCP 2013. In this regard, the Panel notes certain departures from the provisions of the DCP but considers these are acceptable given

	<p><i>the urban design outcomes achieved in this proposal.</i></p> <p><u>Comment</u></p> <p>Notwithstanding the variation to the height, the objectives of the Cumberland Local Environmental Plan 2021 are complied with. It is also identified that the development still achieves a high degree of compliance with the local planning controls contained within the Cumberland Development Control Plan.</p> <p>The floor space ratio of the development is reduced by 2.9% (1,007 square metres) and supported.</p> <p><i>5 - The proposed development subject to the conditions imposed will have no unacceptable adverse impacts on the natural or built elements including the local drainage system or the operation of the local road system.</i></p> <p><u>Comment</u></p> <p>The modified development is not identified to have adverse impact to the locality on the natural and built elements of the Merrylands Town Centre.</p> <p><i>6 - In consideration of conclusions 1-5 above, the Panel considers the proposed development is a suitable use of the site and approval is in the public interest.</i></p> <p><u>Comment</u></p> <p>The modified development maintains the conclusions of points 1 to 5 above and considered to be an appropriate development for the locality.</p>
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Section 4.15(1):

Section 4.15 Matters for Consideration	Comments
Section 4.15(1)(a)(i) - Provisions of any environmental planning instrument.	This is satisfactory as demonstrated throughout the report.
Section 4.15(1)(a)(ii) - Provisions of any proposed planning instrument.	State Environmental Planning Policy (Sustainable Buildings) 2022 sets sustainability standards of

	<p>buildings across NSW for residential and non-residential development. The Sustainable Buildings SEPP was notified on Monday 29 August 2022 and will come into effect on Sunday 1 October 2023 to allow for the relevant industry to adjust to the new standards.</p> <p>Savings and transitional provisions in accordance with Clause 4.2 of the Sustainable Buildings SEPP will apply to any development application or modification application that was made but not finally determined before 1 October 2023.</p>
<p>Section 4.15(1)(a)(iii) - Provisions of any development control plan.</p>	<p>The Cumberland Development Control Plan will apply to the modification application. An assessment undertaken identifies the following variations.</p> <p><i>Part F2 - Business Site Specific (Part F2-6 Merrylands Town Centre).</i></p> <p><i>Subpart 3.3.1 - Site Amalgamation and Site frontage Control C3:</i></p> <p><i>Subpart 3.3.2 - Building and Ceiling Height.</i></p> <p><i>Subpart 3.8.3 - Site and building design (Control C3 and C7 as indicated on Figure 38).</i></p> <ul style="list-style-type: none"> • <i>Height along Pitt Street - 16 storeys (54 metres).</i> • <i>Height along southern boundary 12 storeys (42 metres).</i> • <i>Height along eastern and north eastern boundary 8 storeys (30 metres).</i> <p>The matters are addressed within Appendixes C and D and determined as being satisfactory.</p>
<p>Section 4.15(1)(a)(iiia) - Provisions of any planning agreement.</p>	<p>There are no Planning Agreements applicable to the modification application that requires review.</p>
<p>Section 4.15(1)(a)(iv) - Provisions of the Environmental Planning and Assessment Regulation 2021.</p>	<p>The modification application has been made in accordance with the relevant matters prescribed by the Regulations.</p>
<p>Section 4.15(1)(b) - the likely impacts of the development, including environmental impacts on the natural and built environments and social and economic impacts in the locality.</p>	<p>The environmental impacts of the modified development on the natural and built environments are addressed under the Cumberland Development Control Plan 2021 (CDCP) section in this report and are satisfactory.</p> <p>The modified development will not have a detrimental social impact in the locality considering the nature of the proposal. The changes sought are acceptable within the context of a Town Centre</p>

	<p>environment being a site adjacent to extensive shopping facilities and public transport.</p> <p>The modified development will not have a detrimental economic impact on the locality considering the nature of the locality being a town centre environment adjacent to an extensive array of services.</p>
Section 4.15(1)(c) - the suitability of the site for the development.	The site has previously been determined as being suitable to support the development. There are no changes occurring that would alter the conclusion that is made.
Section 4.15(1)(d) - any submissions made in accordance with the EP&A Act 1979 or EP&A Reg 2021.	Council has received one submission to the modified development. The submission is addressed below under the heading "Submissions made in accordance with the Act or Regulation (EP&A Act s4.15 (1)(d))".
Section 4.15(1)(e) - the public interest.	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

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

State Environmental Planning Policies

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

State Environmental Planning Policies (SEPPs)	Relevant Clause(s)	Compliance with Requirements
<ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity and Conservation) 2021 	Chapter 2 - Vegetation in non Rural Areas.	N/A - No vegetation removal is proposed as part of the modification application.
	Chapter 6 - Bushland in Urban Areas.	N/A - No bushland zoned or reserved for public open space is affected by the modification application.
	Chapter 10 - Sydney Harbour Catchment.	<p>The modified development raises no issues as no impact on the catchment is envisaged.</p> <p>(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 within the catchment area. Hence the provisions are not directly relevant to the development application.</p>
<ul style="list-style-type: none"> • State Environmental Planning Policy 	Chapter 2 - Coastal Management.	The subject site is not identified as a coastal wetland or 'land identified as

(Resilience and Hazards) 2021		“proximity area for coastal wetlands” or coastal management area.
	Chapter 4 - Remediation of Land Part 4.6.	Part 4.6 - Contamination and remediation to be considered in determining a development application. <u>Discussion</u> The matter was addressed under the original development application and no changes to site conditions are identified. Condition 147 attached to the original consent addresses the matter in a satisfactory manner. No additional assessment is warranted as part of the latest modification application.
• State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2 - Infrastructure. Part 2.43 Part 2.48 Part 2.97. Part 2.98. Part 2.99. Part 2.119. Part 2.120. Part 2.122.	The modification application has been assessed under the following Parts: <ul style="list-style-type: none"> • Chapter 2 - Infrastructure. • Division 15 - Railways. • Division 17 - Roads and Traffic. Where relevant, appropriate referrals have been undertaken to service authorities. Generally, no objections have been raised to the changes sought. Appropriate conditions are applied to the recommendation for Panel consideration to address any relevant matters raised.
• State Environmental Planning Policy (Building Sustainability Index BASIX) 2004		BASIX Certificate Number 1300358M, dated Friday 3 June 2022 and prepared by “SLR Consulting” has been submitted to the Council and determined as being satisfactory.
• State Environmental Planning Policy (Planning System) 2021	Schedule 6	The Sydney Central City Planning Panel is required to be the determining authority under Clause 275(1) and (2) of the EPA Regulations 2021 on the grounds that there is a variation to Clause 4.3 - “Height of Buildings” of the Cumberland Local Environmental Plan 2021 with the increase in the variation to Tower Building A exceeding 10% over and above the previous approval.

State Environmental Planning Policy No. 65 - (Design Quality of Residential Apartment Development).

State Environmental Planning Policy 65 applies to the modified 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.

It is considered that the proposal is generally compliant except for the provisions as shown in the table below. A comprehensive assessment against SEPP 65 and the Apartment Design Guide is contained in Appendix A.

Control	Required	Provided	Yes / No												
<p>Part 3F - Visual Privacy.</p>	<p>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" data-bbox="395 869 868 1182"> <thead> <tr> <th data-bbox="395 869 564 958">Building height</th> <th data-bbox="564 869 718 958">Habitable rooms & balconies</th> <th data-bbox="718 869 868 958">Non-habitable rooms</th> </tr> </thead> <tbody> <tr> <td data-bbox="395 958 564 1025">Up to 12m (4 storeys)</td> <td data-bbox="564 958 718 1025">6m</td> <td data-bbox="718 958 868 1025">3m</td> </tr> <tr> <td data-bbox="395 1025 564 1122">Up to 25m (5-8 storeys)</td> <td data-bbox="564 1025 718 1122">9m</td> <td data-bbox="718 1025 868 1122">4.5m</td> </tr> <tr> <td data-bbox="395 1122 564 1182">Over 25m (9+storeys)</td> <td data-bbox="564 1122 718 1182">12m</td> <td data-bbox="718 1122 868 1182">6m</td> </tr> </tbody> </table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room.</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties.</p>	Building height	Habitable rooms & 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>Building setbacks are not changing.</p> <p>The development once complete will occupy an entire city block and be surrounded by roads.</p> <p>Internal setbacks between buildings are not subject to change. Setbacks include:</p> <ul style="list-style-type: none"> • 6 metres between buildings A and B. • 6 metres between buildings A and C. • 6 metres between buildings B and D. <p>A setback of 6 metres between buildings A and B is maintained to level 9 and at level 10, the separation distance increases to 10 metres and there are opposing balconies situated 11.8 metres apart.</p>	<p>Satisfactory on the grounds that setbacks are not subject to change.</p>
Building height	Habitable rooms & 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>Levels 4 to 7 - Require 9 metres.</p> <p>Level 8 and 9 - Require 12 metres.</p> <p>Level 10 to 13 for the affected balconies - Require 24 metres.</p>	<p>The same occurs across levels 11, 12 and 13. This has not changed.</p> <p>No concerns arise for the upper levels of building A.</p> <p>The variations are:</p> <p>Level 4 to 7 - 6 metres between buildings A and B including bedroom and living areas.</p> <p>Level 8 and 9 - 6 metres between buildings A and B including bedroom and living areas.</p> <p>Level 10 to 13 - Separation distance between 2 balconies is 11.8 metres apart but offset at an angle.</p>	<p>No Variation is 33.3% and approved under the original application and modifications issued.</p> <p>No Variation is 50% and approved under the original application and modifications issued.</p> <p>No Variation is 50.8% and approved under the original application and modifications issued.</p>
<p>Part 4A1 - Solar and Daylight Access.</p>	<p>A maximum of 15% of apartments to receive no direct sunlight between 9 am and 3 pm mid winter.</p>	<p>As approved - 68 apartments to receive no sunlight or 18.6% (Based on 365 apartments).</p> <p>Proposed 68 apartments to receive no sunlight or 18.7% (Based on 363 apartments).</p>	<p>No No change to the approval in terms of absolute numbers.</p>

Comment

The variations identified in the above table are approved under the primary development application or the associated modification applications and do not worsen residential amenity. It is considered that no further assessment is required as the architectural plans provides a development generally in conformity with the original development consent.

Local Environmental Plans

The provisions of the Cumberland Local Environmental Plan 2021 are applicable to the modified development. The site exhibits a split zone as follows:

- Part B4 Mixed Use zone (Western half of site).
- Part B6 Enterprise Corridor zone (Eastern half of site).

It is noted that the modified development generally achieves compliance with the key objectives of both the B4 (Mixed Use) zone and B6 (Enterprise Corridor) zone.

(a) Permissibility:

The proposed development encompassing Buildings A, B and the western side of Building C is identified as being:

1 - Shop top housing is defined by the Cumberland Local Environmental Plan 2021 as being:

“one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities”.

Note—

*Shop top housing is a type of **residential accommodation**—see the definition of that term in this Dictionary.*

Shop top housing (Buildings A, B and for the western side of Building C) is a permissible form of development on the site within the B4 Mixed Use zone subject to consent and the B6 Enterprise Corridor subject to consent as prescribed in Schedule 1 (Clause 24) of the Cumberland Local Environmental Plan 2021.

The proposed development encompassing Buildings C and D (except for the western side of Building C) is defined as a residential flat building.

2 - A residential flat building which is defined by the Cumberland Local Environmental Plan 2021 as being:

“a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing”.

Note—

*Residential flat buildings are a type of **residential accommodation**—see the definition of that term in this Dictionary.*

A residential flat building is not a permissible development in either the B4 Mixed Use zone or the B6 Enterprise Corridor zone.

Buildings C and D except for the western side of Building C incorporates residential apartments on the ground level in addition to three floors above comprising of apartments. The modification application retains Building C and D in its approved format. Given that the Sydney West Joint Regional Planning Panel has approved of Building C and D in its current form (and generally without significant change), Building C and D as shown on the plans is considered acceptable in this instance notwithstanding the zoning of the land.

The main provisions of the Cumberland Local Environmental Plan 2021 relevant to the development are prescribed in the table below.

DEVELOPMENT STANDARD	COMPLIANCE	DISCUSSION
4.3 - Height of Buildings. For that area within zone B4 Mixed use - 54 metres. For that area within zone B6 Enterprise Corridor - 42 metres.	No No	Proposed 71.05 metres (Tower A). Overall variation is 17.05 metres or 31.5%. Proposed 47.85 metres (Tower B). Overall variation is 5.85 metres or 13.92%.
4.4 - Floor Space Ratio. For that area within zone B4 Mixed use - 6.5:1. For that area within zone B6 Enterprise Corridor - 5.0:1. Clause 4.42(2F) Residential FSR (Area B) (FSR Max -1.7):1 being 6.5 - 1.7 = 4.8:1.	No No No - A reduction from 8.87:1 to 8.56:1.	<u>Proposed</u> For the B4 Mixed use zone - 6.84:1. For the B6 Enterprise Corridor zone - or 5.59:1. Floor space ratio has been reduced.

Assessment of the Height Variation

A detailed Clause 4.6 variation is not lawfully required for the modification application. However, the applicant has provided the following reasons as to why the Panel should support the modification application noting that no Clause 4.6 variation is required. The detailed justification is provided at Appendix B.

- Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of the control, and the objectives of the zone are achieved.
- The height of the development enables an appropriate development density. Despite the minor increase in height, there is a decrease in floor space ratio for the total

development. Hence, the maximum building height as proposed enables a suitable development density that is marginally less than the original approval.

- The development proposal is consistent with the intent of the maximum height control and will provide an attractive series of buildings that addresses the site’s frontages. The height in storeys aligns with the development control plan provisions and the height of the building is compatible with the character of the locality.
- The non-compliance is minor in nature with most of the building being compliant with the building height control. The structure associated with the rooftop communal open space and service overruns are recessed and its impact to the streetscape is negligible and not identifiable at street level.
- The departure will not unreasonably impact on the solar access of adjoining properties or the public areas in the vicinity of the site, nor does it impact on privacy. The extent of shadow increase is minor and will not impact on the ability for adjoining properties to redevelop noting the planning controls contemplate significant redevelopment of those sites.
- The proposed variation will not lead to a reduction in privacy afforded to existing residents or future residents of the proposal.
- The development site is constrained by flooding which has necessitated an increase to the natural ground level to provide an adequate freeboard that effectively increases the height of the building to ensure that flood waters cannot enter the building.
- The increased height is proposed to ensure compliance with the ADG 3.1m floor to floor heights to improve amenity for the residential units and to provide the necessary slab thicknesses to accommodate the building size and configuration.

Council assessment

Council staff has reviewed the height increase per floor level and it is identified that much of the increase is occurring through habitable floor areas. As previously mentioned, the increase in height through the habitable floors of Tower Building A is 3.6 metres and the increase in the habitable floors of Tower Building B is 2.15 metres.

This would result in the height of Towers A and B being varied as follows:

Proposed height	Modified height	Variation reduction
4.3 - Height of Buildings.		
Block A (West tower) - 71.05 metres.	67.45 metres.	Variation is reduced to 13.45 metres or 24.9%.
Block B - 47.85 metres.	45.7 metres.	Variation is reduced to 3.7 metres or 8.8%.
Block C - 19.2 metres.	May remain the same at 19.2 metres as no variation occurs.	

The change if supported by the Panel would result in a minor reduction of shadowing created by the development. This is addressed via a condition attached to the recommendation.

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

This has been addressed under Section 4.15(1)(a)(ii) - Provisions of any proposed planning instrument above and no further comment is required.

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

The Cumberland Development Control Plan 2021 is the relevant development control plan to consider which provides guidance for the design and operation of development to achieve the aims and objectives of the Cumberland Local Environmental Plan 2021. A comprehensive assessment and compliance table is contained in Appendix C and D attached to the report and a high degree of compliance is achieved. The following chapters are relevant to the development:

- Residential Flat Buildings Chapter - Part B3.
- Development in Business Zones Chapter - Part C.
- Development in Business Site Specific Chapter - Part F2.

As previously mentioned, there are variations observed in relation to:

- *Part F2 - Business Site Specific (Part F2-6 Merrylands Town Centre).*
- *Subpart 3.3.1 - Site Amalgamation and Site frontage Control C3:*
- *Subpart 3.3.2 - Building and Ceiling Height.*
- *Subpart 3.8.3 - Site and building design (Control C3 and C7 as indicated on Figure 38).*

The matters are addressed within Appendixes C and D and determined as being satisfactory subject to conditions.

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)(iiia))

There is no draft planning agreement associated with the subject modification application.

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

The modified development raises no concerns as to the relevant matters arising from the Environmental Planning and Assessment Regulations 2021.

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

It is considered that the modified development will have no significant adverse environmental, social or economic impacts in the locality subject to conditions.

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 hazard or other site constraints other than site flooding that is likely to have a significant adverse impact on the modified development. Accordingly, it is considered that the modified 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 (Website) Mail Sign Not Required

In accordance with Council’s Notification requirements contained within the Cumberland Development Control Plan 2021, the modified development was publicly notified for a period of twenty one (21) days between Thursday 14 July 2022 and Thursday 4 August 2022. During the notification period, Council received one submission as follows:

Issue	Planner’s Comment
I would like to lodge a submission.	No details are provided. While correspondence was sent back to the writer, no second submission was made.

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

In view of the foregoing analysis, it is considered that the modified 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

Advice has been provided by Council’s Senior Contributions Advisor in which a contribution for the changes sought is not required to be paid. Contributions are addressed at Condition 13 of the development consent and do not need to be altered.

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

CONCLUSION

The modification application has been assessed in accordance with the relevant requirements of the Environmental Planning and Assessment Act 1979 and the following planning instruments:

- a) State Environmental Planning Policy (Planning Systems) 2021.
- b) State Environmental Planning Policy (Biodiversity and Conservation) 2021 being Chapter 10 (Sydney Harbour Catchment).
- c) State Environmental Planning Policy (Resilience and Hazards) 2021 being Chapter 4 - Remediation of Land.
- d) State Environmental Planning Policy (Transport and Infrastructure) 2021 - Part 2.43.
- e) State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development and the Apartment Design Guide (ADG).

- f) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- g) Cumberland Local Environmental Plan 2021.
- h) Cumberland Development Control Plan 2021.

The modified development is determined as being satisfactory for approval and is supported subject to a reduction in height as described within the assessment report above.

The development as modified is appropriately located within the B4 Mixed Use zone and the B6 Enterprise Corridor zone under the provisions of the Cumberland Local Environmental Plan 2021.

Having regard to the assessment of the proposal from a merit perspective, the Panel 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 modified 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 and 4.55 of the Environmental Planning and Assessment Act 1979, and the modified development may be approved subject to conditions.

RECOMMENDATION

1. The Modification Application 2022/0211 being a Section 4.55(2) application for an alteration of floor levels, height of the building, revised apartment layout, reduction in the number of apartments from 365 to 363, provision of additional commercial floor space, revised plant and service areas, revised basement layout and alterations to facade treatment and communal open space areas on land at 224 to 240 Pitt Street Merrylands be approved subject to conditions as recommended in the Council's assessment report.
2. Persons whom have lodged a submission in respect to the application be notified of the determination of the application.

ATTACHMENTS

1. Draft Notice of Determination.
2. Architectural Plans and shadows.
3. Landscape plans.
4. Redacted submissions Received.
5. Appendix A - Apartment Design Guide Assessment Table.
6. Appendix B - Cumberland Local Environmental Plan Assessment Table.
7. Appendix C - Cumberland Development Control Plan 2021 Assessment Table Residential Flat Buildings Chapter.
8. Appendix D - Cumberland Development Control Plan 2021 Assessment Table Development in Business Zones and Business Site Specific Chapters.
9. Appendix E "Design Excellence Panel" Minutes.
10. Appendix F "Applicants response to the Design Excellence Panels concerns.
11. Appendix G - Justification to the height variation.