

APPENDIX B
Cumberland Local Environmental Plan 2021

Clause	Provision	Discussion
1.2	<p>Aims of Plan</p> <p>(1) This Plan aims to make local environmental planning provisions for land in Cumberland in accordance with the relevant standard environmental planning instrument under section 3.20 of the Act.</p>	<p>It is considered that the aims of the plan are complied with. In particular, the following aims are achieved:</p> <p>Clause 1.2(2)(b), (c), (d), (e) and (f).</p>
2.3	<p>Zone Objectives and Land Use Table</p> <p><u>E2 Commercial Centres zone</u></p> <p>The objectives of the E2 Commercial Centres zone are:</p> <p>Objectives of zone</p> <ul style="list-style-type: none"> <i>To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.</i> <i>To encourage investment in commercial development that generates employment opportunities and economic growth.</i> <i>To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.</i> <i>To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.</i> <i>To ensure that new development provides diverse and active street frontages to attract pedestrian traffic and to contribute to vibrant, diverse and functional streets and public spaces.</i> 	<p>The site exhibits 3 zones as follows:</p> <ul style="list-style-type: none"> Part R4 High Density Residential (For approximately one third of the site). Part E2 Commercial Centre zone (For approximately one third of the site). <p><i>The proposed building works relates to the E2 portion of the site.</i></p> <ul style="list-style-type: none"> Part RE1 Public Recreation (For the remaining one third of the site). <p>The primary building works are occurring across that part of the site that is within the E2 zone.</p> <p>All the relevant objectives of the E2 Commercial Centres zone stated are complied with.</p> <p>The development is defined as "Shop top housing" which is defined under the Cumberland Local Environmental Plan 2021 as:</p> <p><i>"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".</i></p> <p>Shop top housing is permitted with consent within the zone.</p> <p>Notwithstanding the above</p>

	<p><u>Permitted development.</u></p> <p><u>Permitted with consent.</u></p> <p>Amusement centres; Artisan food and drink industries; Backpackers' accommodation; Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Entertainment facilities; Function centres; Group homes; Home industries; Hostels; Hotel or motel accommodation; Information and education facilities; Local distribution premises; Medical centres; Mortuaries; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation areas; Recreation facilities (indoor); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restricted premises; Shop top housing; Tank-based aquaculture; Vehicle repair stations; Veterinary hospitals; Any other development not specified in item 2 or 4.</p> <p><u>R4 - High density residential zone</u></p> <p>The objectives of the R4 High Density Residential zone are:</p> <p>Objectives of zone</p> <ul style="list-style-type: none"> • To provide for the housing needs of the community within a high density residential environment. • To provide a variety of housing types within a high density residential environment. • To enable other land uses that provide facilities or services to meet the day to day needs of residents. • To ensure that non-residential land uses are located in a setting that minimises impacts on the amenity of a high density residential environment. 	<p>determination, it is identified that prior to the zoning changes of Wednesday 26 April 2023, the permissibility of shop top housing had to be established under Clause 24 of Schedule 1 Additional permitted uses being:</p> <p><i>24 - Use of certain land at Mays Hill, Merrylands, Pendle Hill and Westmead</i></p> <p><i>(1) This clause applies to land in Zone E2 Commercial Centre or Zone E3 Productivity Support in Mays Hill, Merrylands, Pendle Hill and Westmead, shown as "24" on the Additional Permitted Uses Map.</i></p> <p><i>(2) Development for the purposes of shop top housing is permitted with development consent.</i></p> <p>While this is still a provision of the Cumberland Local Environmental Plan 2021, Council no longer needs to rely on the provision to establish permissibility for the development.</p> <p><u>R4 - High density residential zone</u> <i>(Limited to a portion of the basement car park)</i></p> <p>A portion of the five storey basement car park at the south east corner of the site crosses into the R4 High Density Residential zone.</p> <p>The plans are not showing any commercial encroachments into this area including car parking spaces or associated facilities.</p> <p>A basement car park used wholly for residential means would be permitted with consent within the R4 High Density Residential zone and would comply with the relevant objectives of the zone.</p> <p>Shop top housing is permitted with consent within the R4 High Density</p>
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<ul style="list-style-type: none"> • To encourage residential development that maintains the amenity of the surrounding area. <p>Permitted with consent</p> <p>Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Centre-based child care facilities; Community facilities; Home industries; Hostels; Kiosks; Multi dwelling housing; Neighbourhood shops; Oyster aquaculture; Places of public worship; Residential flat buildings; Respite day care centres; Roads; Seniors housing; Shop top housing; Water recycling facilities; Any other development not specified in item 2 or 4</p> <p><u>RE1 Public Recreation zone</u></p> <p>The objectives of the RE1 Public Recreation zone are:</p> <ul style="list-style-type: none"> • <i>To enable land to be used for public open space or recreational purposes.</i> • <i>To provide a range of recreational settings and activities and compatible land uses.</i> • <i>To protect and enhance the natural environment for recreational purposes.</i> <p>Permitted development</p> <p>Aquaculture; Centre-based child care facilities; Community facilities; Depots; Environmental facilities; Function centres; Information and education facilities; Kiosks; Markets; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; Roads; Signage; Take away</p>	<p>Residential zone.</p> <p><u>RE1 Public Recreation zone</u></p> <p>The development requires vehicle and pedestrian access from the future Mc Leod Road to the west to cross RE1 Public Recreation zoned land within the same allotment of land but not identified as being "Site 1".</p> <p>Council officers have recently finalised a subdivision application SC Number 2024/0014 to permit a boundary adjustment. The adjustment will permit a road to be constructed over that part of the land known as "RW" on the approved subdivision plan across the RE1 zoned land.</p> <p>A road defined as:</p> <p><i>"a public road or a private road within the meaning of the Roads Act 1993, and includes a classified road".</i></p> <p>A road is permissible development with consent within the RE1 zone.</p> <p>As part of that road carriageway, there will be a need for pedestrian footpaths that connect the building to Mc Leod</p>
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	<p>food and drink premises; Water recreation structures; Water recycling facilities.</p>	<p>Road to the west. The submitted Landscape Design Report and associated plans are showing the following:</p> <ul style="list-style-type: none"> • A combined driveway and pedestrian path situated along the northern side of the vehicle access. • Timber decking structures. <p>Much of this area is outside the site known as "Site 1". There will be a need for detailed planning of the area such as a suitable and delineated pedestrian crossing and protective devices.</p> <p>This would need to be made a condition attached to any consent issued.</p> <p><u>Pedestrian pathway west side of site</u></p> <p>The plans also show a pedestrian pathway alongside the western curtilage of the site. To ensure an adequate pathway width within the development site, portions of the west facing ground floor shops and a fire booster room will need to be altered.</p> <p>The applicant has advised that it is possible to undertake this but has requested a condition to this effect to be attached to any consent that may be issued.</p>
4.3	<p>Height of Buildings</p> <p>(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</p> <p>The height of a building is not to exceed the following:</p> <ul style="list-style-type: none"> • Part 65 metres (For part E2 zoned land being Site 1) and Part 39 metres (For the remainder of the E2 zoned land being Site 1). 	<p>The development exhibits the following heights.</p> <ul style="list-style-type: none"> • Proposed - 71.2 metres across part of the E2 zoned land. <p>The variation to the stated provision is 6.2 metres or 9.5%.</p> <ul style="list-style-type: none"> • Proposed 67.65 metres across the remainder of the E2 zoned land. <p>The variation to the stated provision is 28.65 metres or 73.4%.</p>

	Area designated for a new road and park - No building height limit applies.	<p>The variation is considerable and requires detailed assessment. A detailed Clause 4.6 Variation has been submitted addressing the variation which is discussed within the main body of the report and submitted to the Panel for consideration.</p> <p>The Clause 4.6 Variation is supported as detailed within the primary assessment report.</p>
4.4	<p>Floor Space Ratio</p> <p>(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.</p> <p>The maximum floor space ratio (FSR) for a building on the site shall not exceed 5.0:1.</p>	<p>The applicant has calculated the floor space of the development to be 22,699.9 square metres which provides a floor space ratio of 4.999:1. This would assume compliance across the site.</p> <p>The figures have been tested and a floor space ratio of 4.998:1 is derived.</p> <p>Compliance is achieved.</p> <p><u>Note 1</u>: FSR is based wholly upon the development site being that part of the land zoned E2 Commercial Centre.</p> <p><u>Note 2</u>: A reduction of at least 30 square metres will be required to accommodate a pedestrian pathway situated wholly upon the development site which would reduce the floor space ratio to at least 22,669.9 square metres. The new floor space ratio will be 4.992:1.</p>
4.6	<p>Exceptions to development standards</p> <p>(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:</p> <p>(a) that compliance with the development standard is unreasonable or unnecessary in</p>	<p>A Clause 4.6 Variation to the Building Height provision of Clause 4.3 is lodged for Council, and Panel consideration.</p> <p>The contents of the Variation is addressed within the primary assessment report for Panel consideration.</p> <p>On the basis of what is submitted, the Clause 4.6 Variation may be supported as detailed within the primary assessment report.</p>

	the circumstances of the case, and (b) that there are sufficient environmental planning grounds to justify contravening the development standard.	
5.1A	<p>Development on land intended to be acquired for public purposes.</p> <p>1) The objective of this clause is to limit development on certain land intended to be acquired for a public purpose.</p> <p>(2) This clause applies to land shown on the Land Reservation Acquisition Map and specified in Column 1 of the table to this clause that has not been acquired by the relevant authority of the State specified for the land in clause 5.1.</p>	<p>Site 1 the subject of the development application is not earmarked for any acquisition.</p> <p>Land adjoining the site to the immediate west and south will become a new future road known as McLeod Road and a future park which includes an open space corridor.</p> <p>The associated development application for the future park - Number 2023/0485 has recently been lodged to the Council for assessment and determination. The architectural plans show the development works abutting such land but not crossing into the area that will be subject to future acquisition.</p> <p>Council mapping identifies the acquisition area as highlighted in yellow.</p> <p>The development application does not address the infrastructure works associated with the site including new roads, the park and associated stormwater drainage. Development application 2023/0485 proposes such works which is currently under assessment.</p> <p>The applicant has submitted correspondence from Bartier Perry and dated Thursday 25 January 2024 being an offer to enter into a Planning Agreement for the public domain works for the public benefit to be constructed within the subject property and subject to a development application, to comprise nine distinct components to revitalize the Merrylands Town Centre and promote safe and walkable connections in accordance with the relevant development control plan.</p>

		<p>Council has considered the offer at its meeting of Wednesday 7 February 2024 and resolved to endorse the offer in principle.</p> <p>As such the matter of land acquisition within the immediate surrounds of the site are addressed in a satisfactory manner.</p>
5.6	<p>Architectural roof features</p> <p>(2) Development that includes an architectural roof feature that exceeds, or causes a building to exceed, the height limits set by clause 4.3 may be carried out, but only with development consent.</p> <p>(3) Development consent must not be granted to any such development unless the consent authority is satisfied that:</p> <p>(a) the architectural roof feature:</p> <ul style="list-style-type: none"> (i) comprises a decorative element on the uppermost portion of a building, and (ii) is not an advertising structure, and (iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and (iv) will cause minimal overshadowing, and <p>(b) any building identification signage or equipment for servicing the building (such as plant, lift motor rooms, fire stairs and the like) contained in or supported by the roof feature is fully integrated into the design of the roof feature.</p>	<p>An architectural roof feature is not included into the final design of the building.</p>
5.10	<p>Heritage Conservation</p> <p>(5) Heritage assessment.</p> <p>The consent authority may, before granting consent to any development:</p> <ul style="list-style-type: none"> (a) on land on which a heritage item is located, or (b) on land that is within a heritage 	<p>The site being Site 1 is not listed as a heritage item within the Cumberland Local Environmental Plan 2021.</p> <p>Additionally, the site is not within a heritage conservation area.</p>

	<p>conservation area, or</p> <p>(c) on land that is within the vicinity of land referred to in paragraph (a) or (b), require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</p>	<p>Accordingly, no assessment of heritage matters is required.</p>
5.21	<p>Flood planning</p> <p>(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</p> <ul style="list-style-type: none"> (a) is compatible with the flood function and behaviour on the land, and (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and (d) incorporates appropriate measures to manage risk to life in the event of a flood, and (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of riverbanks or watercourses. <p>(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—</p>	<p>The site is impacted by overland flows and flooding. There is also a Sydney Water Corporation culvert traversing through the eastern side of the site. The underground pipeline through this area is managed through Sydney Water Corporation.</p> <p>The development application addresses the flooding and overland flow paths in a satisfactory manner.</p> <p>The buildings ground floor retail tenancies are at RL 16.7 metres AHD.</p> <p>Council engineers have supported the development subject to conditions.</p>

	<p>(a) the impact of the development on projected changes to flood behaviour as a result of climate change,</p> <p>(b) the intended design and scale of buildings resulting from the development,</p> <p>(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,</p> <p>(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.</p>	
6.1	<p>Acid Sulphate Soils</p> <p>Development must not impact on acid sulphate soils.</p>	There are no issues of acid sulphate soils within the site.
6.2	<p>Earthworks</p> <p>(3) Before granting development consent for earthworks, the consent authority must consider the following matters:</p> <ul style="list-style-type: none"> a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality, b) the effect of the proposed development on the likely future use or redevelopment of the land, c) the quality of the fill or of the soil to be excavated, or both, d) the effect of the proposed development on the existing and likely amenity of adjoining properties, e) the source of any fill material and the destination of any excavated material, f) the likelihood of disturbing relics, g) the proximity to and potential for adverse impacts on any 	<p>Earthworks across the site are considerable. As such, a 5 storey basement car park is required to be constructed.</p> <p>The earthworks are included as part of the development application.</p> <p>The development application has also been referred to Water New South Wales on the grounds that the development is Integrated Development for the purpose of the Water Management Act 2000.</p> <p>As per the advice of Friday 23 February 2024, a General Terms of Approval is issued by Water New South Wales subject to conditions.</p> <p>The conditions are included in full into the recommendation made.</p>

	<p>watercourse, drinking water catchment or environmentally sensitive area.</p> <p>h) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p>	
6.4	<p>Essential Services</p> <p>(1) Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required:</p> <ul style="list-style-type: none"> a) the supply of water, b) the supply of electricity, c) the disposal and management of sewage, d) stormwater drainage or on-site conservation, e) suitable vehicular access. 	<p>New services will be essential in servicing the building.</p> <p>Importantly:</p> <ul style="list-style-type: none"> • Sydney Water Corporation has not raised objection to the development and has provided advice to the Council that the development would be supported subject to conditions. • Endeavour Energy has provided Council with advice stating that the development is supported subject to conditions. <p>Council conditions attached to the recommendation will address relevant services such as water, sewer, electricity and internet / phone connections throughout the development.</p>
6.9	Salinity	<p>The site according to the Geotechnical Site Investigation Report prepared by Geotesta and dated 31/10/22 (Pages 12 to 14) is affected by low levels of salinity.</p> <p>This is not significant to adversely impact upon the development.</p> <p>Bore tests have been undertaken and marginal or low levels of saline water tables are detected across parts of the site.</p> <p>As such, appropriate conditions reflecting the findings are attached to the recommendation for Panel consideration.</p>
6.12	<p>Urban Heat</p> <p>In deciding whether to grant development consent for the purposes</p>	<p>The development is making provisions that exceeds the minimum BASIX requirements including a rainwater tank</p>

	<p>of commercial premises, industries or residential accommodation, the consent authority must consider whether—</p> <p>(a) the facade and roof of the proposed building and paved surfaces are designed to reduce adverse effects of solar heat on the surrounding land, including private open space and the public domain, and</p> <p>(b) the awnings and eaves of the building are designed to provide shelter from the sun and improve public comfort at street level, and</p> <p>(c) the heating, ventilation and air conditioning systems of the building are designed to minimise the release of heat in the direction of private open space and the public domain, and</p> <p>(d) the development maximises the use of green infrastructure that is strategically designed and managed to support a good quality of life in an urban environment, and</p> <p>(e) the development accommodates sufficient tree canopy, open space and deep soil zones to achieve urban cooling benefits, and</p> <p>(f) the building is designed to achieve high passive thermal performance.</p>	<p>for vehicle washing and irrigation purposes, provision for a solar panel system across part of the roof of the development and provision for electric vehicles within the development.</p> <p>The development is exceeding the minimum BASIX Certificate requirements for water and energy. In this regard, a score of 42 and 33 is achieved for water and energy which exceeds the minimum provisions of 40 and 25 for both elements.</p> <p>Other additions include:</p> <ul style="list-style-type: none"> • A 10,000 rainwater tank for watering common areas and for vehicle washing. • 4 star air conditioners. • 3 and 4 star fixtures for toilets, taps and showerheads. <p>The Design Excellence Panel in the Minutes issues recommended additional features to improve sustainability and energy reduction. It is considered that the additional features satisfy Clause 6.12 stated.</p>
6.13	<p>Ground floor development in zones E1, E2 and MU1</p> <p>(1) The objective of this clause is to ensure that active uses are provided at the street level in certain employment and mixed use zones to encourage the presence and movement of people.</p> <p>(2) This clause applies to land in the following zones—</p>	<p>With the development situated within Zone E2 Commercial Centre, it is essential that active uses and retail / commercial premises are situated across the ground floor.</p> <p>The plans are showing four retail / commercial tenancies facing the south, east and west across the ground floor of the development.</p> <p>Compliance is achieved.</p>

	<p>a) Zone E1 Local Centre, b) Zone E2 Commercial Centre, c) Zone MU1 Mixed Use.</p> <p>(3) Development consent must not be granted to development for the purposes of commercial premises, mixed use development that includes commercial premises or a change of use of a building to commercial premises on land to which this clause applies unless the consent authority is satisfied that the ground floor of the building—</p> <p>(a) will not be used for the purposes of residential accommodation or serviced apartments, and</p> <p>(b) will not be used for a car park or to provide ancillary car parking spaces, and</p> <p>(c) will provide for uses and building design elements that encourage interaction between the inside of the building and the external public areas adjoining the building.</p> <p>(4) Subclause (3)(b) does not apply to a site that—</p> <p>(a) is greater than 60 metres in depth from all street frontages, or</p> <p>(b) has a gradient steeper than 15%, measured from boundary to boundary, or</p> <p>(c) is owned by a public authority and is to be used as a public or commuter car park.</p> <p>(5) Subclause (3)(c) does not apply to a part of a building that—</p> <p>(a) faces a service lane that does not require active street frontages, or</p> <p>(b) is used for one or more of the following purposes—</p> <p>(i) a lobby for a commercial, residential, serviced apartment or hotel part of the building,</p>	
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	(ii) access for fire services, (iii) vehicular access.	
6.14	<p>Design Excellence</p> <p>(1) The objective of this clause is to ensure that development to which this clause applies exhibits the highest standard of architectural and urban design as part of the built environment.</p> <p>(2) This clause applies to development involving the construction of a new building, or external alterations to an existing building, that will result in—</p> <p>(a) a building that is greater than 30 metres in height on land shown as “Area 1” on the Design Excellence Map or</p> <p>(b) a building that is greater than 55 metres in height on land shown as “Area 2” on the Design Excellence Map or</p> <p>(c) a building that is on land shown as “Area 3” on the Design Excellence Map.</p> <p>(3) Development consent must not be granted to development to which this clause applies unless the consent authority considers that the development exhibits design excellence.</p> <p>(4) In considering whether the development exhibits design excellence, the consent authority must consider the following matters—</p> <p>(a) whether the development has been endorsed by the Cumberland Design Excellence Panel as exhibiting design excellence,</p> <p>(b) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</p> <p>(c) whether the form and external appearance of the development</p>	<p>The development application falls outside the provisions of Subclause (2) on the grounds that the site is not situated within Area 1, Area 2, or Area 3.</p> <p>As such, the provisions of Clause 6.14 will not apply.</p> <p>Nevertheless, the development application was referred to the Design Excellence Panel meeting of Thursday 15 February 2023 in accordance with the Cumberland Design Excellence Panel Policy as the proposal incorporates a building with a height of greater than 25 metres.</p> <p>As per the Minutes, the Design Excellence Panel provided several recommendations and suggested design changes to the development to improve its functionality within the site.</p> <p>It is identified that most of the recommended design changes have been made.</p> <p>Council officers have reviewed the submission and reviewed the Design Excellence Panel procedures. It is considered that a second referral is not required given that the provisions of the Clause does not specifically apply to the development site.</p>

	<p>will improve the quality and amenity of the public domain,</p> <p>(d) whether the development detrimentally impacts on view corridors,</p> <p>(e) how the development addresses the following matters—</p> <ul style="list-style-type: none"> i. the suitability of the land for development, ii. existing and proposed uses and use mix, iii. heritage issues and streetscape constraints, iv. the location of any proposed tower, having regard to the need to achieve an acceptable relationship with other existing or proposed towers on the same site or on a neighbouring site in terms of separation, setbacks, amenity and urban form, v. bulk, massing and modulation of buildings, vi. street frontage heights, vii. environmental impacts such as sustainable design, overshadowing, wind and reflectivity, viii. the achievement of the principles of ecologically sustainable development, ix. pedestrian, cycle, vehicular and service access and circulation requirements, x. the impact on, and proposed improvements to, the public domain. <p>(5) The height of a building to which this clause applies may exceed the maximum height shown for the land on the Height of Buildings Map by an amount, to be determined by the consent authority, of up to 10% of the amount shown on that map.</p> <p>(6) The floor space ratio of a building to which this clause applies may</p>	
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	exceed the floor space ratio shown for the land on the Floor Space Ratio by an amount, to be determined by the consent authority, of up to 0.5:1.	
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