

TO: Sydney Central City Planning Panel - Wednesday 28 March 2024

SUBJECT: Part 4-4A Terminal Place (Formerly 2 Neil Street) Merrylands.

APPLICATION No: DA2022/0722 / PPSSCC-414.

Application accepted.	Friday 2 December 2022.
Applicant.	Merrylands (A) 88 Development Pty Ltd.
Owner.	Merrylands 88 Pty Ltd.
Application No.	DA2022/0722.
Description of Land.	Part 4-4A Terminal Place (Formerly 2 Neil Street Merrylands) being Part Lot 1 in DP 1302939 - Referred to hereon as "Site 1".
Proposed Development.	Construction of a 21-storey mixed use development on "Site 1" comprising 4 commercial tenancies and 236 apartments over 5 levels of basement parking - Integrated Development Water Management Act 2000 S90(2).
Cost of works.	\$77,881,168.
Site Area.	10,650 Square metres including the RE1 and R4 portions of the land. Applicant identifies the site area as being Development Site 1 and having an area of 4,540 Square metres.
Zoning (Only for Lot 1 in DP1302939).	<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) - The proposed building works relates to the E2 portion of the site and a small portion of R4 land. • Part RE1 Public Recreation (For the remaining one third of the site being Lot 1 in DP 1302939).
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. (Only for Lot 1 in DP 1302939).	<p>Floor Space Ratio</p> <p>5.0:1 for much of Lot 1 in DP 1302939 except for the land along the western and southern parts that is designated for a future park (Western side) and for Mc Leod Road - south west portion of the lot.</p> <p>No floor space ratio requirement on that part of the land zoned RE1 and that part of the site marked for a road "Mc Leod Road".</p> <p>Proposed across the development site being Site 1:</p> <p>4.998:1.</p>

	<p><u>Note</u> - Development only occurring on the E2 zoned land for FSR purposes and excludes all other land.</p> <p>Height of Buildings</p> <p>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> <p>Proposed - 71.2 metres across part of the E2 zoned land. Proposed - 67.65 metres across the remainder of the E2 zoned land.</p>
Issues.	<p>Height. Vehicle access from Mc Leod Road. Setbacks. Level 1 Residential use. Basement car park setbacks. Building depth.</p>

SUMMARY

1. Development Application Number 2022/0722 was accepted on Friday 2 December 2022 for the construction of a 21-storey mixed use development on "Site 1" comprising 3 commercial tenancies and 236 residential units over 5 levels of basement parking.
2. The application was publicly notified to occupants and owners of the adjoining properties for a period of fourteen (14) days between Thursday 12 January 2023 to Thursday 26 January 2023. During the notification period, Council received two (2) submissions.

The application was renotified for a period of fourteen (14) days between Monday 6 February 2023 and Monday 20 February 2023. During the second notification period, Council received one submission.

The development application was renotified between Thursday 9 November 2023 and Thursday 7 December 2023 (28 days) on the grounds that the development was identified as being Integrated Development under the Water Management Act 2000 following advice received from Water New South Wales. During this period, Council received no submissions.

3. The variations are as follows:

Control	Required	Provided	% variation
Part 3E - 1 - Deep soil zone.	A minimum 7% or 317.8 sq m of the site should be deep soil zone.	At least 283.3 square metres or 6.2%.	34.5 sq m or 10.8%.
Apartment Design Guide.			

Part 4C-1 - Ceiling height. Apartment Design Guide.	3.3 metres for first floor level if located in mixed use areas.	3.1 metres.	200 mm or 6.06%.
Part 4D-2 - Habitable room depth. Apartment Design Guide.	Maximum 8 metres from a window.	Room depths - Up to 8.5 metres for the cross through apartments.	500 mm or 6.2%.
Clause 4.3 - Height of buildings. Cumberland Local Environmental Plan 2021.	Part 65 metres for Part E2 zoned land) Part 39 metres for the remainder of E2 zoned land.	71.2 metres across part of the E2 zoned land. 67.65 metres across remainder of the E2 zoned land.	6.2 metres or 9.5%. 28.65 metres or 73.4%.
Part 3.2 - Setbacks and separation. Control C3 Control C4 Part C Development in Business Zones Chapter - CDCP 2021.	Minimum 3 metre setback for levels above the street wall height for the podium.	Main tower facing the west - 20 storeys in height. No setback above street wall height.	100%.
Part 3.3.2 - Building and Ceiling Height. Control C1 Part F2-6 Merrylands Town Centre Chapter - CDCP 2021.	Maximum permitted building height in storeys: 65 metres - 20 storeys.	Building - 21 storeys. The 21 st storey includes rooftop access, corridors, toilet.	1 storey or 5%.
Part 3.3.2 - Building and Ceiling Height. Control C2 Part F2-6 Merrylands Town Centre Chapter - CDCP 2021.	First floor - 3.3 metres.	First floor - 3.1 metres.	200 mm or 6.06%.
Part 3.3.2 - Street wall height of buildings. Control C6 Part F2-6 Merrylands Town	3 Storeys with a minimum height of 11 metres and a maximum height of 14 metres.	Main tower - 20 storeys facing west from ground level. The 21 storey is setback from edges.	100%.

Centre Chapter - CDCP 2021.			
Part 3.3.4 - Building depth and length Control C4 Part F2-6 Merrylands Town Centre Chapter - CDCP 2021.	Apartments on 2 nd and 3 rd levels limited in depth to 8 metres from glass line and 11 metres from outer edge of building envelope.	Up to 8.5 metres from a glass line. Up to 11.6 metres from outer edge of the building envelope.	600 mm or 7.5%. 600 mm or 5.4%.
Part 3.3.6 - Active frontages, street address and building use. Control C17 Part F2-6 Merrylands Town Centre Chapter - CDCP 2021.	Commercial office space or other suitable non residential uses be provided for Level 1.	First level is residential.	1 or 100%.
Part 3.6.2 - Built form structure plan. Part F2.7 Merrylands Neil Street Precinct Chapter - CDCP 2021.	Building footprints indicated on Figure 27 represent preferred building configuration.	Variation to the plan identified - Podium is smaller.	
Part 3.8 - Site specific controls General controls Part F2.7 Merrylands Neil Street Precinct Chapter - CDCP 2021. <i>(Basement provisions same as Part 3.2 - Basement Design - Control C1 and Part 4.3 - Basement Parking Control C2 of Part B3 Residential Flat Buildings Chapter).</i>	Length of buildings 55 metres (For buildings of 13 to 20 storeys). 2 storeys with commercial / retail uses. 50% of ground floor to be retail for street activation. Basement not to encroach into setback area. Building envelope depth - First storey commercial 25 metres.	56.8 metres for main tower. 1 storey retail. 33.8% retail. Southern basement encroaches into setback area by 6 metres. No first storey commercial.	1.8 metres or 3.1%. 1 storey or 50%. 471 sq m or 32.37%. 6 metres or 100%. First storey residential.

	Residential Max 22 metres.	Up to 23.3 metres.	1.3 metres or 5.9%.
Part 3.8.4 - Site and Building Design.	Secondary active frontage and civic character with colonnades at intersection of Neil St with new Road 1.	No colonnades facing the new road as per control.	
Control C2 Control C3	Comply with Block D Height Plan for permitted storeys Max 20 storeys.	21 storeys which includes lift and related services.	1 storey or 5%.
Control C4	Setbacks to comply with Figure 44.	Basement crosses 6 metres into southern setback.	6 metres or 100%.
Control C6	Building envelope depth - Max 22 metres.	Same under 3.8 above.	1.3 metres or 5.9%.
Part F2.7 Merrylands Neil Street Precinct Chapter - CDCP 2021.	Building depth for 20 storey tower - 20 metres.	Maximum depth 23.3 metres.	3.3 metres or 16.5%.

4. The application is referred to the Panel as the development is identified as being Regionally Significant Development with a capital investment value of greater than \$30 million.
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 Part Lot 1 in DP 1302939 which is generally known as part 4-4A Terminal Place Merrylands (Formerly known as 2 Neil Street).

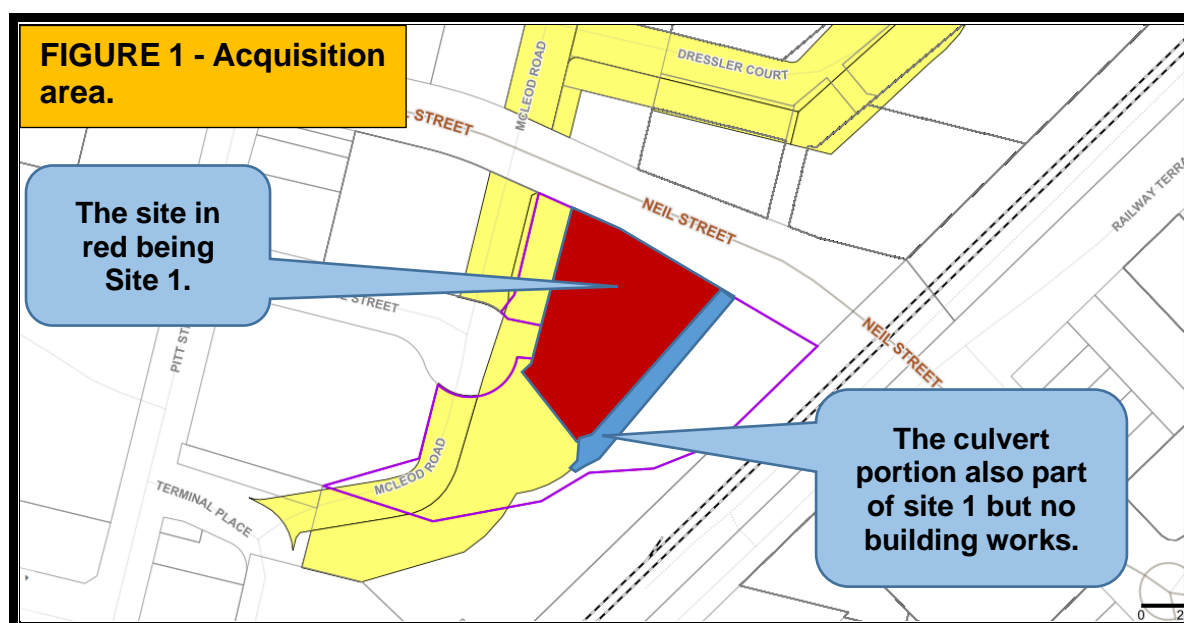
The site adjoins to Lot 1 in DP 229589 and Lot 1 in DP 1173048 which forms part of “site 2” which is subject to a separate development application 2022/0776 currently under assessment with Council.

The subject site has a frontage to Neil Street (Northern frontage), a frontage to Gladstone Street (Part of the western frontage) and has a southern frontage that approaches Terminal Place.

The applicant is identifying a site area of 4,540 square metres applicable to the development application known as “Site 1”.

Land adjoining “Site 1” 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. The plans show the area as being subject to a separate development application. The associated development application for the future park - Number 2023/0485 has recently been lodged to the Council for assessment and determination and is currently under assessment. The architectural plans are showing the main building works occurring within “Site 1” however, minor encroachments along the western side of the building into the area of acquisition are identified being an awning and a decking structure. Conditions will be required for any consent that removes the encroachments to ensure that all works occur within the area known as “Site 1”.

Council mapping shown below identifies the acquisition area as highlighted in yellow with the site edged in purple. Site 1 the subject of the works is shaded in red and blue.



Endeavour Energy has advised that there is an easement benefitting Endeavour Energy for electricity purposes which currently in part has underground cables connecting to Padmount

Substation No 8315 passing outside the southern and eastern boundaries of the development site (Site 1).

The remainder of the easement currently has no in service electricity infrastructure.

There are also low voltage and a single 11,000 volt underground cable passing outside the southern property boundary towards Gladstone Street and the road verge and additional underground cables passing to Neil Street and the road verge.

There are also other easements that impact parts of the site including:

- Right of Access being 3 metres in width.
- Easement for Noise and Vibration.
- Easement for drainage of variable width.
- Easement for support of variable width.
- Easement for support.
- Right of carriageway.
- Easement for electricity purposes.
- Easement to drain water.
- Easement for stormwater channel (The culvert).

The site is prone to flooding and any development work must account for the flood levels of the site. In addition, a drainage culvert passes through the site and lies adjacent to the southern and eastern boundaries of the site. The culvert has a variable width of 9.1 to 9.7 metres depending on location.

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

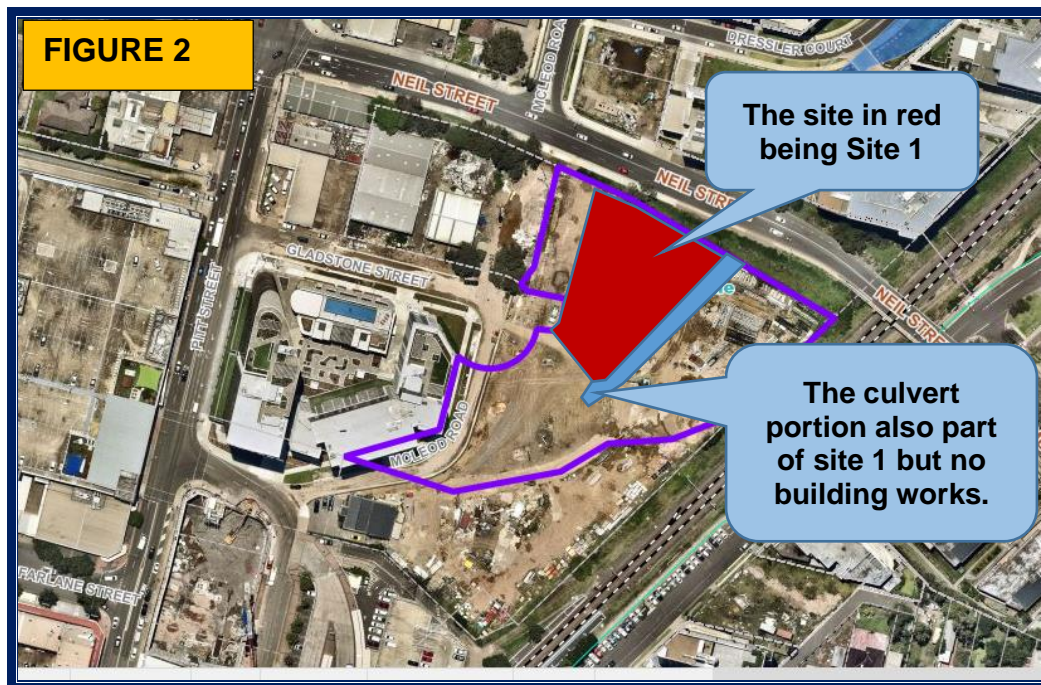
The site the subject of the works is vacant land but has recently been used to store materials associated with the construction of the mixed use development at 228 Pitt Street opposite to the south west which is nearing completion.

The Merrylands Railway Station and bus station is situated to the south.

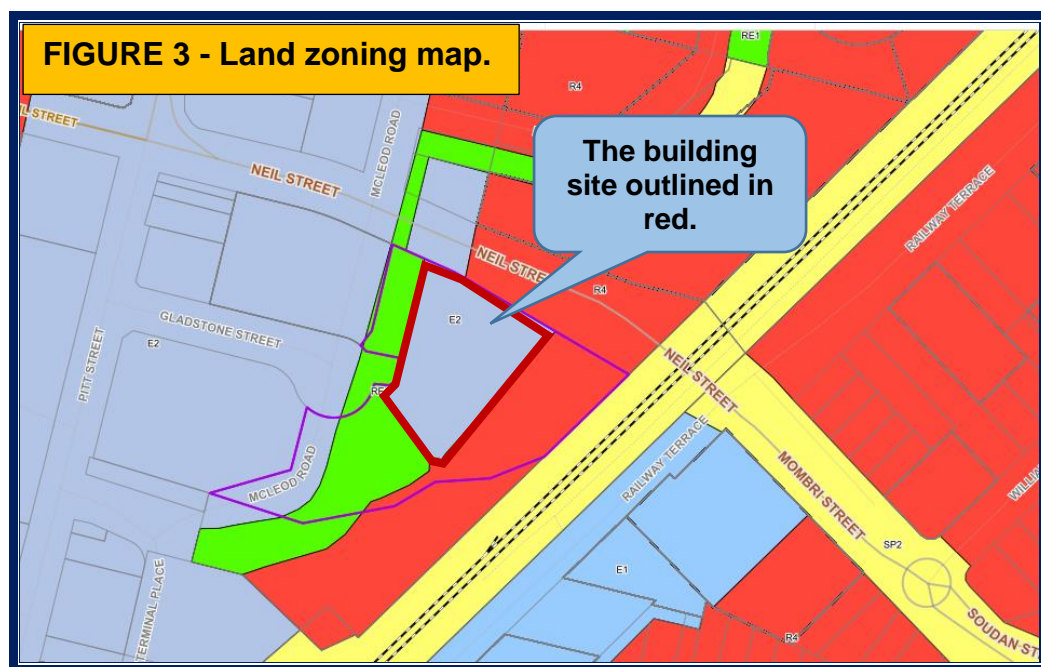
The Locality

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

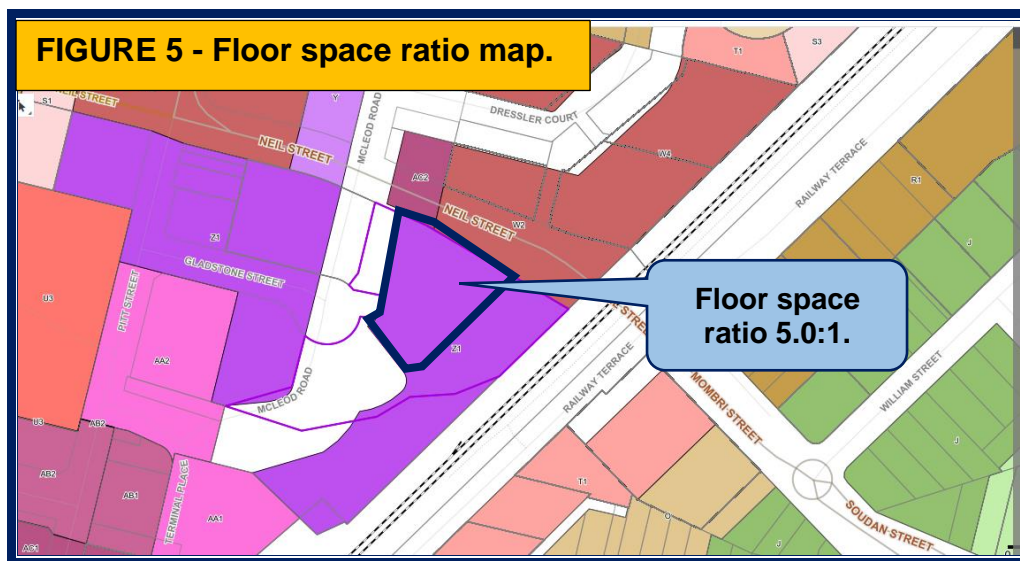
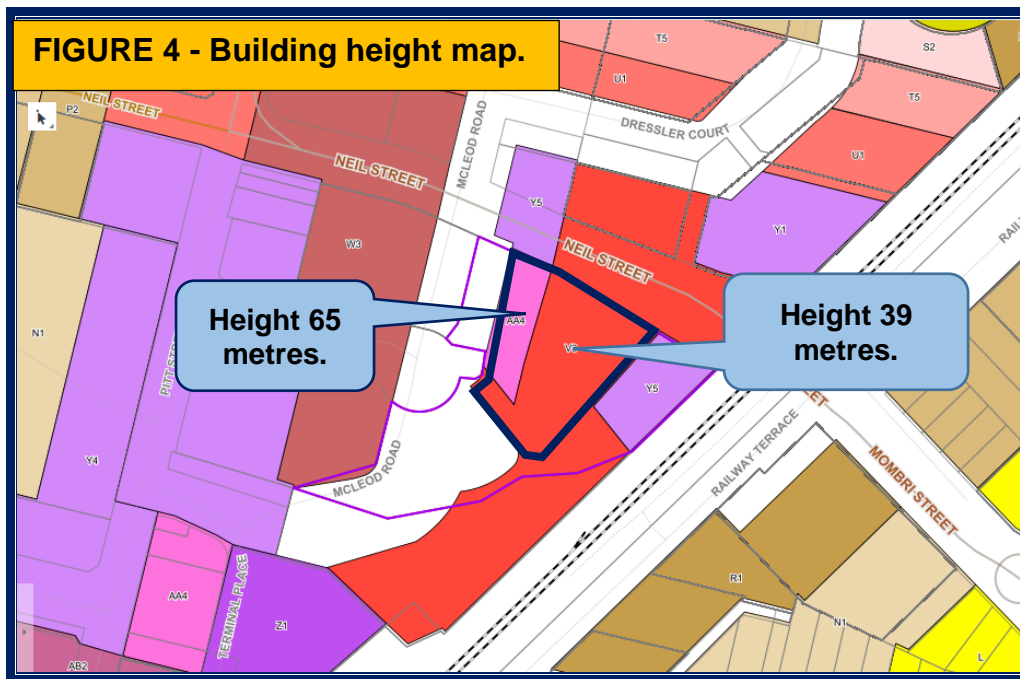
The overall site is shown below edged purple with Site 1 being shaded in red.



The land zoning map with Site 1 edged in red covering the E2 zone land is identified below.



Key attributes of the site being the building height limits and floor space ratio limit are also shown below.



Photos of the site taken Tuesday 19 December 2023 are provided below.



DESCRIPTION OF THE DEVELOPMENT

Development Application 2022/0722 is proposing the construction of a twenty one (21) storey) mixed use development across Site 1 which includes a five (5) level basement car park for 345 vehicles, four retail / commercial tenancies on the ground floor and 236 apartments above.

Vehicle and pedestrian access to the site will be situated along the western side of the building. The access will be resolved via an extension of Gladstone Street via the RE1 zoned land to the subject site. This will need to be completed and resolved with Council prior to the issue of any Occupation Certificate for "Site 1".

The development application does not address the infrastructure works associated with the larger site including new roads, the park and associated stormwater drainage. Development application 2023/0485 proposes such works which is currently under assessment.

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.

Council has considered the offer at its meeting of Wednesday 7 February 2024 and resolved to endorse in principle the offer. The letter of offer forms an attachment to the report for the Panel to note.

The key elements of the building to be constructed are demonstrated within the table below.

Feature	Proposal	Comments
Basement car park.	5 levels of car parking with room to park 345 vehicles	<p>The car parking comprises:</p> <ul style="list-style-type: none"> • Residential - 259 spaces. • Visitor spaces - 59 spaces. • Car wash Bay - 1. <p>Commercial and retail - 27 spaces.</p>
Retail floor space.	4 Tenancies occupying a combined area of 981 square metres.	The retail tenancies vary in size and shape.
Number of apartments.	236 Apartments.	<p>The apartments are divided into:</p> <ul style="list-style-type: none"> • 31 x 1 bedroom apartments. • 186 x 2 bedroom apartments. • 19 x 3 bedroom apartments.

The plans are showing vehicle access to the building situated at the intersection of Gladstone Street with Mc Leod Street. The access is crossing through land that is zoned RE1 Public Recreation which is addressed within the report.

The plans are also showing a pedestrian pathway alongside the western curtilage of the building that provides access to the west facing commercial tenancies. However, it is noted that much of the walkway is situated over the land zoned RE1 Public Recreation which is on the adjoining allotment of land. To ensure that a suitable pedestrian path width is provided within the development site, there will be a need to relocate portions of the west facing ground floor shops at least 2 metres further away from the property boundary. The applicant is prepared to accept a condition requiring this to occur as discussed in the report below.

The development at and above ground level features the following as shown in the table below.

Feature	Proposal
Ground level	<p>4 Commercial/ retail tenancies facing south, east and west with each tenancy being separated from one another.</p> <p>The ground floor includes a services area such as bin stores, a building managers office, lift cores and vehicle manoeuvring area.</p>
Level 1	<p>An apartment level with apartments facing north, south and west with a central common area facing east that occupies 507 square metres.</p> <p>The common area is situated across a podium covering the ground level.</p>
Levels 2 and 3	<p>Levels 2 and 3 have the same format and layout with apartments facing north, south and west.</p>
Levels 4 to 19	<p>Levels 4 to 19 comprises the primary tower being Tower A. Tower A is situated across the western half of the site which features apartments of various sizes.</p> <p>The applicant is seeking a 21 storey building across the western half of the site and a 4 storey building generally across the eastern part of the site.</p> <p>The Level 4 plan shows a solar panel plant to be situated across part of the roof area across that part of the building facing Neil Street but no specific details are provided.</p> <p>The primary tower is in breach of the maximum height limits of the Cumberland Local Environmental Plan 2021 as the applicant seeks the transfer of floor space from other parts of the development site towards the main western tower.</p> <p>As shown, the height variation ranges from 6.2 metres or 9.5% to 28.65 metres (73.46%) and passes through habitable floor areas.</p>
Level 20	<p>Level 20 comprises the lift overruns, corridors, a toilet, common open spaces and landscaped areas.</p>

	The common open space on site occupies an area of 892 square metres.
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HISTORY

A pre lodgement application Number 2022/0059 for a concept development application being a 2 stage development of the site as follows:

- One x 20 storey building (Building A) as Stage 1.
- One x 16 storey building (Building B) and two x 12 storey buildings (Buildings C and D) as Stage 2.

The meeting was held with Council Officer's on 28 October 2022.

The development application was accepted by the Council for determination on Friday 2 December 2022.

The development application was presented to the Design Excellence Panel for discussion on Thursday 15 February 2023. At that meeting, the Panel requested several changes to the design of the building to improve the streetscape appearance and to resolve several planning issues. Further discussion in relation to the Design Excellence Panel is provided below under "External referrals".

The development application was presented to the Sydney Central City Planning Panel "Kick off briefing" on Thursday 9 March 2023. At that meeting, the Panel was advised of the initial issues associated with the development application.

The applicant was notified of the issues on Wednesday 15 March 2023.

A detailed submission including a revised design for the site was presented to the Council on Friday 21 July 2023. The plans submitted on the 21 July 2023 are presented to the District Panel for determination.

APPLICANTS SUPPORTING STATEMENT

The applicant has provided a Statement of Environmental Effects prepared by Think Planners and dated Monday 28 November 2022 which supports the development application.

CONTACT WITH RELEVANT PARTIES

The assessing officer has undertaken a site inspection of the subject site and surrounding properties and has been in regular contact with the applicant throughout the assessment process.

INTERNAL REFERRALS

Development Engineer

The development application was referred to Council's Development Engineer for comment who has advised that the development proposal is satisfactory subject to conditions.

Building Assessment

The development application was referred to Council's Building Assessment team for comment. As per the advice of Friday 25 August 2023, there is no objection to the development proceeding subject to standard conditions addressing building construction and Building Code of Australia requirements.

Environment and Health

The development application was referred to Council's Environment and Health Officer for comment who has advised that the development proposal is satisfactory subject to conditions.

Tree Management

The development application was referred to Council's Tree Management Officer for comment who has advised that the development proposed is satisfactory subject to conditions.

Waste Management

The development application was referred to Council's Waste Management Officer for comment who has advised that the development proposal is satisfactory subject to conditions.

EXTERNAL REFERRALS

Design Excellence Panel

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.

At that meeting, the Panel identified that there were numerous issues to address. The applicant has addressed those issues. A detailed discussion of this is attached as Appendix E to the report for Panel consideration.

Endeavour Energy

The development application was referred to Endeavour Energy for assessment of the development upon the electricity network. As per correspondence of Thursday 26 January 2023, the development application is supported subject to conditions.

In addition, there is advice provided governing the easements and additional conditions addressing such matters for any consent that may be issued.

New South Wales Police - Cumberland Police Area Command

The development application was referred to the New South Wales Police Cumberland Police Area Command for a CPTED Assessment. As per the correspondence dated

Tuesday 10 January 2023, the development is determined as being acceptable subject to conditions addressing crime prevention and safety.

Transport for New South Wales (Roads and Maritime Services)

As per correspondence dated Friday 8 September 2023, a number of comments are raised in relation to traffic all of which have been addressed. Outstanding matters are addressed via conditions for any consent that may be issued.

Transport for New South Wales (Sydney Trains)

As per correspondence dated Tuesday 14 February 2023, the development application is supported subject to conditions.

Water New South Wales

The development application is Integrated Development for the Purpose of Section 90(2) of the Water Management Act 2000 for dewatering purposes. Water New South Wales has issued a General Terms of Approval for the dewatering activities dated Friday 23 February 2024. The conditions provided by Water New South Wales are incorporated into the recommendation for consideration by the Panel.

PLANNING COMMENTS

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

State Environmental Planning Policies

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

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 development application. In this regard, Site 1 is generally devoid of any trees or significant vegetation.
	Chapter 6 - Water Catchments - Sydney Harbour Catchment	It is determined that given location, a detailed assessment is not required given that there is no direct impact upon the catchment and there is no direct impact upon watercourses. As such, the development is acceptable under the new provisions that came into effect on Monday 21 November 2022.
<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 "proximity area for coastal wetlands" or coastal management area.

<p>(Resilience and Hazards) 2021</p>	<p>Chapter 4 - Remediation of Land</p>	<p>Part 4.6 - Contamination and remediation to be considered in determining a development application.</p> <p><u>Discussion</u></p> <p>A Detailed Site Investigation (DSI) was prepared by Environmental Consulting Services Pty Ltd, dated Monday 23 January 2023 (Revision 2). The consultant advised that asbestos was found and could be present within the fill material on site. Additionally, some heavy metals were found within the groundwater of the site above recommended drinking water guidelines.</p> <p>The detailed site investigation report recommended a remedial action plan to specify the required works associated with further investigation, address data gaps and specify the required validation testing.</p> <p>A remediation action plan has been prepared by Environmental Consulting Services Pty Ltd, dated Friday 20 January 2023 (Revision 1). The consultant has identified a suitable pathway so that the site can be used safely for the proposed development.</p> <p>Council's Environmental Health Team has supported the development subject to conditions.</p>
<p>• State Environmental Planning Policy (Transport and Infrastructure) 2021</p>	<p>Chapter 2 - Infrastructure. Part 2.41</p>	<p>Chapter 2 - Infrastructure</p> <p><u>Division 4</u> - Electricity generating works or solar energy systems.</p> <p>The Level 4 plan shows a solar panel plant to be situated across part of the roof area across that part of the building facing Neil Street but no specific details are provided. The plans show the installation of at least 91 panels across the roof section.</p> <p>Under Part 2.41(4) "Exempt Development provisions" for solar energy systems, the system is determined as being exempt development and not requiring any further assessment by Council.</p>

		<p>Part 2.119 - Impact of road noise or vibration on non road development.</p> <p>Neil Street is a classified regional road and as a result, the development application has been referred to Transport for New South Wales (Roads and Maritime Services) for assessment.</p> <p>Part 2.121 Traffic Generating Development (Schedule 3).</p> <p>The development falls under the provision of Schedule 3 due to:</p> <ul style="list-style-type: none"> • The car park having more than 50 car parking spaces. • The development having more than 75 dwellings. • Proximity of the site to Neil Street. <p>As per correspondence of Friday 8 September 2023, there is no objection to the development but there are matters that should be addressed as part of the assessment process. Conditions are provided for any consent that may be issued.</p>
<ul style="list-style-type: none"> • State Environmental Planning Policy (Building Sustainability Index BASIX) 2004 		<p>BASIX Certificate Number 1346672M-03 dated Tuesday 4 July 2023 and prepared by "SLR Consulting Pty Ltd" has been submitted to the Council and determined as being satisfactory.</p>
<ul style="list-style-type: none"> • State Environmental Planning Policy (Planning System) 2021 	Schedule 6	<p>Development of a type that is listed in Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 is defined as 'regional significant development'. Such applications require a referral to a Sydney District Panel for determination as constituted by Part 3 of Schedule 2 under the Environmental Planning and Assessment Act 1979. The proposed development constitutes 'Regional Development' as it has a Capital Investment Value (CIV) of \$77,881,168 which exceeds the \$30 million threshold.</p> <p>While Council is responsible for the assessment of the DA, determination of the Application will be made by the Sydney Central City Planning Panel.</p>

<ul style="list-style-type: none"> • State Environmental Planning Policy (Sustainable Buildings) 2022 		<p>State Environmental Planning Policy (Sustainable Buildings) 2022 sets sustainability standards of buildings across NSW for residential and non-residential development. The Sustainable Buildings SEPP was notified on the 29 August 2022 and came into effect on Sunday 1 October 2023.</p> <p>Savings and transitional provisions in accordance with Clause 4.2 of the Sustainable Buildings SEPP will apply to the subject development application or modification application that was made but not finally determined by 1 October 2023.</p> <p>This will not be applicable to the development application.</p>
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State Environmental Planning Policy (Housing) 2021

On Thursday 14 December 2023, the NSW Government consolidated the provisions of State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65) into the State Environmental Planning Policy (Housing) 2021 and the Environmental Planning and Assessment Regulation 2021 (the Regulation).

The process of consolidation does not affect the operations of the provisions or the Apartment Design Guide. An assessment of the Apartment Design Guide (ADG) is contained in Appendix A attached to the report.

As per Schedule 7A Savings and transitional provisions, Section 8(1) of the State Environmental Planning Policy (Housing) 2021, the consolidated provisions regarding SEPP 65 will not apply to the current development application as the amendment made to this policy by the amending policy does not apply to a development application made but not finally determined before the commencement date. The subject development application was lodged prior to the consolidated provisions coming into effect on Thursday 14 December 2023.

Therefore, an assessment against the controls under Chapter 4 - Design of residential apartment development of the State Environmental Policy (Housing) 2021 which commenced on Thursday 14 December 2023 do not apply to this application.

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

As stated above, State Environmental Planning Policy 65 - Design Quality of Residential Apartment Development (SEPP 65) was repealed on Thursday 14 December 2023 with no savings or transitional provisions preserving the operation of the state policy. Despite this, a comprehensive merit based assessment against the SEPP 65 and assessment of the Apartment Design Guide (ADG) controls is contained at Appendix A attached to the report.

It is considered that the proposal is generally compliant except for the provisions as shown in the table below.

Control	Required	Provided	Yes / No
Part 3E - 1 Deep soil zone.	A minimum of 317.8 or 7% of the site should be deep soil zone.	At least 283.3 square metres or 6.2%. Variation is 34.5 square metres or 10.8%.	No
Part 4C-1 Ceiling height.	3.3 metres for first floor level if located in mixed use areas.	3.1 metres. Variation is 200 mm or 6%.	No
Part 4D-2 Habitable room depth.	Maximum 8 metres from a window.	Room depths of up to 8.5 metres taken from the glass line to the rear wall of the kitchen for the cross through apartments affecting 38 apartments. The affected apartments are located within the primary tower. Variation is 500 mm or 6.2%.	No

Comments

The variations identified within the above table are considered acceptable as follows.

1 - Part 3E - 1 Deep soil zone

- a) The site is within a town centre location and zoned for the type of development as shown. In addition, the ground floor uses are primarily retail or commercial.
- b) A separate development application has been submitted to the Council for the public park adjoining to the site which is currently under assessment. The park forms part of the redevelopment of the larger site.

The applicant has made an offer to enter into a Planning Agreement for the delivery of the park which is separate to the development application. Council has resolved to support the offer made by the applicant.

- c) The future public park will comprise deep soil zone areas that will exceed the minimum stated requirements.

2 - Part 4C-1 - Ceiling heights

- a) The first floor of the development is shown as being residential in nature with the BASIX Certificate demonstrating satisfactory residential amenity.

- b) The NatHERS energy certificate demonstrates that all the dwellings across Level will achieve a Star Rating of between 5.4 and 8.2 which is consistent with the remaining dwellings across the development.

3 - Part 4D-2 - Habitable room depth

- a) The measurement is to the rear walls of the kitchens. The variation is minor and limited to the rear walls of kitchens impacting upon benches, cupboards and position of the kitchen fridge / freezer.
- b) The BASIX Certificate demonstrates a satisfactory residential amenity being achieved.
- c) The apartments are provided with floor to ceiling windows to permit maximum penetration of light into their living spaces.
- d) If this is taken from the glass line to the edge of the bench attached to the wall, then compliance is achieved.

Local Environmental Plans

The provisions of the Cumberland Local Environmental Plan 2021 are applicable to the development application. The proposed development is consistent with the relevant objectives of the zones that applies to the whole site.

(a) Permissibility:

The proposed development is defined as “Shop top Housing” which is defined as:

“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”.

Shop top housing is permitted with consent within the E2 Commercial Centre zone being that part of the site where the primary building is to be constructed.

R4 - High density residential zone

Shop top housing is also permitted with consent within the R4 High Density Residential zone.

The R4 High Density Residential zone portion will generally be landscaped / common area which is permitted.

RE1 - Public Recreation zone (Vehicle access)

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”.

Council officers have recently finalised a subdivision application SC Number 2024/0014 to permit a boundary adjustment to ensure vehicle / pedestrian access could be provided to the building to cross over the RE1 zoned land.

As part of that road carriageway, there will be a need for pedestrian footpaths that connect the building to Mc Leod Road to the west. This is subject to the public park development application which is currently under assessment being application number 2023/0485 which is not part of this application.

As the work falls outside of the Site 1 area, a condition will be imposed stating that the works suggested on the plans do not form part of the consent. A condition is also included into the recommendation to ensure the necessary works associated with the vehicular / pedestrian access to the site is completed prior to the issue of any Occupation Certificate for Stage 1.

The plans show a 'deck retail terrace' alongside the western curtilage ground floor of the building which falls outside the boundary of Site 1. 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 to allow access from the subject site (Site 1) and not rely upon the adjoining RE1 portion of land.

The applicant has advised in writing 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.

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 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).	No	Proposed - Maximum 71.2 metres across part of the E2 zoned land. Variation 6.2 metres or 9.5%. Proposed - 67.65 metres across the remainder of the E2 zoned land within the area governed by the 39 metre height limit. Variation 28.65 metres or 73.46%. The applicant has Submitted a Clause 4.6 Variation as discussed below.
4.4 Floor Space Ratio 5.0:1 for much of the site except for the land along the western and southern parts that is designated for a future park / parkland and a new road. No floor space ratio requirement on that part of the land zoned RE1 and that part of the site marked as "Mc Leod Road".	Yes	FSR - 4.998:1. Waste rooms on the ground level are included. <u>Note:</u> To achieve the change to the ground level path, an area of at least 30 square metres would need to be removed from the ground floor of the building which would marginally reduce the floor area to 22,660 square metres and a floor space ratio of 4.992:1.

4.6 Exceptions to Development Standards	Yes	Refer to detailed assessment below.
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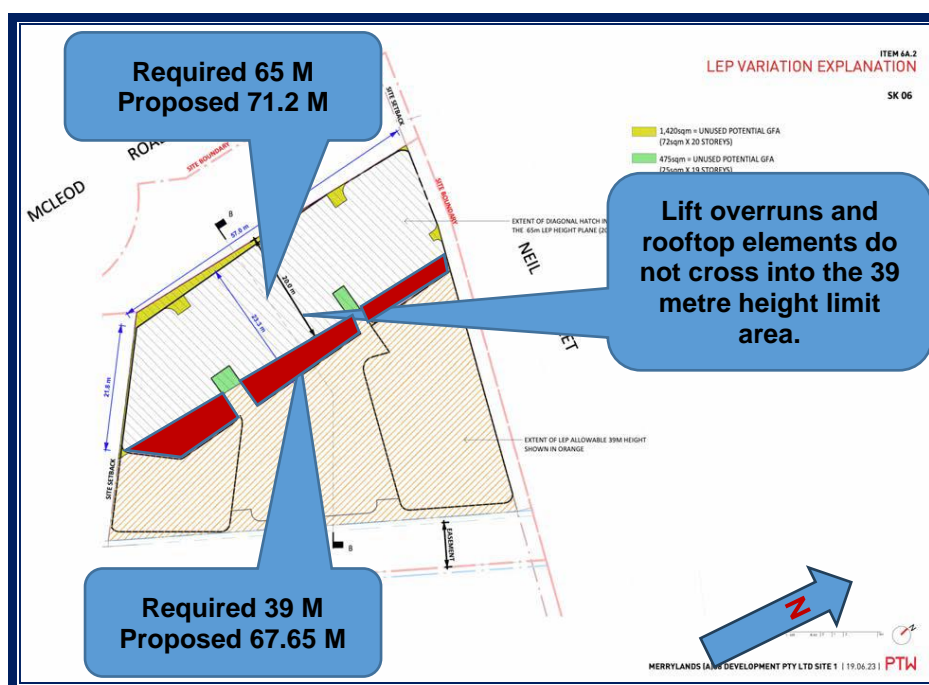
(b) Clause 4.6 - Variation to Building Height

Recent changes to the provisions regarding Clause 4.6 Variations will not apply to the current development application because the application was lodged prior to the new provisions coming into effect on Wednesday 1 November 2023.

Clause 4.6 allows the consent authority to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. The consent authority may grant the exception as the Secretary's concurrence can be assumed where clause 4.6 is adopted as per the Department of Planning Circular PS20-002, dated 05 May 2020.

The applicant has submitted a written request to vary the development standard for Building Height. Based on various case laws established by the Land and Environment Court of NSW such as *Four2five P/L v Ashfield Council [2015] NSWLEC 9*, *Randwick City Council v Micaul Holdings P/L [2016] NSW LEC7* and *Zhang and anor v Council of the City of Ryde [2016] NSWLEC 1179*, a 3 part assessment framework for a variation request proposed under clause 4.6 has been considered and an assessment of the proposed variance, following the 3 part test is discussed in detail below.

The height variations are clearly shown within the diagram presented below.



The diagram above is showing:

- The required building height limit along the western side of the site being 65 metres with the building having a maximum height of 71.2 metres which occurs at the lift overrun.
- The required building height limit along the eastern side of the site being 39 metres but with a maximum height being 67.65 metres.

- The part of the building as shown in red where the maximum 39 metre height limit is passing through habitable floor area (Total of 8 floors).

The 3 preconditions which must be satisfied before the application can proceed are as follows:

1. Is the proposed development consistent with the objectives of the zone?

Applicant's justification:

The proposal is consistent with the objectives of the E2 Commercial Centre zone on the grounds that the development is not antipathetic to the zone objectives.

The zone objectives are:

- *To strengthen the role of the commercial centre as the centre of business, retail, community and cultural activity.*
- *To encourage investment in commercial development that generates employment opportunities and economic growth.*
- *To encourage development that has a high level of accessibility and amenity, particularly for pedestrians.*
- *To enable residential development only if it is consistent with the Council's strategic planning for residential development in the area.*
- *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.*

The proposal provides for an active ground floor to contribute to the role of the Merrylands Town Centre as the centre of business, retail, community and cultural activity and the development will strengthen the role of Merrylands Town Centre given the nature of the proposal.

The proposal provides for an active ground floor to contribute to employment generation and economic growth and the extent of residential units will also provide greater patronage of Merrylands Town Centre to further generate economic growth.

The development has a high level of accessibility and amenity with good connectivity elsewhere to Merrylands Town Centre and public transport. The proposal is providing a mixture of compatible uses and for redevelopment in an accessible location with a scheme that exhibits high levels of amenity and accessibility.

The development provides residential development consistent with Councils strategic planning for residential development in the area- notably the Neil Street Precinct which envisages residential development above ground floor commercial development.

The proposal provides for an active ground floor to the primary street frontage to McLeod Road and the future park to attract pedestrian traffic and contribute to vibrant, diverse and functional streets and public spaces.

Planning comment:

The development is providing for:

- An active and pedestrian oriented ground floor facing future parklands for the locality.
- Economic development and redevelopment and is contributing to employment for the Merrylands Town Centre.
- Appropriate connections close to services.
- Appropriate residential development close to services being retail and public transport links.
- An active street frontage adjoining a future park.

It is determined that all five relevant objectives of the E2 Commercial Centre zone are generally complied with.

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

Applicant's justification:

In accordance with the provisions of the clause, it is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives of the control are achieved.

The objectives of the building height development standard are stated as:

- a) To establish a maximum height of buildings to enable appropriate development density.*
- b) To ensure that the height of buildings is compatible with the character of the locality.*
- c) To minimise the visual impact of development.*
- d) To ensure sufficient solar access and privacy for neighbouring properties.*

The current development proposal seeks to depart from the height control for small portions of the upper storey of the building and the shifting of the height of Building A to provide a more suitable design response to the site through lowering of the 8 to 12 storey areas down to 4 storeys to maximise solar access.

Despite the height breach, the proposal remains consistent with the objectives of the Clause for the following reasons:

1 - The height approach is to:

- *Retain the 20 storey tower but make it marginally deeper.*
- *Lower the 8 to 12 storey areas into a 4 storey built form.*

This is a redistribution of the permitted 5:1 floor space ratio on the site and the variation enables a suitable development density noting compliance with the 5:1 floor space ratio. Hence the height as proposed enables an appropriate development density which satisfies objective (a).

2 - The visual impact of the non compliance is limited noting that the departure is primarily to the centrally located plant, stair and lift core areas and the realignment of the tower in terms of height, the height of the building being greater than 39 metres area is offset by the

lowering of the remaining parts where a building of 12 storeys could have been provided. The height breach continues to align with the intended outcome for a larger tower on the corner with lower buildings adjacent to this. This provides a suitable design response that is compatible with the desired character of the locality and thus satisfies objective (b).

3 - The breach to the overall tower height is not perceptible from the public domain and limits any visual impact from the breach and satisfies objective (b) in relation to the adoption of the extended tower depth into the 39 metre height area. The visual impact is significantly offset by the reduction in 8 storeys on the remainder of the site and the volume of the tower is comparable to what is contemplated in the 65 metre height limit. Hence the volume of the built form to the building and its visual impact is as contemplated by the controls and the proposal satisfies objective (c).

4 - The shadow diagrams show the adjoining properties receive adequate solar access and the breach of the height of the tower through the realignment of the footprint reduces the overshadowing to Neil Park. This improves solar access through the building noting that in the absence of this, the proposal would fail to achieve the 70% of apartments required to achieve 2 hours of solar access which aligns with part of objective (d). The height breach improves the performance of the proposal in satisfying objective (d).

5 - The additional height has no bearing on the privacy of neighbouring properties which aligns with part of objective (d).

6 - The development follows the landform whilst acknowledging the impact of the overland flow / flooding and a suitable design response noting that the ground floor is marginally raised to deal with flooding.

7 - The development provides an appropriate scale and intensity noting consistency with the Neil Street DCP height massing and noting the floor space ratio across the entirety of the site is compliant.

Planning comment:

1 - The site is subject to a split height limit with part of the site having a height limit of 65 metres and part of the site having a height limit of 39 metres. The building contravenes both height limits as follows:

For that part of the site with a 65 metre height limit.

- Proposed - 71.2 metres across part of the E2 zoned land.
- Variation - 6.2 metres or 9.5% but not passing through habitable floor area.

For that part of the site with a 39 metre height limit.

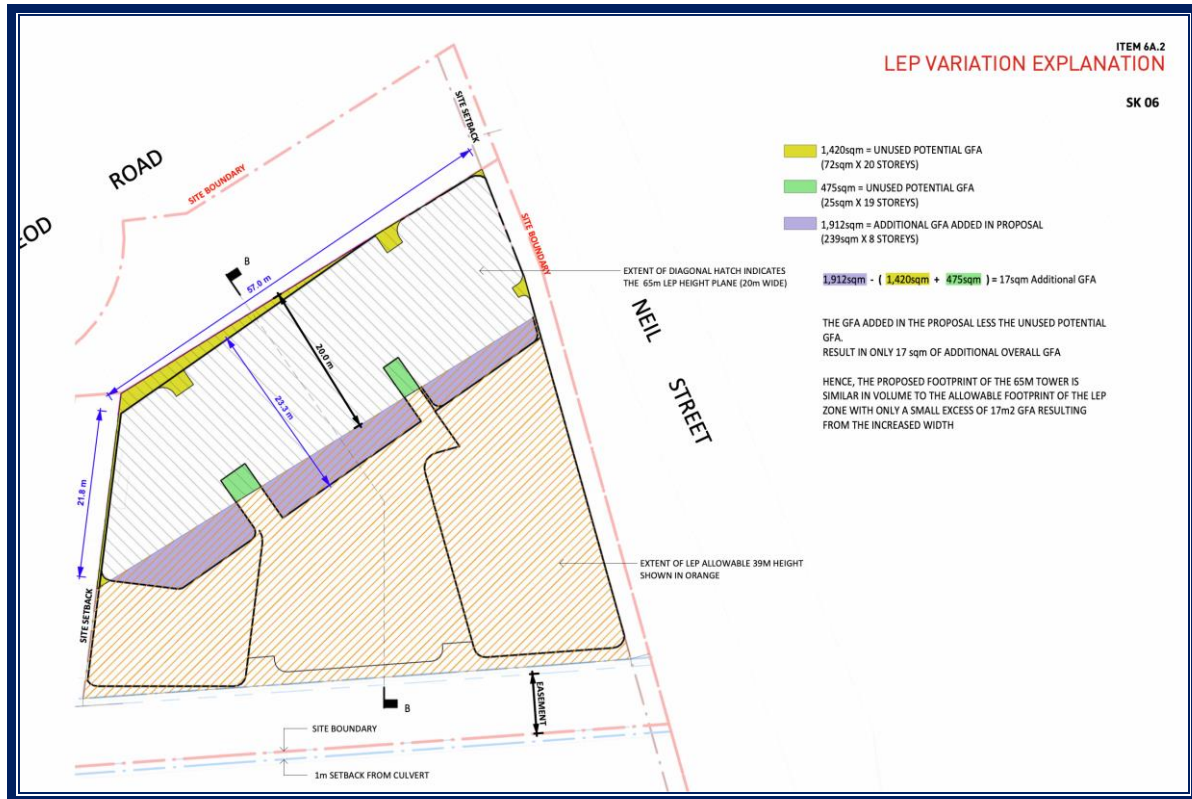
- Proposed - 67.65 metres across the remainder of the E2 zoned land.
- Variation - 28.65 metres or 73.46%.

The significant height breach along the 39 metre height area is a result of an urban design study undertaken which resulted to lower the 8 - 12 storey building to a 4 storey building along the Neil Street frontage and 'transfer' the floor space onto the tower. Rather than

increasing the height of the tower beyond the 20 storeys contemplated by the DCP, the depth has been marginally increased and the tower slightly widened.

The affected area is approximately 239 square metres per floor across 8 floors for a total area of 1,912 square metres.

The diagram below shows the height contravention in greater detail taken from the applicants Clause 4.6 Variation Request.



Source - Think Planners Clause 4.6 Variation Request.

In particular, the height is moved from the brown portion of the diagram above to the tower as highlighted in purple.

Of importance, the overall floor space ratio for the site is 4.998:1 and thus overall, this is a compliant development in relation to floor space ratio across Site 1.

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

Applicant's justification:

It is considered that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case as the underlying objectives are achieved.

Furthermore:

- *The development shifts the height of Building A to provide a more suitable design response to the site through lowering of the 8-12 storey areas down to 4 storeys to maximise solar access.*
- *The redistribution of floor area enables an appropriate development density noting that the floor space ratio of 5.0:1 is complied with.*
- *The visual impact of the non-compliance is limited noting the departure is primarily to the centrally located plant, stair, and lift core areas, and the realignment of Tower A in terms of height. This is offset by the lowering of the remaining parts where a building of 12 storeys could have been provided and now a building of 4 storeys is provided.*
- *The height breach to the overall tower height is not perceptible from the public domain and limits any visual impact from this breach. The visual impact is offset by the reduction in 8 storeys on the remainder of the site and the volume of the Tower is comparable to what is contemplated in the 65m height limit.*
- *The adjoining properties achieve adequate solar access. The breach of the height to Tower A through realignment of the footprint reduces the overshadowing to Neil Park and improves solar access through the building. The height breach improves the performance of the tower.*
- *There are no privacy issues.*
- *The development provides an appropriate scale and intensity, noting consistency with the intent of the Neil Street DCP height massing and noting the FSR across the entirety of the site is compliant.*

Planning comments:

Based upon the evidence provided and assessment, the following outcomes are identified:

1. The submission package shows that the development has reduced impact to the public park that is required to be constructed to the south as much as possible. The development is appropriately located as per the planning controls.
2. The shadow impacts to the wider site are acceptable and reasonable given location and the form of development that is proposed.
3. Side building separation setbacks are compliant with the Apartment Design Guide and no adverse privacy issues arise.
4. The development has a compliant floor space ratio of 4.998:1.

b) Are there sufficient environmental planning grounds to justify contravening the development standard and therefore is the applicant's written justification well founded?

Applicant's justification:

The environmental planning grounds associated with the breach in height are as follows as the breach to the height standard enables:

- The provision of a more suitable urban design response.*
- The provision of a design response that maximises solar access to the development and through to adjoining development including open space areas.*
- The design and provision of the rooftop communal rooftop terrace that necessitates balustrading, lift cores and fire stairs which protrudes beyond the permitted height plane- including the necessary wind screens to provide amenity to occupants. The proposal as designed seeks to maximise amenity for future occupants via the provision of this communal rooftop open space area. Proposed rooftop structures i.e. lift overrun, lobby, seating, BBQ facilities are directly correlated to the design, function and intended use of the rooftop communal open space area which forms an integral part of the proposed development. The structures service the rooftop communal open space area which has been provided to benefit the future occupants of the site. The noncompliance relates to features of the property which will significantly improve the amenity of the occupants.*
- The scheme avoids detrimental environmental planning outcomes, as it does not give rise to adverse solar access, view loss or visual or acoustic privacy impacts on site, or to neighbouring properties. The breach improves the solar access to the development, the public domain (Neil Park) and other buildings in the Precinct to the south of the subject site. o The flood affectation that necessitates a suitable freeboard level to be achieved.*
- Suitable freeboard levels are achieved.*

Planners comment

It is considered appropriate to support the applicant's response. It is demonstrated that the applicant has sought to reduce the adverse impacts of the development upon the locality. Internal and external residential amenity is generally satisfactory.

Conclusion:

Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6 subclause (3). Council is further satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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

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

There are no draft planning instruments to consider relevant to the development application.

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

The Cumberland Development Control Plan 2021 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 for Panel consideration. The variations are addressed below with references made to the objectives as relevant.

1 - Part 3.2 - Setbacks and separation (Control C3 and C4) - Development in Business Zones Chapter.

A minimum 3 metre setback to be provided for levels above the street wall height for the podium and levels above street wall height to be setback to ensure visual separation.

Comment

The entire development occupies Site 1 with street wall heights and a building footprint that is generally in accordance with Figures 43 and 44 of the Block D - Block Heights and Setback diagrams.

In addition, the main tower facing the western side boundary is 20 storeys in height with a 21st storey on top for the rooftop elements that are setback from the building sides.

The applicant is requesting the variation to be granted on the grounds that the site does not directly adjoin a street and that the provisions of Part 2-7 Merrylands Neil Street Precinct chapter override the control. In this regard, the applicant is relying on the interpretation of Figures 43 and 44 of the Block D Block heights and Setback diagrams to establish the final appearance of the building.

In this regard, the building is providing appropriate commercial tenancies at ground level that will activate the local area, the development exhibits satisfactory setbacks to the property boundaries and adverse impacts are minimised to the future public domain areas.

The design chosen may be supported given that a high level of amenity is being created for the precinct.

2 - Part 3.3.2 - Building and Ceiling Height (Control C1) F2-6 Merrylands Town Centre Chapter.

Maximum permitted building height in storeys - 65 metres - 20 storeys.

The objectives of the controls are:

- *Achieve appropriate management of overshadowing, access to sunlight and privacy.*
- *Deliver a built form that provides a height transition, from lower scale on the edges of the centre to higher scale in the core of the centre.*
- *Ensure the scale of the built form provides for a legible centre.*
- *Provide appropriate transition in building heights from public spaces.*

As specified throughout the report, the development exhibits a ground floor retail area, nineteen (19) storeys of apartments above and a twenty first (21) storey encompassing the lift overrun, corridors, a toilet and access.

In addition, there are various height variations which are previously discussed resulting in a need for a detailed Clause 4.6 Variation to be supported by Council and the Panel. It is considered reasonable to support the development and the Clause 4.6 Variation on height grounds as discussed earlier in the report.

3 - Part 3.3.2 - Building and Ceiling Height (Control C2) Part F2-6 Merrylands Town Centre Chapter.

The first floor should have floor to ceiling heights of 3.3 metres.

The first floor which is a residential floor has a floor to ceiling height of 3.1 metres resulting in a variation of 200 mm or 6.06%. The variation is considered minor with the BASIX Certificate and the associated NatHERS Certificate demonstrating that satisfactory residential amenity is being achieved for the affected apartments.

The variation may be supported for the above reasons.

4 - Part 3.3.2 - Street wall height of buildings (Control C6) Part F2-6 Merrylands Town Centre Chapter.

The control requires 3 Storeys with a minimum height of 11 metres and a maximum height of 14 metres.

The control is similar to the matter described under Point 1 above. The applicant is seeking a variation on the grounds that the site specific controls for Block D Neil Street override the provision.

It is considered appropriate to support the design as shown within the architectural plans given that an appropriate degree of amenity is being achieved for the site and locality.

4 - Part 3.3.4 - Building depth and length (Control C3 and C4) Part F2-6 Merrylands Town Centre Chapter.

The maximum permitted building envelope depth for residential accommodation is 22 metres.

The objectives of the control are:

- *Promote sustainable building design and development and reduce reliance on artificial heating, cooling and lighting.*
- *Ensure that adequate cross ventilation and sunlight access is achieved in residential apartments within the high density centre.*
- *Provide for viable and functional commercial spaces.*
- *Consider the amenity of future residents and workers through building design.*
- *Provide sunlight access and streetscape amenity to the public domain.*

The building above the ground floor has maximum depth of 23.3 metres which is a variation of 1.3 metres or 5.9%. The variation is considered minor and not adversely impacting upon residential amenity for the site.

Apartments on 2nd and 3rd levels are limited in depth to 8 metres from glass line and 11 metres from outer edge of building envelope.

There are apartments within the development that reach up to 8.6 metres from a glass line and 11.6 metres from the outer edge of the building envelope.

Generally, the building is achieving a high degree of residential amenity and the building is consistent with the stated objectives.

6 - Part 3.3.6 - Active frontages, street address and building use (Control C17) Part F2-6 Merrylands Town Centre Chapter.

Commercial office space or other suitable non residential uses be provided for Level 1.

The objectives of the control are:

- *Provide for a vibrant, pedestrian focused centre through the orientation and design of ground floor entries and shop fronts.*
- *Require activation of the street through the reinforcement of activities along the main streets and some laneways.*
- *Maintain the established character of fine grain frontages at ground level.*
- *Provide well designed building facades and entrances.*
- *Contribute to a safe environment for pedestrians and residents through both passive and active surveillance.*
- *Ensure the accessibility of the centre for the entire community.*

The development supports the stated objectives in which a mixed use development is proposed that will activate a part of the Merrylands Town Centre. The ground floor shops or commercial tenancies are oriented towards the south, east and west and appropriate pedestrian links are provided across and into the building.

The First level of the development is residential and not commercial. The applicant is requesting a variation to the control on the grounds that the ground floor of the development has higher floor to ceiling heights. It is identified that the ground floor of the development is provided with floor to ceiling heights of at least 4.5 metres. For this reason, the applicant has made the decision to only provide 1 level of retail within the development being the ground floor.

The ground floor has a height the equivalent of a two storey building and on this ground the variation should be supported.

8 - Part 3.6.2 Built form structure plan (Figure 27) Part F2.7 Merrylands Neil Street Precinct Chapter.

Building footprints indicated on Figure 27 represent the preferred building configuration.

A variation to the diagram shown on Figure 27 is identified with the design approach shown. While there is a variation to the indicative plan, it is identified that a majority of the provisions are complied with.

It is considered appropriate to support the development in terms of layout as shown on the grounds that an acceptable commercial / residential amenity is achieved.

9 - Part 3.8 Site specific controls - General controls Part F2.7 Merrylands Neil Street Precinct Chapter (Variations only for Block D).

The objectives for Block D are:

- *Ensure the development contributes to the provision of public infrastructure.*
- *Ensure that the intersection of New Road 1 and Neil Streets is reinforced with greater height and create a distinct identity for the corner.*
- *Reinforce the open space through built form.*
- *Ensure scale and form of development contributes to the public domain and legibility of New Road 1 and Neil Street.*

Length of buildings 55 metres (For buildings of 13 to 20 storeys).

The primary tower has a maximum length of 56.8 metres which is a variation of 1.8 metres or 3.1%. The variation is considered minor and having minimal or no adverse impact to the locality.

2 storeys with commercial / retail uses.

The comments under Point 6 above are relevant to this part.

50% of ground floor to be retail for street activation.

At least 33.8% of the ground floor comprises retail tenancies facing, south, east and west. It is not possible to increase this further due to the need to provide suitable vehicle access to the building and the need for servicing across the ground floor.

It is considered that the development activates the street level in a satisfactory manner notwithstanding the various site constraints that exists across and adjoining to the site.

Basement not to encroach into setback area. (Basement provisions are the same as Part 3.2 - Basement Design - Control C1 and Part 4.3 - Basement Parking Control C2 of Part B3 Residential Flat Buildings Chapter).

The southern basement car park is encroaching into the southern setback area by 6 metres. It is considered reasonable to permit the variation given that the encroachment has no adverse impact upon the performance of the development and the entire development does not encroach into land zoned RE1 Public Recreation to the south or west.

There is no adverse impact upon the overland flow paths, flooding or service authority requirements.

Building envelope depth - Commercial First storey 25 metres.

The first storey of the development comprises residential apartments and not commercial floor areas. It is considered appropriate not to enforce the stated provision given the land use chosen.

Residential Max 22 metres.

This is addressed in Point 4 above.

Further, the stated objectives are complied with. In particular, the ground floor commercial tenancies are oriented towards the west and south that will assist in activating the future parkland and open space area with pedestrian movement.

10 - 3.8.4 Site and Building Design Detailed controls (Control C2, C3, C4) and other controls

Control C2 - Secondary active frontage and civic character with colonnades for the building at intersection of Neil St with new Road 1.

Colonnades are not used however as described within the report, a pedestrian pathway within the site is required resulting in a reduction in the size of the two ground floor west facing commercial tenancies. The internal load bearing columns could / would readily become a colonnade.

Control C3 - Comply with Block D Height Plan for permitted storeys.

The matter concerning height is addressed at Point 2 above and no further discussion is required.

Control C4 - Setbacks to comply with Figure 44.

The matter concerning the basement car park is addressed above in Point 9.

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

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 broader site to service "Site 1" and "Site 2" to the immediate east.

The Planning Agreement is in connection with the development application to deliver a public domain within the precinct including Neil Street Park, Terminal Park and Boulevard Park. In accordance with the development application associated with the public domain works.

This includes:

1. Dedication of part of the land that is zoned RE1 Public Recreation pursuant to the Cumberland Local Environmental Plan 2021.

The land marked proposed Lot 3 in the Subdivision Plan at Schedule 3 is to be dedicated pursuant to clause 5.1A and the Land Reservation Acquisition Map of the Cumberland Local Environmental Plan 2021 to be developed as a Public Domain (inclusive of driveways).

2. Part of the Land, otherwise known as McLeod Road is zoned E2 Commercial Centre and marked "Local Road" pursuant to *Cumberland Local Environmental Plan 2021*.

The land marked proposed Lot 4 in the Subdivision Plan is to be dedicated pursuant to clause 5.1A and the Land Reservation Acquisition Map of the Cumberland Local Environmental Plan 2021 to be developed as a local road.

The detailed offer is attached to the assessment report for Panel consideration.

Council has considered the offer at its meeting of Wednesday 7 February 2024 and resolved to endorse in principle the letter of offer regarding the dedication of land for the purpose of open space and local roads including associated works as required by Council and associated offsets of local infrastructure contributions.

Relevant conditions are attached to the recommendation addressing the matter.

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

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

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

It is considered that the environmental, social and economic issues have been addressed as part of the assessment report. While there are several site constraints identified, it is considered that the development is acceptable under the heading in terms of environmental, social and economic impacts.

The suitability of the site for the development (EP&A Act s4.15 (1)(c))

As identified within the report, there are several site constraints impacting the development which includes flooding, easements and the presence of an underground culvert. All the site constraints have been addressed by the assessment report and the development is considered 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 development application was notified for a period of fourteen (14) days between Thursday 12 January 2023 to Thursday 26 January 2023. During the notification period, Council received two (2) submissions.

The application was renotified for a period of fourteen (14) days between Monday 6 February 2023 and Monday 20 February 2023. During the second notification period, Council received

one submission which is the same as a previous submission. As such, there are 2 unique submissions to consider.

The issues raised during the notification period are outlined below.

Issue	Planner's Comment
There is no affordable housing or public housing being made available.	The development application is not proposing any affordable rental housing or public housing and the applicant is not required to provide such housing within the development.
Many residents near public housing areas are not happy with increased crime rates and general anti social behaviour.	The development application has received a detailed CPTED assessment by New South Wales Police and determined as being acceptable.
<p>There have been many recent breaches of working illegal outside standard building hours where people were observed as working on scaffolds in the dark.</p> <p>There are no controls over the amount of dust being produced at various large building development. The matters have been reported to council rangers and Worksafe.</p>	<p>This is related to the adjoining development site where construction works are in progress.</p> <p>It is identified that there is an ongoing issue with construction activities occurring outside the conditions of consent.</p> <p>Similar conditions addressing construction hours and amenity controls are to be incorporated into any consent issued.</p>

The development application was renotified between Thursday 9 November 2023 and Thursday 7 December 2023 (28 days) on the grounds that the development was identified as being Integrated Development under the Water Management Act 2000 following advice received from Water New South Wales. During this period, Council received no submissions.

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

In view of the foregoing analysis, it is considered that the development, if carried out subject to the conditions set out in the recommendation below, will have no significant adverse impacts on the public interest.

CUMBERLAND LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN 2020

The development would require the payment of contributions in accordance with Cumberland Local Infrastructure Contributions Plan 2020. In accordance with the Contribution Plan a contribution amount of \$6,846,438.60 is payable. The amount is payable prior to the issue of a Construction Certificate.

HOUSING AND PRODUCTIVITY CONTRIBUTION

In accordance with s7.24 of the Environmental Planning and Assessment Act, 1979 as amended by the Environmental Planning and Assessment Amendment (Housing and

Productivity Contribution) Act 2023, the development is subject to the (Housing and Productivity Contribution) Act 2023.

In accordance with Schedule 2 of the Order, the proposed development is exempt from the provisions of the contributions due to the development application being lodged for determination prior to Sunday 1 October 2023.

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

CONCLUSION

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979* and the relevant environmental planning instruments. The development is considered to be satisfactory.

The proposed development is appropriately located within the E2 Commercial Centre zone, R4 High Density Residential zone and the RE1 Public Recreation zone under the Cumberland Local Environmental Plan 2021. There are variations to the planning instruments as described within the planning assessment report however, the variations are considered as being acceptable.

Having regard to the assessment of the proposal from a merit perspective, the Sydney Central City Planning 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 development, irrespective of the departures noted above, is consistent with the intentions of Council's planning controls and represents a form of development contemplated by the relevant statutory and non-statutory controls applying to the land.

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

RECOMMENDATION

1. That the Clause 4.6 variation request to contravene the building height development standard, pursuant to the Cumberland LEP 2021, be supported.
2. That development application number 2022/0722 for construction of a 21-storey mixed use development on "Site 1" comprising 4 commercial tenancies and 236 apartments over 5 levels of basement parking on land known as Part 4-4A Terminal Place Merrylands be approved subject to conditions as listed in the attached schedule.
3. Persons whom have lodged a submission in respect to the application be notified of the determination of the application.

ATTACHMENTS

1. Draft Notice of Determination.

2. Architectural Plans including the ground floor plans for “Site 2” located to the east.
3. Shadow diagrams.
4. Landscape plans.
5. Clause 4.6 Variation request.
6. Copy of correspondence from Bartier Perry - Letter of Offer for Planning Agreement.
7. Redacted Submissions Received.
8. Appendix A - Apartment Design Guide assessment table.
9. Appendix B - Cumberland Local Environmental Plan 2021 assessment table.
10. Appendix C - Cumberland Development Control Plan 2021 Assessment tables - Residential Flat Buildings Chapter.
11. Appendix D - Cumberland Development Control Plan 2021 Assessment tables - Development in Business Site Specific Chapter.
12. Appendix E - Design Excellence Panel Minutes & applicants discussion with assessment officer's comments.