

**APPENDIX C**  
**Cumberland Local Environmental Plan 2021**

<b>Clause</b>	<b>Provision</b>	<b>Discussion</b>
<b>1.2</b>	<p><b>Aims of Plan</b></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) and (f).</p>
<b>2.3</b>	<p><b>Zone Objectives and Land Use Table</b></p> <p><b>R4 High density residential zone</b></p> <p>The objectives of the R4 High Density Residential zone are:</p> <p><b>Objectives of zone</b></p> <ul style="list-style-type: none"> <li><i>To provide for the housing needs of the community within a high density residential environment.</i></li> <li><i>To provide a variety of housing types within a high density residential environment.</i></li> <li><i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i></li> <li><i>To ensure that non-residential land uses are located in a setting that minimises impacts on the amenity of a high density residential environment.</i></li> <li><i>To encourage residential development that maintains the amenity of the surrounding area.</i></li> </ul> <p><b><u>Permitted development.</u></b></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; <b>Neighbourhood shops</b>; Oyster</p>	<p>Site 2 exhibits 1 zone being:</p> <ul style="list-style-type: none"> <li>Part R4 High Density Residential.</li> </ul> <p>The proposed building works relate to the R4 zone of the site.</p> <p>It is considered that all the relevant objectives of the R4 zone are complied with.</p> <p>The proposed development is defined as the following:</p> <p>1 - Residential flat buildings are defined as:</p> <p><i>“A building containing 3 or more dwellings but does not include an attached dwelling or multi dwelling housing”.</i></p> <p>A residential flat building is a permitted development with consent within the R4 High Density Residential zone being that part of the site where the primary development is to be constructed.</p> <p>2 - Neighbourhood shop defined as:</p> <p><i>“Premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day to day needs of people who live or work in the local area and may include ancillary services such as a post office, bank, dry cleaning but</i></p>

	<p>aquaculture; Places of public worship; <b>Residential flat buildings</b>; Respite day care centres; Roads; Seniors housing; <b>Shop top housing</b>; Water recycling facilities; Any other development not specified in item 2 or 4.</p> <p><b><u>RE1 Public Recreation zone</u></b></p> <p>The objectives of the RE1 Public Recreation zone are:</p> <ul style="list-style-type: none"> <li>• <i>To enable land to be used for public open space or recreational purposes.</i></li> <li>• <i>To provide a range of recreational settings and activities and compatible land uses.</i></li> <li>• <i>To protect and enhance the natural environment for recreational purposes.</i></li> </ul> <p><b>Permitted development</b></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);</p>	<p><i>does not include neighbourhood supermarkets or restricted premises”.</i></p> <p>A neighbourhood shop is a permitted development with consent within the R4 High Density Residential zone.</p> <p>Building D could even be construed as being “Shop top housing which is also a permissible form of development within the R4 High Density Residential zone. Shop top housing is defined 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><b>Note—</b></p> <p><i>Shop top housing is a type of <b>residential accommodation</b>— see the definition of that term in this Dictionary”.</i></p> <p><b><u>RE1 Public Recreation zone</u></b></p> <p>The development application requires vehicle and pedestrian access from the future Mc Leod Road to the west to cross RE1 Public Recreation zoned land within the wider site area but not identified as being “Site 2”.</p> <p>Council officers have recently finalised a subdivision application to permit a boundary adjustment to create an appropriate driveway access to service the building complex. The subdivision plan supporting this was registered with the Land and Property Information Office Wednesday 22 May 2024.</p> <p>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>
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	Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; <b>Roads</b> ; Signage; Take away food and drink premises; Water recreation structures; Water recycling facilities.	<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>
<b>4.3</b>	<p><b>Height of Buildings</b></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. The height of a building is not to exceed the following:</p> <ul style="list-style-type: none"> <li>• Part 54 metres for the R4 zoned land)</li> <li>• Part 39 metres for the remainder of the R4 zoned land.</li> </ul> <p>Area designated for a new road and park - No building height limit applies.</p>	<p>The development exhibits the following heights.</p> <p><b>Building B - 55.5 metres.</b></p> <p>The variation is 1.5 metres or 2.7%.</p> <p><b>Building C - 43.05 metres.</b></p> <p>The variation is 4.3 metres or 10.38%.</p> <p><b>Building D - 42.6 metres.</b></p> <p>The variation is 3.6 metres or 9.2%.</p> <p>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 may be supported as described in detail within the <u>primary assessment report</u>.</p>
<b>4.4</b>	<p><b>Floor Space Ratio</b></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 Councils figure which includes the ground floor waste bin areas is calculated at 4.808:1 based upon a floor area of 29,601.2 square metres across the entire development.</p> <p><u>Note:</u> To achieve the change to the ground level pathway adjacent to Building D, at least 29 square metres of retail area would need to be lost which would marginally reduce the floor area to 29,569 square metres or 4.803:1.</p>
<b>4.6</b>	<p><b>Exceptions to development standards</b></p> <p>(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has</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</p>

	<p>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 the circumstances of the case, and</p> <p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p>	<p>consideration.</p> <p>On the basis of what is submitted, the Clause 4.6 Variation may be supported.</p>
<b>5.4</b>	<p><b>Controls relating to miscellaneous permissible uses.</b></p> <p>(7) Neighbourhood shops must not exceed an area of 80 square metres.</p>	<p>All 6 neighbourhood shops have areas of 80 square metres or less which is compliant with Clause 5.4(7).</p>
<b>5.6</b>	<p><b>Architectural roof features</b></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"> <li>(i) comprises a decorative element on the uppermost portion of a building, and</li> <li>(ii) is not an advertising structure, and</li> <li>(iii) does not include floor space area and is not reasonably capable of modification to include floor space area, and</li> <li>(iv) will cause minimal overshadowing, and</li> </ul> <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>

<p><b>5.10</b></p>	<p><b>Heritage Conservation</b> (5) Heritage assessment.</p> <p>The consent authority may, before granting consent to any development:</p> <ul style="list-style-type: none"> <li>(a) on land on which a heritage item is located, or</li> <li>(b) on land that is within a heritage conservation area, or</li> <li>(c) on land that is within the vicinity of land referred to in paragraph (a) or (b),</li> </ul> <p>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>The site is not listed as a heritage item within the Cumberland Local Environmental Plan 2021.</p> <p>Additionally, there are no heritage listed areas adjoining or adjacent to the site and the site is not within a heritage conservation area.</p> <p>Notwithstanding the above, it is identified that Lot 1 in DP 1173048 being a small allotment of land at the south eastern corner of the site previously owned by Sydney Trains / Transport Holding Entity was recently subject to a Stage 1 Heritage Planning Proposal listing.</p> <p>The proposal that was endorsed by Council is to amend the heritage listing curtilage of the existing heritage items based on Railcorp Section 170 Heritage and Conservation Register curtilage for the Merrylands Railway Station.</p> <p>Previously, there was a building or large shed on the site. The building was demolished by the new owners during 2012 which is at least 12 years ago.</p> <p>As such, there is now no building on the site with the site being vacant land.</p> <p>The provisions of the Cumberland Heritage Study Planning Proposal and the draft changes to the Cumberland Local Environmental Plan 2021 which were forwarded to the Department on Tuesday 9 January 2024 for finalisation are noted as part of the assessment process.</p>
<p><b>5.21</b></p>	<p><b>Flood planning</b></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>	<p>The site is impacted by overland flows and flooding. There is also a Sydney Water Corporation culvert traversing the western boundary of the site.</p> <p>The underground pipeline through this area is managed through Sydney Water Corporation.</p>

	<p>(a) is compatible with the flood function and behaviour on the land, and</p> <p>(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</p> <p>(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</p> <p>(d) incorporates appropriate measures to manage risk to life in the event of a flood, and</p> <p>(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> <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>(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>	<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>
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<b>6.1</b>	<b>Acid Sulphate Soils</b>  Development must not impact on acid sulphate soils.	There are no issues of acid sulphate soils within the site.
<b>6.2</b>	<b>Earthworks</b>  (3) Before granting development consent for earthworks, the consent authority must consider the following matters: (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 watercourse, drinking water catchment or environmentally sensitive area. (h) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.	<p>Earthworks across the site are considerable. As such, a 6 storey basement car park is required to be constructed although it is noted that the lowest basement level has a smaller footprint than the basement levels 1 to 5 above.</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 to ascertain if the excavation works will impact upon the ground water table and whether any water extraction works is Integrated Development or not.</p> <p>Water New South Wales has granted a General Terms of Approval for the excavation works and associated dewatering works that will be required. All the conditions recommended by Water New South Wales are incorporated into the recommendation that forms part of the assessment report.</p>
<b>6.4</b>	<b>Essential Services</b>  (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:  a) the supply of water, b) the supply of electricity, c) the disposal and management of sewage, d) stormwater drainage or on-site	<p>New services will be essential in servicing the building.</p> <p>Importantly:</p> <ul style="list-style-type: none"> <li>• 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.</li> <li>• Endeavour Energy has provided Council with advice stating that the development is supported subject to conditions.</li> </ul> <p>Council conditions attached to the</p>

	<p>conservation,</p> <p>e) suitable vehicular access.</p>	<p>recommendation will address relevant services such as water, sewer, electricity and internet / phone connections throughout the development.</p>
6.7	<p><b>Stormwater Management</b></p> <p>(1) The objectives of this clause are as follows—</p> <p>(a) to minimise the impacts of urban stormwater on properties, native vegetation and receiving waters,</p> <p>(b) to avoid adverse impacts on soils and land stability,</p> <p>(c) to protect the environmental values of water identified for urban waterways in the Sydney Harbour and Parramatta River and Georges River catchments.</p> <p>(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—</p> <p>(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and</p> <p>(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and</p> <p>(c) avoids significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if the impact cannot be reasonably avoided, minimises and mitigates the impact.</p>	<p>Compliance is achieved. Council engineers have provided a detailed assessment and concluded that the development is supported subject to conditions.</p>
6.9	<p><b>Salinity</b></p>	<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>
<b>6.12</b>	<p><b>Urban Heat</b></p> <p>In deciding whether to grant development consent for the purposes 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</p>	<p>The development is making provisions that exceeds the minimum BASIX requirements including a rainwater tank for vehicle washing and irrigation purposes 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 41 and 27 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"> <li>• Rainwater tanks for watering common areas and for vehicle washing.</li> <li>• 4 star air conditioners.</li> <li>• 3 and 4 star fixtures for toilets, taps and showerheads.</li> </ul> <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 to satisfy Clause 6.12 stated are satisfactory.</p>

	high passive thermal performance.	
<b>6.14</b>	<p><b>Design Excellence</b></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 buildings 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"> <li>i. the suitability of the land for development,</li> <li>ii. existing and proposed uses and use mix,</li> <li>iii. heritage issues and streetscape constraints,</li> <li>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,</li> <li>v. bulk, massing and modulation of buildings,</li> <li>vi. street frontage heights,</li> <li>vii. environmental impacts such as sustainable design, overshadowing, wind and reflectivity,</li> <li>viii. the achievement of the principles of ecologically sustainable development,</li> <li>ix. pedestrian, cycle, vehicular and service access and circulation requirements,</li> <li>x. the impact on, and proposed improvements to, the public domain.</li> </ul> <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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	<p>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.</p>	
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