

TO: Sydney Central City Planning Panel

SUBJECT: Part 5 and Part 7 Mc Leod Road Merrylands.
1/4-4A Terminal Place Merrylands.

APPLICATION No: DA2022/0776 / PPSSCC-424.

Application accepted.	Friday 23 December 2022.
Applicant.	Merrylands (B) 88 Developments Pty Ltd.
Owner.	Merrylands 88 Pty Ltd.
Application No.	DA2022/0776.
Description of Land.	Part 5 and Part 7 McLeod Road Merrylands. 1/4-4A Terminal Place Merrylands. <ul style="list-style-type: none"> • Part Lot 10 in DP 1305248. • Part Lot 11 in DP1305248. • Lot 1 in DP 1173048.
Proposed Development.	Construction of three buildings B, C & D ranging in height from 12 to 17 storeys and comprising of 6 neighbourhood shops and 303 apartments over six levels of basement parking with associated site works - Integrated development Water Management Act 2000 S90(2).
Cost of works.	\$112,781,548.
Site Area.	16,289 square metres including the RE1 and E2 portions of the land. Applicant identifies the site area as being Development Site 2 and having an area of 6,156 square metres.
Zoning.	<ul style="list-style-type: none"> • Part R4 High Density Residential (For approximately 45% of the site). The proposed building works only relates to the R4 portion of the site. • Part E2 Commercial Centre zone (For approximately 30% of the site). • Part RE1 Public Recreation (For the remaining 25% of the site).
Disclosure of political donations and gifts	Nil disclosure.
Heritage	No heritage listing however Lot 1 in DP 1173048 is a draft heritage item. See discussion below within the report.
Principal Development Standards	Floor Space Ratio. 5.0:1 for "Site 2". Proposed across development site being "Site 2".

	<p>4.808:1.</p> <p><u>Note</u> - Development only occurring on the R4 zoned land for FSR purposes and excludes all other land.</p> <p>Height of Buildings.</p> <p>Part 54 metres (For part of the R4 zoned land the subject of this application being Site 2) and part 39 metres for the remainder of the R4 zoned land being Site 2.</p> <p>Proposed:</p> <ul style="list-style-type: none"> • Building B - 55.5 metres. • Building C - 43.05 metres. • Building D - 42.6 metres. <p>Area designated for a new road and park - No building height limit applies.</p>
Issues	<p>Height.</p> <p>Setbacks.</p>

SUMMARY

1. Development Application Number 2022/0776 was accepted on Friday 23 December 2022 for the construction of three buildings B, C & D ranging in height from 13 to 17 storeys and comprising of four neighbourhood shops and 310 apartments over six levels of basement parking with associated site works.
2. The application was publicly notified to occupants and owners of the adjoining properties for a period of fourteen (14) days between Thursday 2 February 2023 to Thursday 16 January 2023. During the notification period, Council received one (1) submission.

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 the previous submission.

The development application was renotified between Thursday 14 September 2023 and Thursday 12 October 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 dated Friday 8 September 2023. During this period, Council received one submission.

3. The development application was modified to a development encompassing the construction of three buildings B, C & D ranging in height from 13 to 17 storeys and comprising of six neighbourhood shops and 303 apartments over 6 levels of basement parking with associated site works following a submission made on Monday 7 August 2023.
4. The variations are:

Control	Required	Provided	% variation												
Part 3E - 1 Deep soil zone. Apartment Design Guide.	A minimum 430.9 square metres or 7% of the site should be deep soil zone.	At least 260.3 square metres or 4.2%.	170 sq m or 39.4%.												
Part 3F Visual privacy. Apartment Design Guide.	Minimum separation distances are: <table><tr><th>Building height</th><th>Habitable rooms & balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+storeys)</td><td>12m</td><td>6m</td></tr></table>	Building height	Habitable rooms & balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+storeys)	12m	6m	Building D. Habitable floor areas, balconies and bedrooms face one another - 12 metres. Other setbacks comply.	12 m or 50%.
Building height	Habitable rooms & balconies	Non-habitable rooms													
Up to 12m (4 storeys)	6m	3m													
Up to 25m (5-8 storeys)	9m	4.5m													
Over 25m (9+storeys)	12m	6m													
Part 4D-2 Habitable room depth. Apartment Design Guide.	Maximum 8 metres from a window.	Room depths up to 8.4 metres.	400 mm or 5%.												
Part 4E-1 Private open space and balconies at grade. Apartment Design Guide.	Minimum area 15 square metres with minimum depths of 3 metres.	Apartment G04 of Building B - 12 sq m with a width of 2 metres. Apartment G09 of Building C - 10 sq m. Width complies.	Area 3 sq m or 20%. Width 1 m or 33.3%. Area 5 sq m or 33.3%.												
Clause 4.3 - Height of buildings. Cumberland Local Environmental Plan 2021.	Part 54 metres for the R4 zoned land). Part 39 metres for the remainder of the R4 zoned land.	Building B - 55.5 metres. Building C - 43.05 metres. Building D - 42.6 metres.	1.5m or 2.7%. 4.05m or 10.38%. 3.6m or 9.2%.												
Part 3.2 Basement Design. Control C1. Same as Part 4.3 - Basement Parking of the Residential Flat Buildings	Basement walls to be located under building walls where practical. Basement not to encroach into setback area.	Southern wall - 6 metres. Eastern wall - 6 metres. Western Wall - 14 metres.	All 100% to the respective boundaries.												

<p><i>Chapter and Part 3.8 Site specific controls of F2.7 Merrylands Neil Street Precinct</i> - Chapter - CDCP 2021).</p> <p>Part B3 - Residential Flat Buildings Chapter - CDCP 2021.</p>			
<p>3.3.2 - Building and Ceiling Height. Control C2.</p> <p>Part F2-6 Merrylands Town Centre Chapter - CDCP 2021.</p>	<p>Ground floor - 3.5 metres.</p> <p>First floor - 3.3 metres.</p>	<p>Buildings B and C.</p> <p>3.1 metres.</p> <p>3.1 metres.</p>	<p>400 mm or 11.4%.</p> <p>200 mm or 6.06%.</p>
<p>3.3.2 - Street wall height of buildings. Control C6.</p> <p>Part F2-6 Merrylands Town Centre Chapter - CDCP 2021.</p>	<p>3 Storeys - Minimum height of 11 metres and maximum height of 14 metres.</p>	<p>12 to 17 storeys which includes the rooftops.</p>	<p>266% to 433%.</p>
<p>3.3.4 - Building depth and length. Control C3.</p> <p><i>(Same control under Part 3.8 Site specific controls and Part 3.85 - Site and Building Design Control C4 - Part F2.7 Merrylands Neil Street Precinct</i></p>	<p>Envelope depth - 22 metres.</p>	<p>Building D above basement - 26.4 metres.</p>	<p>4.4 m or 20%.</p>

Chapter - CDCP 2021).			
Part F2-6 Merrylands Town Centre Chapter - CDCP 2021.			
3.3.4 - Building depth and length. Control C4.	Apartments on 2 nd and 3 rd levels limited in depth - 8 metres from glass line and 11 metres from outer edge of building envelope.	Up to 8.45 metres from a glass line.	450 mm or 5.6%.
Part F2-6 Merrylands Town Centre Chapter - CDCP 2021.		Up to 11.7 metres from outer edge of building.	700 mm or 6.3%.
3.8.4 Site and Building Design Control C3	Comply with Block D Height Plan for permitted storeys.	Building B - Portion of the 16 storey part (crosses into the 8 storey part of site.	8 storeys or 100%.
Control C6	Building height - Max 16 storeys. For corner of Neil Street and Railway line.	Building B - 17 storeys - include rooftop common area.	1 storey or 6.25%.
Part F2.7 Merrylands Neil Street Precinct Chapter - CDCP 2021.	All other buildings - 12 storeys.	Building C and D 13 and 12 storeys - includes rooftop.	1 storey or 8.3%.

5. 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.
6. 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 being Part 5 and Part 7 McLeod Road and 1/4-4A Terminal Place Merrylands within the following allotments:

- Part Lot 10 in DP 1305248.
- Part Lot 11 in DP 1305248.
- Lot 1 in DP 1173048.

Note: Since lodging the application, part of the legal property description has changed from Lot 1 in DP229589 and Lot 2 in DP 1217412 and formerly known as 4-4A Terminal Place and 2 Neil Street, Merrylands respectively. The new lots and DPs were registered with the NSW Land Registry Services on Wednesday 22 May 2024.

Site (2) adjoins “Site 1” which is situated to the immediate west.

The subject site has a frontage to Neil Street (Northern frontage) and has a southern frontage that adjoins Terminal Place and the associated commuter car park.

A railway line adjoins the site to the immediate east. Further to this, Sydney Trains has advised Council that there is an existing easement benefitting the “Transport Asset Holding Entity” for the railway siding situated along the rear boundary of the site that is associated with the railway line.

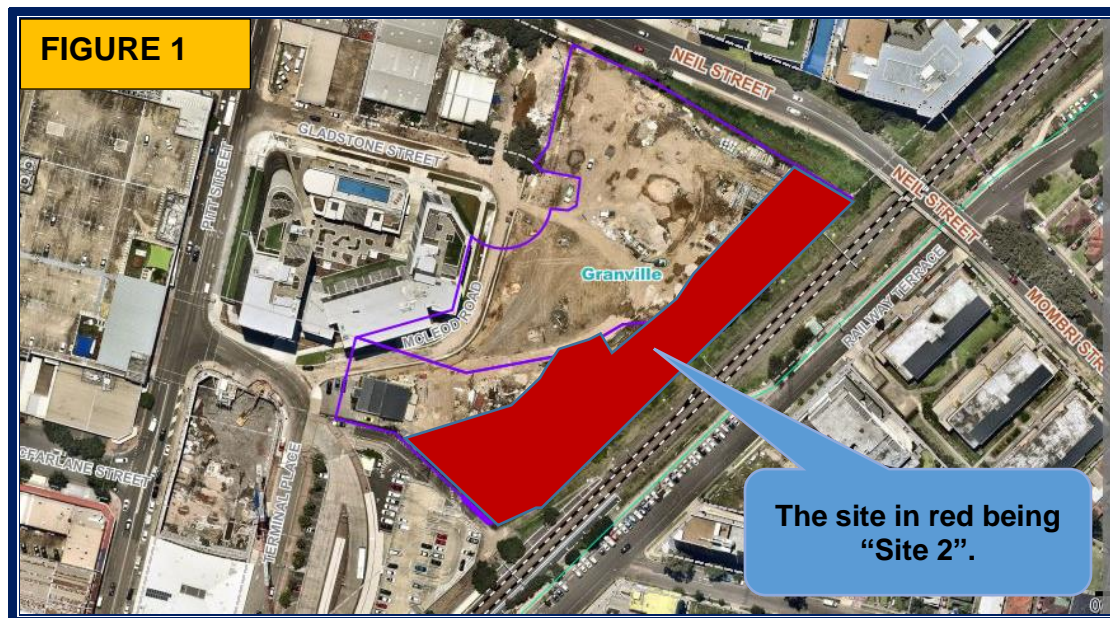
The site is irregular in shape and according to Council records, the site occupies an area of 16,289 square metres. The applicant is identifying a site area of 6,156 square metres applicable to the development application known as “Site 2”.

The southern half of “Site 2” adjoins land to the west that is now a sealed roadway known as McLeod Road and a future park which includes an open space corridor. The associated development application for the future park - Number 2023/0485 has 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 2” however, minor encroachments along the western side of the building D into the area of acquisition are identified being an awning. The adjoining pedestrian walkway for Building D will be situated on the land earmarked for acquisition. The necessary works do not form part of the current development application.

Conditions will be required for any consent that removes any encroachments to ensure that all works occur within the area known as “Site 2”.

Council mapping shown below identifies the acquisition area as highlighted in yellow. The “Site 2” the subject of the works is shaded in red.



Endeavour Energy has advised that there is an easement benefitting Endeavour Energy for electricity purposes passing through the site but has no in service electricity infrastructure attached.

There is also a low voltage service conductor connecting to the customer connection points for the existing site passing through the site.

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.

Recent site inspections have identified that the site the subject of the works is vacant land; however, building materials are being stored across part of the site.

The Merrylands Railway Station, bus station and a commuter car park is situated to the immediate south.

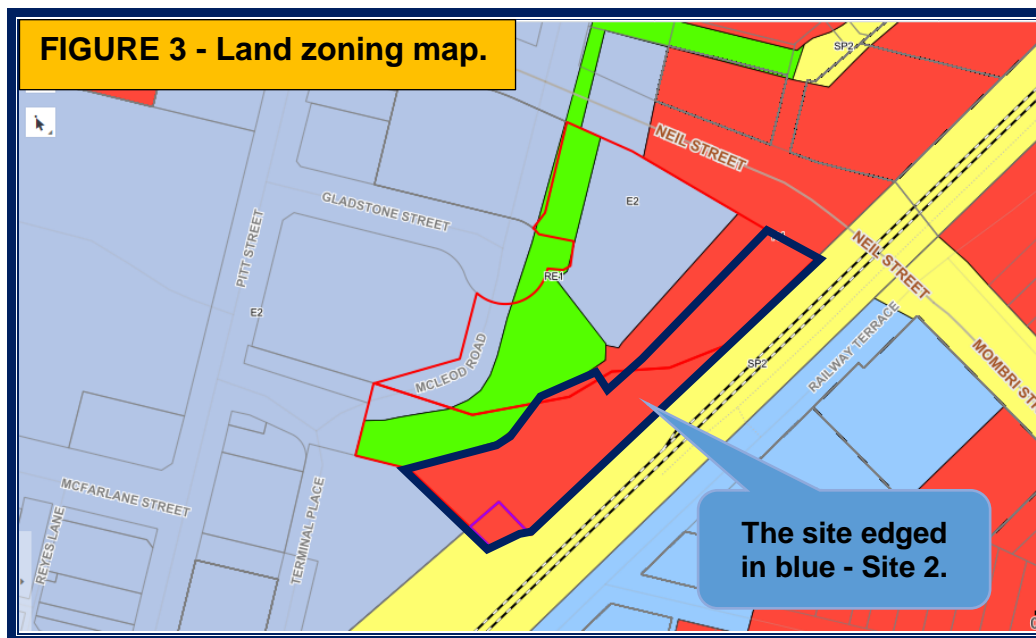
The Locality

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

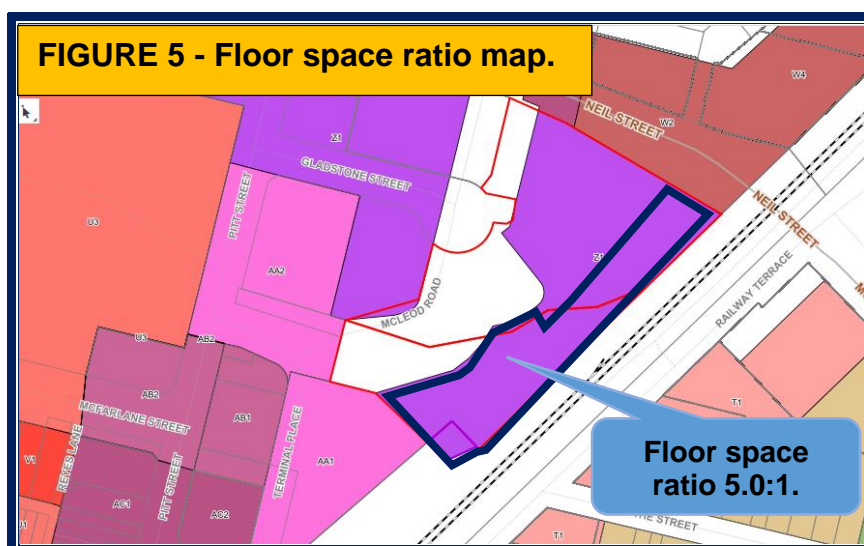
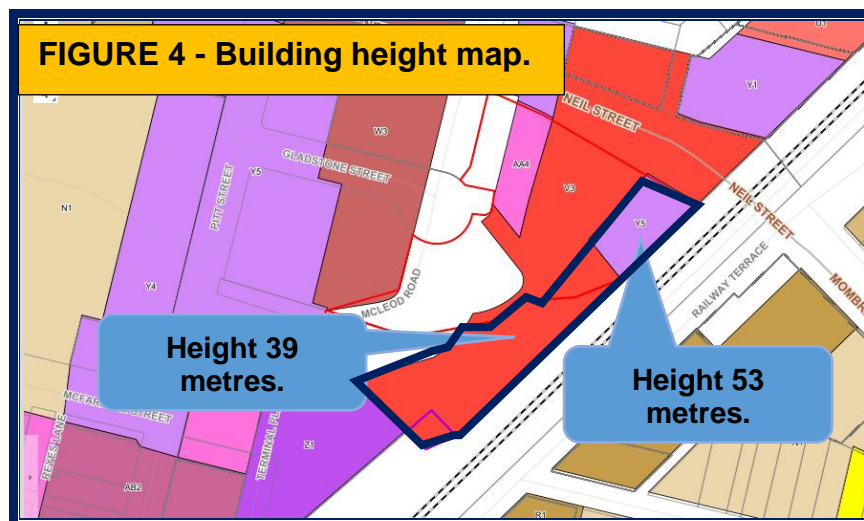
The overall site is shown below edged in purple with Site 2 being shaded in red.



The land zoning map with Site 2 edged in blue covering the R4 zone land is identified below.



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

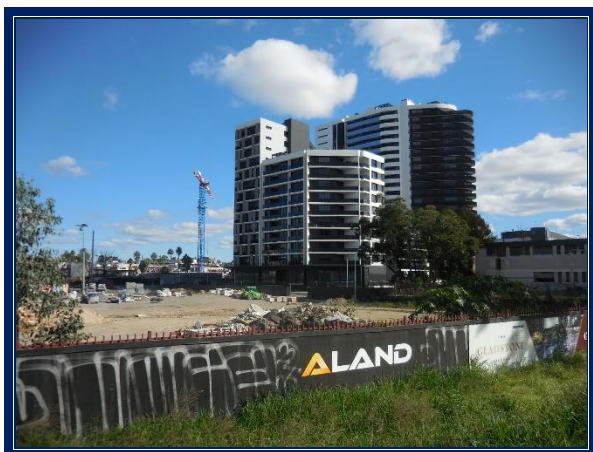


The site is not listed as a heritage item within the Cumberland Local Environmental Plan 2021. Notwithstanding the above, it is identified that Lot 1 in DP 1173048 being a small allotment of land at the south eastern corner of the site previously owned by Sydney Trains / Transport Holding Entity was recently subject to a Stage 1 Heritage Planning Proposal listing.

The heritage proposal that was recently endorsed by Council for finalisation 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.

Previously, there was a building or large shed on the site. The building was demolished by the new owners during 2012. As such, there is now no building on the site with the site being vacant land. The expected changes to the Cumberland Local Environmental Plan 2021 and heritage listing are noted.

Photos of the site taken Tuesday 21 May 2024 are provided below.



DESCRIPTION OF THE DEVELOPMENT

Development application 2022/0776 is proposing the construction of three separate buildings B, C & D ranging in height from 12 to 17 storeys and comprising of 6 neighbourhood shops and 303 apartments over six levels of basement parking with associated site works.

Vehicle and pedestrian access to the site will be situated along the western side of Building D being the southernmost building. The access will be resolved via an extension of Mc Leod Road into “Site 2” via the RE1 zoned land to the subject site. This will overcome the permissibility issue of access across RE1 zoned land. This will need to be completed and resolved with Council prior to the issue of any Occupation Certificate for “Site 2”.

The development application does not address the infrastructure works associated with the site including new roads, parks and associated stormwater drainage. Development application 2023/0485 proposes such works. The development application is under assessment by Council staff.

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 development to be constructed are demonstrated within the table below.

Feature	Proposal	Comments
Basement car park	6 Levels of car parking with room to park 439 vehicles.	The car park comprises: <ul style="list-style-type: none"> • Residential 351 spaces. • Visitor spaces 77 spaces. • Car wash bay 1.

		Retail 11 spaces.
Retail floor space (Neighbourhood shops - Only for Building D).	6 shop front tenancies occupying a combined area of 426 square metres.	Neighbourhood shops cannot exceed an area of 80 square metres with all tenancies at or below such size.
Number of apartments.	303 Apartments.	The apartments are divided into: <ul style="list-style-type: none"> • 28 x 1 bedroom apartments. • 228 x 2 bedroom apartments. • 47 x 3 bedroom apartments.
Number of apartments per building	Building B - 126 Apartments. Building C - 43 Apartments. Building D - 134 Apartments.	For a total of 303 Apartments.

The plans are showing vehicle access to the basement within Building D. The access is crossing through land that is zoned RE1 Public Recreation which is addressed within the report.

The plans are also showing the pedestrian pathway alongside Building D situated wholly within the adjoining lot which is zoned RE1 Public Recreation. Such works do not form part of the development application. It is also identified that:

- There is an awning encroaching over this area for Building D.
- Access to one neighbourhood shop is situated within the area.

There will be a need to modify the ground floor western side of Building D to avoid any encroachments into adjoining land not forming Site 2. Further, the awning encroachment across this area will need to be removed.

This is capable of being addressed as conditions attached to any recommendation made.

Each building is varied in design and shape and differences in how building materials are used.

Planning Proposal 2023/0001

Separate to this application and unrelated to the current development application, the Panel should be made aware of Planning Proposal Number 2023/0001 to increase the floor space ratio and building height across Site 2.

This has received endorsement by the Cumberland Local Planning Panel at its meeting of Wednesday 10 April 2024.

At the Council meeting of Wednesday 1 May 2024, Council resolved to support the Planning Proposal with the following changes to the site:

- Tower D - Increase in height to 65 metres (20 storeys with common roof and rooftop lift overrun).
- Floor space ratio increase to 5.5:1 for Buildings D1 and D2 (Building D) and 6:1 for Buildings B and C.
- Additional permitted uses (500 sq m commercial premises) for Building D1 and D2 (Building D).

It is estimated that this would increase the number of apartments within the site by 43.

Council has endorsed that the Planning Proposal be forwarded to the Department of Planning Housing and Infrastructure for a Gateway Determination.

This is submitted to the Panel for its information with the changes having no impact upon determination of this application.

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.

was finalised by Council officers on Tuesday 20 December 2022.

The development application was accepted by the Council for determination on Friday 23 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 buildings 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 Monday 7 August 2023. The plans submitted on the 7 August 2023 are presented to the Regional Panel for determination.

The applicant submitted the final registered plan of subdivision demonstrating provision for vehicle access to “Site 2” on Wednesday 22 May 2024.

The first stage being “Site 1” was approved by the Sydney Central City Planning Panel on Tuesday 26 March 2024 subject to conditions. The application now before the Panel is Stage 2.

APPLICANTS SUPPORTING STATEMENT

The applicant has provided a Statement of Environmental Effects prepared by Think Planners and dated Friday 16 December 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.

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 incorporated 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 F 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 Tuesday 24 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 Thursday 9 February 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 15 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)

Transport for New South Wales (Sydney Trains) has supported the development and has granted concurrence subject to conditions. All conditions recommended in correspondence received are attached to the draft condition set for Panel consideration.

Water New South Wales

The development application is Integrated Development pursuant to 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. The conditions provided by Water New South Wales are incorporated into the recommendation for final approval by the Panel.

PLANNING COMMENTS

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

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.	<p>N/A - No significant vegetation removal is proposed as part of the development application.</p> <p>In this regard, "Site 2" is generally devoid of any trees or significant vegetation.</p> <p>Minor trees / shrubs are to be removed but these are not significant across the overall site.</p>

	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 (Resilience and Hazards) 2021 	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.
	Chapter 4 - Remediation of Land.	<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 has advised that 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>Matters concerning land contamination are addressed in a satisfactory manner and conditions are recommended by Council's Environment and Health Officer for any consent issued addressing land contamination.</p>
<ul style="list-style-type: none"> • State Environmental Planning Policy (Transport and Infrastructure) 2021 	Chapter 2 - Infrastructure.	<p>Chapter 2 - Infrastructure</p> <p><u>2.43 - Electricity transmission</u></p> <p><u>Comments</u></p>

	Part 2.119. Part 2.121.	<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 15 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 1346701M-02 dated Friday 28 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 \$112,781,548 which exceeds the \$30 million threshold.</p> <p>While Council is responsible for the assessment of the DA, determination of</p>

		the Application will be made by the Sydney Central City Planning Panel.
<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.</p> <p>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>

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 Housing SEPP 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 B attached to the report.

As there are no Savings provisions in relation to State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development), the new controls of State Environmental Planning Policy Housing (2021) must be applied to the development.

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 are applied. The development performs satisfactorily in relation to the provisions as shown in Appendix A attached to the report

Apartment Design Guide

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 430.9 square metres or 7% of the site should be deep soil zone.	At least 260.3 square metres or 4.2%.	No

		Variation is 170 square metres or 39.4%.	
3F Visual privacy.	Minimum separation distances are:	Building D.	No (Building D)
		Habitable floor areas, balconies and bedrooms face one another across a distance of 12 metres.	
		All other setbacks comply.	
Part 4D-2 Habitable room depth.	Maximum 8 metres from a window.	Room depths of up to 8.4 metres. Variation is 400 mm or 5%.	No
Part 4E-1 Private open space and balconies.	Minimum area is 15 square metres with minimum depths of 3 metres.	Apartment G04 of Building B 12 sq m with a width of 2 metres.	No
		Apartment G09 of Building C 10 sq m but width complies.	No
		All other ground floor apartments comply.	

Comments

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

1 - Part 3E - 1 Deep soil zone

- a) A separate development application has been submitted to the Council for assessment for the public park adjoining to the site which is currently under assessment. The park forms part of the redevelopment of the overall site.
- b) The applicant is prepared to enter into a Planning Agreement for the delivery of the park as discussed throughout the report.
- c) The future public park will comprise deep soil zone areas that is expected to reach the minimum stated requirements.

2 - Part 3F - Visual privacy

The separation distance within Tower D are less than the requirements stated. In this regard, a setback of 24 metres should be applied between the north and south towers of Building D given the arrangement of the apartments. Instead, the separation distance is 12 metres.

The architectural plans are showing appropriate design elements and screens being applied to the affected apartments to retain a satisfactory level of privacy between apartments. For this reason, the proposed setbacks are satisfactory.

3 - Part 4D-2 - Habitable room depth

The variation to this is considered reasonable as follows:

- a) 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.

4 - Part 4E-1- Private open space and balconies

The variation is considered reasonable given that residential amenity is not adversely impacted. The apartments are facing towards a pedestrian walkway and are close to the new public parks to be constructed.

With a satisfactory aspect, the variation is considered to have no adverse impact to the functioning of the affected apartments.

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.

It is identified that further discussion is required on several items specified below.

(a) Permissibility:

The proposed development is defined as the following:

1 - Residential flat buildings are defined as:

“A building containing 3 or more dwellings but does not include an attached dwelling or multi dwelling housing”.

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.

2 - Neighbourhood shop defined as:

“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 does not include neighbourhood supermarkets or restricted premises”.

A neighbourhood shop is a permitted development with consent within the R4 High Density Residential zone. There are further restrictions on the size of neighbourhood shops which is addressed within the table below.

Building D could even be constructed 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:

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

Note—

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

RE1 - Public Recreation zone (Vehicle access)

The development requires vehicle and pedestrian access from the future Mc Leod Road to the west to cross the RE1 Public Recreation zoned land but not within “Site 2”.

Council officers have recently finalised a subdivision certificate application SC Number 2024/0096 to permit a boundary adjustment. That land is earmarked for public acquisition and this is the reason why a boundary adjustment had to occur to ensure an access could be provided to the building to cross the affected land area.

As part of that road carriageway, there will be a need for pedestrian footpaths that connect the Buildings B, C and D 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 2” 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 2”.

The plans are showing an awning structure encroaching into this area alongside the western curtilage of Building D and a neighbourhood shop with access from the west. The part of the awning that falls outside the site should be removed.

The westernmost neighbourhood shops will need to be modified due to the need to setback the ground floor shops of Building D by at least 1.8 metres from the property boundary.

Such changes are considered to be minor and not impacting upon the superstructure of the primary building.

The necessary changes will ensure that the site does not rely upon the adjoining RE1 zoned land for access.

In addition, a fire escape access stair adjacent to the southernmost shop should also be modified so that the stairwell directs occupants to the western side of the site rather than to the primary access driveway.

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 <ul style="list-style-type: none"> Part 54 metres for part of the site. Part 39 metres for the remainder of the site. <p>Area designated for a new road and park - No building height limit applies.</p>	No	<p>Proposed:</p> <ul style="list-style-type: none"> Building B - 55.5 metres. Building C - 43.05 metres. Building D - 42.6 metres.
4.4 Floor Space Ratio <p>5.0:1 (For the whole of "Site 2").</p> <p>No floor space ratio requirement on that part of the land zoned RE1 and that part of the site marked as "Mc Leod Road".</p>	Yes	<p>Proposed across the whole site:</p> <p>4.808:1.</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>
5.4(7) Controls relating to miscellaneous permissible uses <p>Neighbourhood shops maximum floor area - 80 square metres.</p>	Yes	<p>All shops are at or under 80 square metres in floor area.</p> <p>Necessary changes to 2 shops will not result in any variation to the control.</p>
4.6 Exceptions to Development Standards	Yes	Refer to detailed assessment below.

(b) Clause 4.6 - Variation to the Building Height limit

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 PS 18-003, dated 21 February 2018.

The applicant has submitted a written request to vary the development standards 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 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 B6 and R4 zone, insofar as the development is not antipathetic to the zone objectives (per Schaffer Corporation v Hawkesbury City Council (1992) 77 LGRA 21).

The zone objectives are:

- To provide for the housing needs of the community within a high density residential environment.*
- To provide a variety of housing types within a high density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To ensure that non-residential land uses are located in a setting that minimises impacts on the amenity of a high density residential environment.*
- To encourage residential development that maintains the amenity of the surrounding area.*

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 of the scale proposed within a high density residential environment.

The development provides a variety of unit sizes and configurations to contribute towards the provision of a variety of housing types within a high density residential environment.

The development provides facilities and services to meet the day to day needs of residents however the non-residential land uses are neighbourhood shops at the ground floor to activate the park.

The development provides non-residential land uses (neighbourhood shops) and has been designed to minimise impact on the amenity of the high density residential environment.

The development provides residential development that maintains the amenity of the surrounding area through careful consideration of the design of the scheme and relationship to adjoining properties and the surrounding area.

The proposal is consistent with the future desired character of the area as envisaged by the current planning controls. The proposal is consistent with the objectives of Clause 4.6 and the R4 zones.

Planning comment

The proposed development will:

- Provide for the housing needs within an area that is adjacent to a transport node being bus and rail services and adjacent to a significant shopping complex which has a significant number of shops and discount department stores, supermarkets and related support services. There are also a significant number of shops and services found within the adjoining Merrylands Town Centre available for future residents.
- Provide for several forms of housing (apartments) that will meet the needs for singles, to couple through to families within an environment of a town centre.
- Provide for housing that will be situated adjacent to future parkland.
- Provide a high degree of amenity for residents within a town centre environment.

It is considered that the objectives are complied with.

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

Applicant's justification:

1) *The objectives of this clause are as follows:*

- (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 to a series of non-habitable areas that are centrally recessed to the building.

- *Despite the height breach, the proposal remaining consistent with the objectives of the clause because the height approach is to:*
 - *Retain the 16 storey tower to the 54m height area*
 - *Retain the 12 storey component to the 39m area.*
 - *Hence this is considered consistent with the planned heights for the site.*

- *The proposal also introduces an additional break between Building C and B that is not required by the DCP but provides a better design response. This is a redistribution of the permitted 5:1 FSR on the site and the variation enables a suitable development density noting compliance with the 5:1 FSR and hence the height as proposed enables an appropriate development density which satisfies objective (a).*
- *The visual impact of the non-compliance is limited noting the departure is primarily to the centrally located plant, stair, and lift core areas which are not easily 'read' in terms of the character of the locality and satisfies objective (b).*
- *The shadow diagrams show the adjoining properties received adequate solar access, and the breach of the height to the buildings is centrally located with no meaningful additional shadow impacts- which aligns with part of objective (c).*
- *The additional height has no bearing on the privacy of neighbouring properties which aligns with part of objective (c).*
- *The development is designed to follow the landform, whilst acknowledging the impact of overland flow / flooding and a suitable design response noting that the ground floor is marginally raised to deal with flooding.*
- *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.*

On that basis the underlying objectives are satisfied. Therefore, the proposal satisfies the objectives of the control per Wehbe Test 1.

Planning comment

The development is providing the following heights for Buildings B, C and D:

- Building B - 55.5 metres.
- Building C - 43.05 metres.
- Building D - 42.6 metres.

The variation is passing through the lift overrun, corridor and related services across the top floor of Buildings, B to D and not through habitable floor space. In addition:

- There is an additional break within the development that is not required by the relevant planning controls. In this regard, the development is split into three buildings instead of two buildings. This is improving streetscape amenity, privacy and reducing shadow impacts within and external to the site.
- The development is addressing the site constraints notably flooding and overland flow within a satisfactory manner.
- The development is providing a high degree of amenity which is improved by breaking the development into three separate buildings with each building having different design forms and building material finishes.

It is considered that Part 2 is complied with.

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

Applicant's justification:

Strict compliance with the prescriptive building height requirement is unreasonable and unnecessary in the context of the proposal and its unique circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The design response aligns with the intent of the control and provides for an appropriate transition to the adjoining properties. The proposal promotes the economic use and development of the land consistent with its zone and purpose.

The contravention of the height control does not raise any matter of significance for State or regional environmental planning given the nature of the development proposal.

There is no public benefit in maintaining the development standard as it relates to the current proposal. The departure from the control is acceptable in the circumstances given the underlying objectives of the control are achieved and it will not set an undesirable precedent for future development within the locality as any future development on another site would require consideration of the relevant merits and circumstances of the individual application.

Planning comment

It is considered appropriate to support the development under the stated heading on the following grounds:

- Is a compatible form of development that does not result in unreasonable environmental amenity impacts across the local area.
- The proposed development is consistent with the zone and associated zone objectives and provides a high degree of residential amenity within a town centre environment.
- The development is supported by the service authorities and is a form of development suited for the location.
- The development forms part of a redevelopment of a much larger site area that will activate the local streets within an area adjacent to public transport and retail services.

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:

In relation to environmental planning grounds the variation to the height standard is a suitable outcome. Therefore, the environmental planning grounds associated with the breach in height are:

- a) 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.*
- b) 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.*
- c) The service zones identified are centrally located and not visually dominant but are a necessary component of a building of this size and scale.*
- d) The additional height proposed does not result in 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.*
- e) The flood affectation that necessitates a suitable freeboard level to be achieved.*
- f) The departure to the height standard furthers the objects of the Environmental Planning and Assessment Act 1979 as set out below:*
 - To promote the orderly and economic use and development of land.*
 - To promote good design and amenity of the built environment through the provision of the rooftop common open space area.*

The above discussion demonstrates that there are sufficient environmental planning grounds to justify the departure from the control.

Planning comment

It is considered appropriate to support the applicant's response. It is demonstrated that the variation to the control is mostly related to improvements in the degree of residential amenity being provided across the development such as common areas, sunlight exposure and privacy. In addition:

- The flooding and overland flow path issues have been addressed.
- Satisfactory amenity is being achieved across the wider area with the proposed future park having additional sunlight access resulting from additional breaks between buildings.

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 development 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 that needs to be considered for the purpose of the development application.

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

The Cumberland Development Control Plan 2022 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 D and E for Panel consideration. The variations are addressed below with references made to the objectives as relevant.

1 - Part 3.2 - Basement Design (Control C1) - Part B3 - Residential Flat Buildings Chapter.

(Same as Part 4.3(Control C2) - Basement Parking of the Residential Flat Buildings Chapter and Part 3.8 Site specific controls of F2.7 Merrylands Neil Street Precinct Chapter).

Basement walls to be located under building walls where practical.

Comment

While much of the basement car park is situated underneath the development, there are parts of the basement that are encroaching into the setback areas being:

- Southern wall 6 metres.
- Eastern wall - 6 metres.
- Western Wall - 14 metres.

In this regard:

- The southern wall is situated alongside the southern boundary of the site.
- The eastern wall is situated alongside the boundary of the railway corridor which is managed and controlled by Transport for New South Wales (Sydney Trains).
- The western part of the basement underneath Building D will be situated adjacent to land zoned RE1.

It is identified that the basement car park is wholly underground and would have no adverse impacts upon what occurs at grade level. In particular:

- Transport for New South Wales (Sydney Trains) has provided concurrence to the development subject to conditions.
- The position of the southern and western basement car park is not raising adverse issues.

2 - Part 3.3.2 - Building and Ceiling Height (Control C2) Part F2-6 Merrylands Town Centre Chapter - CDCP 2021.

The ground floor should have a floor to ceiling height of 3.5 metres while the first floor should have a floor to ceiling height of 3.3 metres.

The relevant objectives to the control 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.*

Comment

In particular:

- For Buildings B and C - The apartments on the ground floor and first floor have floor to ceiling heights of 3.1 metres which is consistent with the Apartment Design Guide requirements.
- For Building D - The apartments on the first floor have floor to ceiling heights of 3.1 metres.

As such, there are variations across all three buildings of the development. The plans and documentation provided are showing the following:

Buildings B and C

- The ground floor apartments of the buildings having satisfactory aspect and layout to permit as much sunlight as possible to penetrate the affected apartments.
- The NatHERS Energy Rating Certificates are showing all the affected apartments on the ground and first level of Buildings B and C as having 5.2 to 7.5 Star Ratings. Of the 22 apartments situated within the ground floor of Buildings B and C, at least 15 achieve a Star Rating of 6 or higher with 6 achieving a Star rating of 7 or higher.
- View lines are established from each apartment.

Building D

- The ground floor of Building D comprises neighbourhood shops which feature double height floor to ceiling heights of 6.2 metres and as such, the apartments on the first storey of the building are at a height above the ground level that is equivalent to a two storey building.
- The NatHERS Energy Rating Certificate are showing that the apartments on the first storey are achieving a Star rating of between 5.2 and 8.4 with a majority of these exceeding a Star rating of 6 with almost half achieving a rating of 7 or more.
- View lines are established from each apartment.

It is identified that the objectives are complied with in which:

- Internal residential amenity is satisfactory and consistent with the planning controls.
- The development exhibits appropriate built form heights, setbacks and design. The three buildings vary in design, shape and stature with each building different to one another.
- The development has appropriate presentation to the future public spaces to be provided.

3 - 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.

Comment

All three buildings B, C and D do not feature setbacks across their floor plates above the third storey. This element could be supported on the following grounds:

- The development is being split into three separate buildings whereby the controls envisage two buildings across the whole site. This breaks the bulk, volume and mass of the entire development while introducing greater amenity in the form of improved privacy and solar penetration to apartments across the whole development.
- View lines are improved across the whole development site.
- Building D is split into two separate and distinct towers above the eighth storey which also reduces the bulk, scale and mass of the overall development.
- All three buildings feature differing designs and variations of the use of built forms and building materials providing contrasting built forms to the streetscape.
- The design chosen improves solar penetration to the future public park to the constructed adjacent to the development site.
- The development is designed so that general compliance with the objectives of Part 3.3.2 are complied with.

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

(Same as Part 3.8 Site specific controls and Part 3.85 - Site and Building Design Control C4 - Part F2.7 Merrylands Neil Street Precinct Chapter).

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

The relevant 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.*

Comment

Part of the Building D situated above the basement car park is encroaching into the setback area by as much as 4.3 metres.

This is affecting the north facing neighbourhood shops and the apartments situated above.

The application is requesting support of the variation on the grounds that strict application of the control would have an adverse impact upon the design of the building. The encroachment is occurring within the R4 High Density Residential Zone and not the RE1 Public Recreation zone.

It is considered reasonable to allow the variation on the following grounds.

- Building D is split into two separate and distinct towers above the eighth storey which reduces the bulk, scale and mass of the overall development.
- Additional open space is being provided at ground level between buildings B, C and D due to the architect splitting the development into three separate buildings rather than having two buildings as envisaged by the planning controls.
- There is a loss of 30.75 square metres of open space within the affected area but with the splitting of the development into three buildings instead of two, at least 180 to 208 square metres of additional open space or common open space is being created at ground level. The net increase is between 149 and 177 square metres. As such, the loss adjacent to Building D is more than compensated for across other parts of the site.
- The objectives governing sustainable building design, internal and external amenity, provision of functional space within the development and solar penetration to and within the development are achieved.

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

Comment

There are apartments within the development that each up to 8.45 metres from a glass line and up to 11.7 metres from outer edge of the building envelope.

The variation to both elements is 450 mm and 700 mm respectively for both controls. Using the information provided by the applicant, it is identified that the two variations do not have adverse impact to residential amenity and all apartments perform satisfactorily in terms of internal and external amenity and solar penetration to main living areas.

5 - Part 3.8.4 Site and Building Design (Control C3 and C6)

*Comply with Block D Height Plan for permitted storeys.
Building height - Max 16 storeys. For corner of Neil Street and Railway line.
All other buildings - 12 storeys.*

The objectives of the control 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.*

Comment

The following is identified:

- Building B - Portion of the 16 storey part (Not affecting the 17th storey part) crosses into the 8 storey part of the site.
- Building B is 17 storeys in height includes the rooftop.
- Building C and D is 13 storeys includes the rooftops.

There are three variations identified although it is considered appropriate to support all three for the following reasons:

- The extra storey across the rooftop of all three buildings is required for access purposes being access to common areas. The rooftop areas include enclosed corridors, lift overruns and various other services which strictly must be included as a storey. The areas are not habitable living space for residents but parts form floor space ratio for the entire building complex.
- The development is providing a high degree of residential amenity within the centre of Merrylands.
- Floor space ratio across the entire development is compliant with the 5.0:1 requirement.

- The development offers a high degree of amenity for residents and locals.
- The stated objectives in relation to built form are complied with.

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.

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, permissibility constraints 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 2 February 2023 to Thursday 26 January 2023. During the notification period, Council received one submission.

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 the previous submission.

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.

The development application was renotified between Thursday 14 September 2023 and Thursday 12 October 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 dated Friday 8 September 2023. During this period, Council received one submission as follows.

The issues raised during the notification period are outlined below.

Issue	Planner's Comment
The project will involve much construction noise.	Construction noise and timing of works are to be addressed as conditions attached to the recommendation for Panel consideration.

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 \$8,812,767.40 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 R4 High Density Residential zone under the Cumberland Local Environmental Plan 2021. There are variations in relation to the applicable planning instruments that apply to the site however, these are considered to be 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 2022/0776 for construction of three (3) buildings (B, C & D) ranging in height from 12 to 17 storeys and comprising of six (6) neighbourhood shops and 303 apartments over six (6) levels of basement parking with associated site works on land at Part 5 and Part 7 McLeod Road and 1/4 - 4A Terminal Place Merrylands be approved consent 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.
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. Copy of Subdivision plan showing site access.
8. Redacted Submissions Received.
9. Location of Site 2 in relation to Site 1 sheet.
10. Appendix A - Chapter 4 (SEPP Housing) 2021 assessment table.
11. Appendix B - Apartment Design Guide assessment table.
12. Appendix C - Cumberland Local Environmental Plan 2021 assessment table.
13. Appendix D - Cumberland Development Control Plan 2021 Assessment tables - Residential Flat Buildings Chapter.
14. Appendix E - Cumberland Development Control Plan 2021 Assessment tables - Development in Business Site Specific Chapter.
15. Appendix F - Design Excellence Panel Minutes & applicants discussion with assessment officer's comments.