

TO: Sydney Central City Planning Panel

SUBJECT: 2 Bachell Avenue LIDCOMBE

APPLICATION No: DA2023/0775 / PPSSCC-550

Application lodged	18 April 2024.
Applicant	Pacific Planning Pty Ltd.
Owner	Raad Property Acquisition NO 10 Pty Ltd.
Application No.	DA2023/0775 / PPSSCC-550.
Description of Land	2 Bachell Avenue LIDCOMBE. Lot 2 in DP 219413.
Proposed Development	Demolition of existing structures, construction of a mixed use development across nine-storeys with associated parking for specialised retail, high technology industries, light industrial, office and medical uses, storage units, recreation facility (indoor), food and drink premises, centre based child care facility, neighbourhood shop and an animal boarding facility. Integrated Development - sections 89 & 90(2) of the Water Management Act 2000.
Site Area	8,738 square metres.
Zoning	E3 Productivity Support.
Disclosure of political donations and gifts	Nil disclosure.
Cost of works	\$105,000,000.00 (CIV).
Heritage	The site is not a Heritage item and is not located in a Heritage Conservation Area.
Principal Development Standards	<p>Minimum Lot Size Permissible: 1,500 square metres. Proposed: 8,738 square metres.</p> <p>FSR Permissible: 3:1. Proposed: 3.24:1 (applicant), 3.27:1 (Council).</p> <p>Height of Building (HoB) Permissible: Part 18m and Part 32 metres. Proposed: 19.9 metres at the highest breach in the 18 metre HoB zone. 33.08 metres at the height breach in the 32 metres HoB zone.</p>
Issues	<p>FSR. Car parking. Stormwater. Design Excellence Panel – Layout of uses.</p>

SUMMARY

1. Development application 2023/0775 was lodged on the 18 April 2024 for the demolition of existing structures, construction of a mixed use development across nine-storeys with associated parking for specialised retail, high technology industries, light industrial, office and medical uses, storage units, recreation facility (indoor), food and drink premises, centre based child care facility, neighbourhood shop and an animal boarding facility for determination.
2. The application was publicly notified to occupants and owners of the adjoining properties for a period of 28 days between the 2 May 2024 and the 30 May 2024. In response, one (1) submission was received.
3. On the 8th of October 2024, the applicant lodged amended plans and documents.
4. The amended plans and documents were publicly notified to occupants and owners of the adjoining properties for a period of 7 days between 24 October 2024 and 31 October 2024. In response, one (1) submission was received.
5. The subject site is not listed as a heritage item nor located within the heritage conservation area.
6. The variations are as follows:

Control	Required	Provided	% variation
Clause 4.3 Cumberland Local Environmental Plan 2021. Height of Building.	Maximum 18m Maximum 32m	19.9m 33.08m	10.55% 3.375%
Clause 4.4 Cumberland Local Environmental Plan 2021. Floor Space Ratio.	3.0:1	3.24:1 (28,272 square metres). According to Council's calculation, the FSR is 3.27:1 or 28,575.1 square metres.	7.8% 9%
Sub-part 3.8, C1. Part C Development in Business Zones Chapter Cumberland Development Control Plan 2021 (CDCP 2021).	Minimum finished floor level (FFL) to finished ceiling level (FCL) in a commercial building, 3.3 metres for commercial/retail levels above ground level.	All upper levels have a 2.7m FFL to FCL.	0.6m or 18.18%
Sub-part 3.10, C1.	Continuous awnings are	No awning provided.	100%

Part C Development in Business Zones Chapter Cumberland Development Control Plan 2021 (CDCP 2021).	required to be provided to all active street frontages.		
Sub-part 2.3, C2. Part G1 Advertising & Signage Chapter Cumberland Development Control Plan 2021 (CDCP 2021).	Total signage per street frontage must not exceed one (1) top-hamper sign, one (1) under-awning sign and one (1) wall sign.	30 wall signs along the Bachell frontage.	29 or 96.6%.
Sub-part 4.3, C1 Part G3 Traffic, Parking, Transport & Access (Vehicle) Chapter Cumberland Development Control Plan 2021 (CDCP 2021).	926 car spaces.	520 car spaces.	406 car spaces, a variation of 43.84%.
Sub-part 4.4, C8. Part G3 Traffic, Parking, Transport & Access (Vehicle) Chapter Cumberland Development Control Plan 2021 (CDCP 2021).	The width of driveways is limited to 8 metres at the boundary including development with commercial loading docks and servicing (including waste servicing).	The driveway width for the service vehicles is 15.4metres.	7.4m or 92.5%.

7. 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.
8. The application is recommended for refusal as outlined in the Council's assessment report.

REPORT

SUBJECT SITE AND SURROUNDING AREA

The site is legally described as Lot 2 in DP 219413 which is generally known as 2 Bachell Avenue, Lidcombe.

The site is triangular in shape and has a primary frontage to Bachell Avenue.

The site has the following boundaries:

- Bachell Avenue - 203.835 metres.
- Southern boundary - 139.915 metres.
- Eastern boundary - 122.30metres.

The overall site area is 8,738 square metres.

A 2743mm x 1676mm stormwater channel and a DN600 wastewater main traverses within the boundaries of the proposed site. The site is affected by flooding and the proposed development work is required to account for the flood levels for the site.

A site inspection on the 1st of May 2024 identified a single storey brick building and car park exists across the site.

The site, the subject of the development application is situated on the southern end of the Industrial area and is adjacent to a residential area (to the west) and railway infrastructure (to the south).

There is a culvert situated along the eastern curtilage of the site, refer to location below (red arrow).

The location of the site is shown below edged in purple.



Figure 1– Aerial view of subject site - edged in purple (Source Nearmaps).

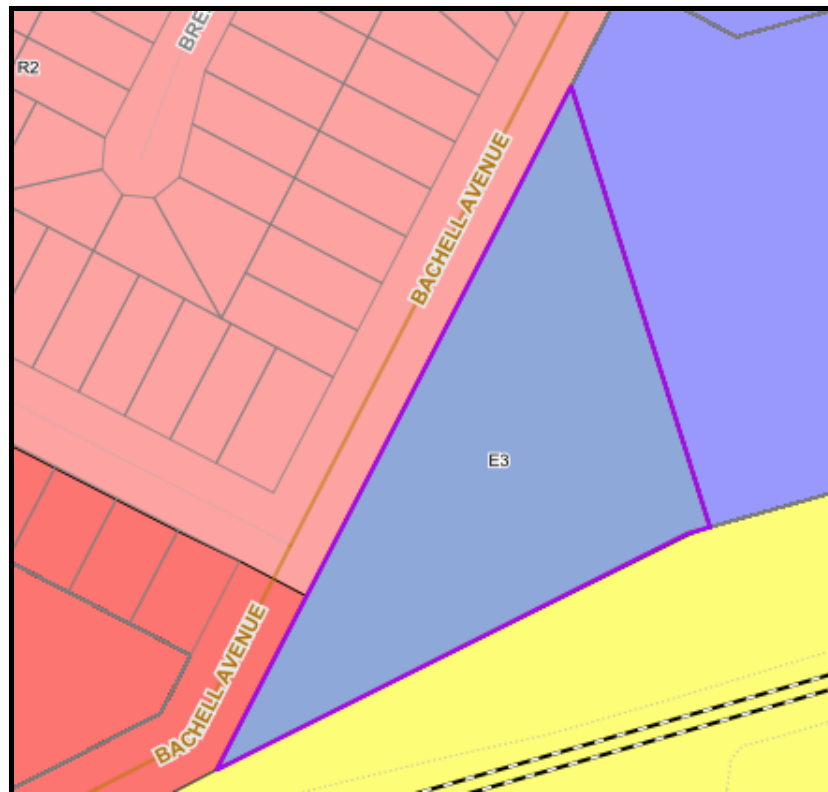


Figure 2 – Land zoning with the site edged in purple

DESCRIPTION OF THE DEVELOPMENT

Council has received a development application for the demolition of existing structures, construction of a mixed use development across nine-storeys with associated parking for specialised retail, high technology industries, light industrial, office and medical uses, storage units, recreation facility (indoor), food and drink premises, centre based child care facility, neighbourhood shop and an animal boarding facility.

A detailed breakdown of the proposal is demonstrated below:

Basement 2

- 193 x car parking spaces.
- 1x loading bay.
- 5 x bicycle spaces.
- 10 x motorcycle spaces.
- 9 x storerooms.
- Lift access.
- Fire stairs.
- Plant rooms.

Basement 1

- 183 x car parking spaces.
- 2 x loading bays.
- 32 x bicycle spaces.
- 3 x motorcycle spaces.
- 4 x storerooms.

- Lift access.
- Fire stairs.
- Plant rooms.

Lower Ground Floor

- 87 x car parking spaces (2 of which are nominated as car share and one a ride share).
- 27 x Childcare car parking spaces.
- 11 x loading bays.
- 45 x bicycle spaces.
- Gym (Indoor recreation facility).
 - Bathroom facilities.
 - Storerooms.
 - Lobby.
 - List Access.
- 17 x Self Storage Units.
- Lift access.
- Fire stairs.
- Plant rooms.

Ground Floor

- Gym (Indoor recreation facility).
- Food and drink premises.
- 1 x Neighbourhood shop.
- Specialised retail premises.
- Light industry tenancies each with each tenancy accessing a car space via the internal driveway.
- Public amenities.
- Mailroom.
- Garbage room.
- Substation.
- 4 x loading bays.
- Ambulance Bay.

Level 1

- Health Services facility and open terrace.
- Specialised retail premises.
- Food and drink premises.
- Public amenities.

Level 2

- Light Industry, with each tenancy accessing a car space via the internal ramp.
- High Technology Industries.
- Specialised retail premises.
- Garbage room.
- Amenities.
- 1 x loading bay.

Level 3

- Light industry.
- High Technology industries.

- Specialised retail premises.
- Health Services Facility with terrace (entry via level 4).

Level 4

- High Tech Industries.
- Health Services facility.
- Amenities.

Level 5

- Office tenancies.
- Food and drink premises (café) with terrace.
- Centre based childcare centre.

Level 6

- Office tenancies.

Level 7

- Office tenancies.
- Basketball court.

Level 8

- Office tenancies.
- Dog daycare with associated outdoor exercise areas.

A separate application and approval will be required for the fit-out of each tenancy or for any change of use to the tenancies.

HISTORY

A Planning Proposal to amend the former Auburn Local Environmental Plan was submitted to Council in November 2018.

Th Gateway determination included:

- Rezone the site from IN1 General Industrial to B5 Business Development.
- Increase the floor space ratio control for the site from 2.5 to 3:1.
- Apply a 32m height of building control to the majority of the site, with 18m height of building controls applying to the frontage to Bachell Avenue.
- Add Office and Business Premises as additional permitted uses.
- Apply a floor space cap of 7000m² to the additional permitted uses.
- Removal of the foreshore building line

The changes to the LEP were gazetted on the 9th of March 2021.

PL2021/0005

On 12 April 2021, Council provided pre-lodgement advice and comments from the Design Excellence Panel for Construction of a mixed-use development, including light industries, office and business premises, food and drink premises, specialised retail, centre-based childcare, recreation facility, self-storage, and wholesale supplies consisting of 4 to 9 storey buildings, integrated open space areas and basement parking.

PL2021/0135

On 22 March 2022, the Design Excellence Panel provided comments for construction of a mixed-use development, including light industries, office and business premises, food and drink premises, specialised retail, centre-based childcare, recreation facility, self-storage, and wholesale supplies consisting of integrated open space areas and basement parking.

The development application now before the Panel was lodged with the Council for determination on Thursday, 18 April 2024.

APPLICANTS SUPPORTING STATEMENT

The applicant has provided an addendum Statement of Environmental Effects prepared by Pacific Planning dated October 2024 which was received by Council on the 8th of October 2024 in support of the 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 Engineering

The development application was referred to Council's Senior Development Engineer for comment who has advised that the following matters remain outstanding and have not been adequately addressed:

- *The On-site detention (OSD) system related matters have not been fully resolved and insufficient information has been provided.*
- *The Water Sensitive Urban design (WSUD) related matters have not been fully resolved, and insufficient information provided.*
- *Matters relating to the proposed alteration works at the intersection of Rawson Street and Bachell Avenue not been fully resolved and insufficient information provided.*
- *The parking space numbers provided are not sufficient to cater for the proposed development.*

The outstanding matters above have formed part of the reasons for refusal.

Environmental Health

The development application was referred to Council's Environmental Health Officer for comment who has advised that the proposal is generally supported, appropriate conditions would have been imposed if the application was being recommended for approval.

Tree Management

The development application was referred to Council's Tree Management Officer for comment who has advised that the proposal is supported, appropriate conditions would have been imposed if the application was being recommended for approval.

Waste Management

The development application was referred to Council's Waste Management Officer for comment who has advised that the development is supported, appropriate conditions would have been imposed if the application was being recommended for approval.

EXTERNAL REFERRALS

Water NSW

The development application is Integrated Development pursuant to Sections 89 and 90(2) of the Water Management Act 2000. Water New South Wales has issued a General Terms of Approval for the dewatering activities. The conditions provided by Water NSW would be incorporated into the consent, should the application be recommended for approval.

Transport for NSW (TfNSW)

The development application was referred to TfNSW pursuant to clause 2.122 of the State Environmental Planning Policy (Transport and Infrastructure) 2021. TfNSW in its correspondence dated 17 May 2024 advised that:

- *TfNSW notes that the development proposes vehicle access and civil works to Bachell Avenue (local road). Council as the relevant Road Authority should be satisfied with the proposed design, civil works, swept path analysis and vehicle parking design and operation.*
- *Whilst TfNSW supports the proposed mitigation measures to alleviated increased traffic impacts to the Church Street/ Railway Street intersection, however Council as the relevant Road Authority for this intersection, should be satisfied with these measures.*

Sydney Water

The development application was referred to Sydney Water pursuant to s78 of the Sydney Water Act 1994 on two occasions. Sydney Water in its latest correspondence dated 25 November 2024 advises that the applicant has engaged with Sydney Water and the information provided to Sydney by the applicant as resolved the matters previously raised.

Sydney Water raises no further objections to the proposal. The conditions provided by Sydney Water would be incorporated into the consent, should the application be recommended for approval.

Ausgrid

The development application was referred to Ausgrid pursuant to s2.48 of the SEPP (Transport and Infrastructure) 2021. Ausgrid in its correspondence received on the 15th of May 2024 did not raise any objections to the proposal, subject to conditions.

Transport for New South Wales (Sydney Trains)

Given the proximity to the railway to the south-west the application was referred to Sydney Trains pursuant to Section 2.99 of the SEPP (Transport and Infrastructure) 2021. Sydney

Trains in its correspondence received on the 19th of November 2024 did not raise any objections to the proposal, subject to conditions.

Design Excellence Panel

The development application was referred to the Design Excellence Panel (DEP) meeting of 19 June 2024 in accordance with the Cumberland Design Excellence Panel Policy as the proposal incorporates a building with a height of greater than 25 metres. The DEP comments are contained in Attachment 13.

At the meeting of 19 June 2024, the Panel identified that there were numerous issues to address. The applicant has addressed and responded to those matters. The DEP assessment and applicant's response is contained in Attachment 14 for the Panels' consideration.

The DEP core issue with the proposal relating to the design, the layout of uses and the layout of light industrial uses appears more of a 'back of house', and disconnected from the development. The DEP also raised issues with wayfinding'

- *Various entry points to the development will make it difficult for people to find their way into and around safely and conveniently.*
- *Access is generally convoluted – long, winding and indirect corridors may be unpleasant and unsafe. Pedestrian pathways/access along the north east edge is not clear.*

In addition to the above, the issue relating to the exceedance in the floor space ratio, car parking and stormwater matters have not been adequately addressed by the applicant and therefore the application cannot be supported in its current form.

The core matters raised by the DEP form part of the reasons for refusal.

PLANNING COMMENTS

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

State Environmental Planning Policies

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

State Planning Policies (SEPPs)	Environmental	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>The development application includes the removal of thirteen (13) trees, two (2) of which are street trees.</p> <p>The subject site is not identified on the Biodiversity Values Map and the proposal does not exceed the biodiversity offsets scheme threshold. Therefore, the proposed</p>

		vegetation removal is considered acceptable.
	Chapter 6 - Water Catchments. Sydney Harbour Catchment.	It is determined that given the location of the site, a detailed assessment is not required given that there is no direct impact upon the catchment and no direct impact upon watercourses. As such, the development is acceptable under the provisions that came into effect on 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 3.	Potentially hazardous or potentially offensive development. Potentially hazardous or potentially offensive development does not apply to the development and a preliminary hazard analysis was not required in this instance.
	Chapter 4 - Remediation of Land. Part 4.6.	<p>Part 4.6 - Contamination and remediation to be considered in determining development application.</p> <p><u>Comments</u> Council's Environmental Health Officer reviewed the proposal and has advised that the application can be supported subject to conditions in that:</p> <p><i>A remedial action plan (RAP) was prepared by Sullivan Environmental Sciences Pty Ltd, dated 29 November 2023, reference: SES_500. Based on the findings, The steps in remediating the site are:</i></p> <ul style="list-style-type: none"> • <i>Excavate and transport the contaminated soils as waste offsite to a licenced waste facility for disposal.</i> <p><i>All remediation works contained within the RAP will be required to be</i></p>

		<p><i>complied with and will be conditioned.</i></p> <p>As such, it is considered that the development application is satisfactory under Part 4.6 of Chapter 4 of the State Policy.</p>
<ul style="list-style-type: none"> • State Environmental Planning Policy (Industry and Employment) 2021. 	Chapter 3 Advertising and Signage.	A signage strategy is proposed to detail the location of the business and building identification signs. An assessment of the signage is made in detail in Attachment 10
<ul style="list-style-type: none"> • State Environmental Planning Policy (Transport and Infrastructure) 2021. 	Chapter 2 - Infrastructure.	State Environmental Planning Policy (Transport and Infrastructure) 2021 is relevant to the development application as follows.
	Clause 2.48	<p><u>Chapter 2 - Infrastructure.</u></p> <p>Determination of development applications Subpart (2) - Give written notice to electricity providers and take account of responses received within 21 days.</p> <p><u>Comment</u> The development application has been referred to Ausgrid for assessment. Ausgrid in its correspondence received on the 15th of May 2024 did not raise any objections to the proposal, subject to conditions.</p>
	Clause 2.98	<p>The application is subject to clause 2.98 of the SEPP, because the subject site is located adjacent to a railway corridor.</p> <p><u>Comment</u> Sydney Trains in its correspondence received on the 19th of November 2024 did not raise any objections to the proposal, subject to conditions.</p>
	Clause 2.99	The application is subject to clause 2.99 of the SEPP as the proposed redevelopment of the site involves excavation to a depth of at least 2m below ground level (existing), on land within, below or above a rail

		<p>corridor, or within 25m (measured horizontally) of a rail corridor.</p> <p><u>Comment</u> Sydney Trains in its correspondence received on the 19th of November 2024 did not raise any objections to the proposal, subject to conditions.</p>
	Clause 2.122	<p>The application is subject to clause 2.122 as the proposal triggers the requirements for traffic generating developments listed in Schedule 3 of the SEPP.</p> <p><u>Comment</u> The development application was referred to TfNSW pursuant to clause 2.122 of the State Environmental Planning Policy (Transport and Infrastructure) 2021. TfNSW in its correspondence dated 17 May 2024 did not raise any objections to the proposal, subject to conditions.</p>
	Chapter 3 - Education Establishments and Child Care Facilities. Part 3.3	<p>The proposal includes a centre based child care centre on level 5 to the most north-eastern building.</p> <p>A comprehensive SEPP assessment is contained in Attachment 10.</p>
	<ul style="list-style-type: none"> • State Environmental Planning Policy (Planning System) 2021 	<p>Schedule 6.</p> <p>Development of a type that is listed in Schedule 6 of Planning System SEPP 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.</p> <p>The proposed development constitutes 'Regional Development' as it has a Capital Investment Value (CIV) of \$105,000,000.00 which exceeds the \$30 million threshold. While Council is responsible for the assessment of the DA, determination of the Application will</p>

		be made by the Sydney Central City Planning Panel.
<ul style="list-style-type: none"> • State Environmental Planning Policy (Sustainable Buildings) 2022 	Chapter 3 – Standards for non-residential development	<p>Chapter 3 of SEPP (Sustainable Buildings) 2022 applies to this development as it relates to non-residential and is for the erection of a new building and the development has a capital investment value of \$10 million or more.</p> <p>A NABERS agreement for the office component, prepared by Raad Property Acquisition No 10 Pty Ltd has been submitted that addresses the requirements of Chapter 3 and Schedule 3 of SEPP (Sustainable Buildings) 2022 being a 5.5 star NABERS energy rating and 2 star NABERS water rating.</p> <p>The application was also accompanied by an Embodied Emissions Material Form prepared by Raad Property Acquisition No 10 Pty Ltd that quantifies the embodied emissions attributable to the development in accordance with Clause 3.2(2) of the SEPP.</p> <p>The information accompanying the application demonstrates that the development satisfies the requirements in Chapter 3 of SEPP (Sustainable Buildings) 2022 and accordingly, consent can be granted to the development.</p>

Local Environmental Plans

Cumberland Local Environmental Plan 2021

The provision of the Cumberland Local Environmental Plan 2021 is applicable to the development proposal. It is noted that the development generally achieves compliance with the key statutory requirements of the Cumberland Local Environmental Plan 2021 and the objectives of the E3 Productivity Support zone except for the building height and floor space ratio.

(a) Permissibility:

The proposed development is defined as a 'mixed use development' given the various land uses these are outlined below:

Assessment of permissibility of proposed uses		
Proposed use	Dictionary Classification	Permissibility
Food and Drink Premises.	Food and drink premises; Take away food and drink premises;	Yes. 'Food and drink premises' and 'take away food and drink premises' are permitted with consent.
Gymnasium.	Recreation facilities (indoor);	Yes. Permitted with consent.
Health Services.	Health Services Facility;	Yes. A Health Services Facility is not prohibited
Dog daycare.	Animal boarding or training establishments;	Permissible.
Childcare centre.	Centre-based childcare facilities.	Permissible.
Light industrial uses.	Light industries;	Permissible.
Neighbourhood shop	Neighbourhood shops	Permissible.
Specialised retail uses.	Specialised Retail Premises	Commercial premises are prohibited, including Retail Premises, however Specialised Retail Premises are permitted with consent.
Self-Storage.	Storage Premises	Yes. Self-storage units are a type of storage premises and are permitted with consent.
High technology uses.	High technology industry.	Yes. High technology industry is a type of 'light industry' and is permitted with consent.
Building and Business Identification sign strategy.	Building and Business Identification.	Permissible.
Office Premises.	Office premises.	Office premises are permitted with consent under Schedule 1- Additional permitted uses – section 13 Use of certain land at 2 Bachell Avenue, Lidcombe.

The relevant matters to be considered under the Cumberland Local Environmental Plan 2021 and the applicable clauses for the proposed development are summarised below. A comprehensive LEP assessment is contained in Attachment 11

DEVELOPMENT STANDARD	COMPLIANCE	DISCUSSION
4.1 Minimum sub-division lot size 1500, square metres (minimum)	Yes	Subject site lot area is 8,738 square metres. No change is sought.
4.3 Height of Buildings Part 18 metres	No	The height of a building exceeds in part the height

Part 32 metres		<p>of building. In the 18 metre zone the proposal at its highest is 19.9 metres, a variation of 1.9 metres or 10.55%.</p> <p>In the 32 metre zone, the proposal at its highest is 33.08, a variation of 1.08 metres or 3.375%. The variation is supported and is further discussed following this table.</p>
4.4 Floor Space Ratio 3:1	No	<p>The applicant states an FSR of 3.24:1 (28,272 square metres).</p> <p>According to Council's calculation the FSR is 3.27:1 or 28,575.1 square metres.</p> <p>The non-compliance is not supported as detailed in the discussion following this table.</p> <p>This matter forms part of the reasons for refusal.</p>
4.6 Exceptions to development standards	No	<p>The variation to the height of building is supported. However, the breach to the floor space ratio is not supported.</p> <p>Refer to detailed assessment below.</p>
<p>Schedule 1-Additional permitted uses – Additional permitted uses – Section 13 Use of certain land at 2 Bachell Avenue, Lidcombe.</p> <p>(2) Development for the following purposes is permitted with development consent—</p> <p>(a) business premises,</p> <p>(b) office premises.</p>	Yes	<p>A total of 6,041 square metres of office space.</p>

(3) Development consent must not be granted under this clause if it would result in more than 7,000 square metres of gross floor area of all buildings on the land to which this clause applies being used for the purposes specified in subclause (2).

Clause 4.6 – Exceptions to development standards

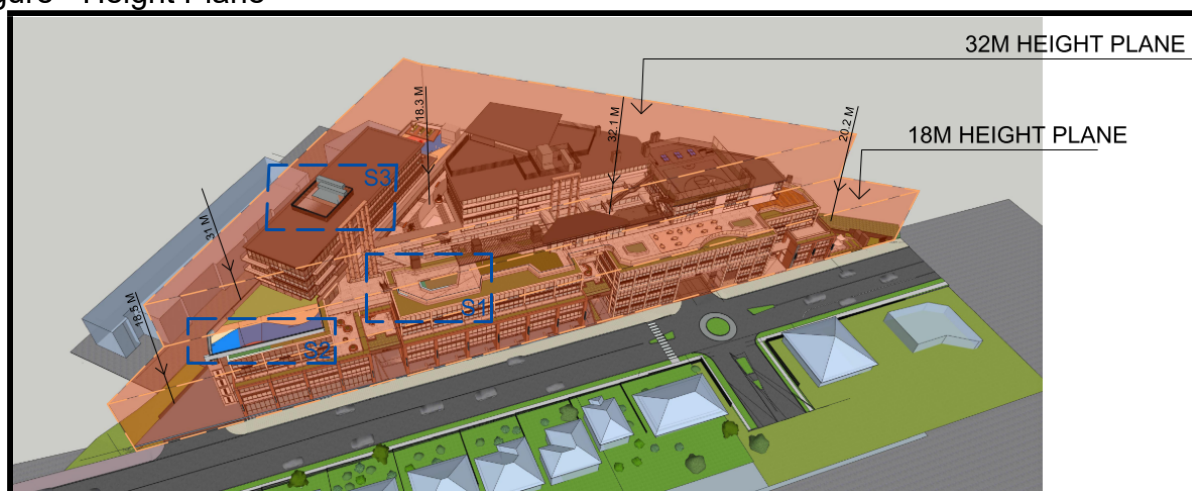
Clause 4.6 aims to achieve better design outcomes for and from development by allowing an appropriate degree of flexibility to development standards if particular circumstances are satisfied.

The application seeks to vary the development standard for the maximum building height under clause 4.3 and the floor space ratio under clause 4.4 of the Cumberland Local Environmental Plan 2021.

Clause 4.3 Height of Building

Consent may only be granted upon the consent authority being satisfied that the applicant has demonstrated in a document submitted with the application that (a) compliance with the development standard is unreasonable or unnecessary in the circumstances and (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

Figure - Height Plane



Source: Two Form Architecture and Interior Design

Breach location	Maximum height breach	% Variation
S1	1050mm	5.8%
S2	1900mm	10.55%
S3	1080mm	3.38%

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances.

The decision of *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827, affirmed in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 set out five common and non-exhaustive ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary. They were that:

- (i) the objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- (ii) the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.
- (iii) the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
- (iv) the development standard has been virtually abandoned or destroyed by the Council's decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable.
- (v) the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary.

Applicant's justification:

- *The design adopts a stepped form back from the street.*
- *The building form has not maximized the available massing within the 18m zone at the north-east corner of the site, in order that a stepped street presentation can be made to Bachell Avenue.*
- *Three-storey form presents to the street, allowing for roof planting above, and a stepped building form.*
- *These levels presenting to the street are well below 18m. This softens the overall building form and accentuates the taller centre element of the street façade.*
- *This design approach shows that massing has been reduced within the 18m height zone to create an elegant and attractive building, increasing in height towards the rear.*
- *The upper-level breach is confined to lift overruns is not visible from the street. Also relevant to point out that these breaches by the parapets and balustrades are in the transition area between the two heights.*
- *The shadow diagrams show that no shadowing impact occurs to any other site, as all shadows fall on the street or to the railway yards to the south.*
- *The stepped setbacks to Bachell Avenue create an attractive façade with opportunity for upper-level planting and vegetation. This is an attractive presentation which shields views to the railway yards. There is no loss of any significant view corridor and the visual impact is exactly what was envisioned when the dual height controls were established.*

Planner's comments

- The three-storey street wall and stepped back from the street for the upper levels provides for an appropriate separation from the residential properties and public domain.
- There are no adverse shadowing or privacy issues being created.
- There is no habitable floor space that will breach the height of building plane.

- The highest breach being the lift overrun is setback over 30 metres from the front boundary and therefore its visibility from the street will be minimal.
- The proposal will not impact on any view corridors.

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

In respect of there being sufficient environmental planning grounds to justify the contravention of the development standard, *Initial Action* found that although the phrase ‘environmental planning’ is not defined, it would refer to grounds that relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979*, including the objects in s.1.3. To be sufficient, the environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248.

Applicant’s justification:

- *The variations are confined to very small intrusions by balustrading and lift overruns into the height zones. The height variations are quite minor in terms of the extent of their intrusion into the 18m and 32m height zone.*
- *No impact results from the height breaches.*
- *The front portion of the site does not adopt the full 18m height, in order to soften the building and create a stepped, or layered, building elevation to Bachell Avenue.*
- *The breaches are not obviously perceptible from the street, and the roof encroachments provide cover for terraces below.*

Planner’s comments:

- The development is providing for breaks within the development and provides for separation between the various uses and having different design forms and building material finishes throughout.
- The breach to the building height does not create any adverse overshadowing impacts.
- There is no habitable floor space that will breach the height of building plane.

Conclusion

As the applicant’s justification has satisfied the test under clause 4.6 in relation to the contravention of the height of building. Council supports the variation to the height of building.

Clause 4.4 Floor Space Ratio

Consent may only be granted upon the consent authority being satisfied that the applicant has demonstrated in a document submitted with the application that (a) compliance with the development standard is unreasonable or unnecessary in the circumstances and (b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

(a) compliance with the development standard is unreasonable or unnecessary in the circumstances.

The decision of *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827, affirmed in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 set out five common and non-exhaustive ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary. They were that:

- (i) the objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- (ii) the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.
- (iii) the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
- (iv) the development standard has been virtually abandoned or destroyed by the Council's decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable.
- (v) the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary.

Applicant's justification:

- *The design adopts a stepped form back from the street.*
- *The building form has not maximized the available massing within the 18m zone at the north-east corner of the site, in order that a stepped street presentation can be made to Bachell Avenue.*
- *At the north-western corner of the site, a building form well below 18m is also proposed (Figure 2). This softens the overall building form.*
- *The amended design approach shows that massing has been reduced from the 18m height zone to create an elegant and attractive building with various different setbacks.*
- *A predominant three-level form exists to the street, with the main entry portion of the façade, being higher.*
- *Consistency with the DCP controls and the overall building height illustrate that the planned density is being achieved. These aspects of the building design provide the visual cues that present an attractive urban character, or not. In this case, the proposed building presentation is attractive, adopting smooth transitions in height. Due to the large frontage and unique shape, the breach in the FSR is not perceptible from the public domain.*

Planner's comments:

- It has not been demonstrated that the objectives of the Floor Space Ratio development standard is satisfied despite the variation proposed.

In this regard, objective 4.4(1)(a) specifies "*to establish a maximum floor space ratio to enable appropriate development density*".

Objective 4.4(1)(b) specifies "*to ensure that development intensity reflects its locality*".

It has not been demonstrated to the satisfaction of Council that the proposed development density and intensification is appropriate noting the following:

- Council's calculation of the proposed gross floor area is greater than that outlined by the applicant. Council calculates the gross floor area as 28,575.1square metres,

whereas the applicant states 28,272 square metres, a difference of 151.9 square metres in gross floor area.

- There is insufficient onsite car parking to service the development and is not acceptable.
- Given the site is located outside the Town Centre and within the vicinity of a Low Density Residential zone and industrial developments, it has not been demonstrated that proposed onsite parking arrangement to service the development is adequate.

(b) there are sufficient environmental planning grounds to justify the contravention of the development standard.

In respect of there being sufficient environmental planning grounds to justify the contravention of the development standard, *Initial Action* found that although the phrase 'environmental planning' is not defined, it would refer to grounds that relate to the subject matter, scope and purpose of the *Environmental Planning and Assessment Act 1979*, including the objects in s.1.3. To be sufficient, the environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248.

Applicant's justification:

- *There is no breach of the 32m height control.*
- *The design resolution and capacity of the site was not fully understood at the Planning Proposal stage. Following the detailed design phase and resolution of building envelope designs and building separation, the final site capacity is now understood. Relative to the allowable floor area, the 7% variation is reasonably modest.*
- *No impact on any adjoining property results from the additional floor area.*
- *The stepped front building heights soften the building form.*
- *Floor area is not easily perceptible to the passer-by, however appropriate heights, setbacks and building scale are. This justification has demonstrated compliance with the desired future character of the area.*

A development that was forced to be compliant with the standard fails to recognise that:

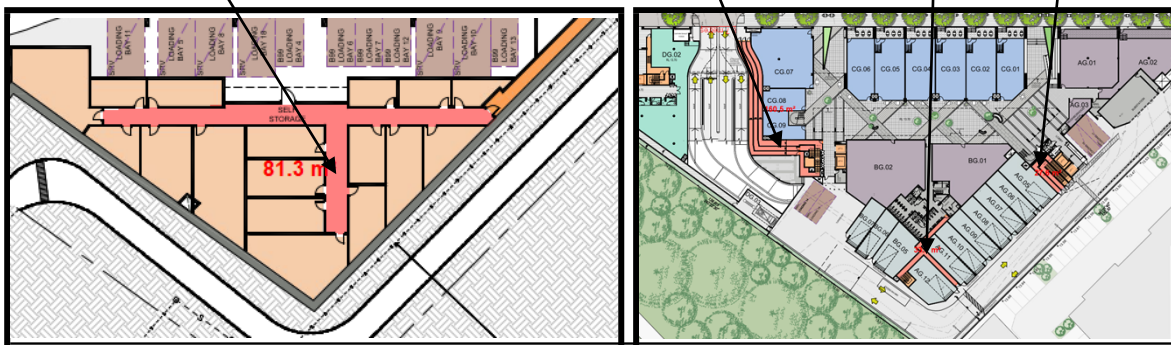
- *The site shape is quite unique, and therefore does not create a precedent that is undesirable.*
- *The variation is imperceptible to any passer-by, and the bulk and scale of the building is consistent with the vision of the site, as per the recent site rezoning.*
- *There are no environmental benefits or reduced impacts that would result from strict compliance.*
- *Strict compliance would reduce amenity of some courtyards by cutting off the roof cover above and removing the window awning above Suite D6.01.*

Planner's comments:

- It has not been demonstrated to the satisfaction of Council's Senior Development Engineer that the development can accommodate the additional GFA as there is insufficient onsite car parking to service the development.
- The Clause 4.6 is factually incorrect as it states there is no breach of the 32m height control, whereas the proposal in part breaches the height within the 32 metre height zone.

- The clause 4.6 states that “the design resolution and capacity of the site was not fully understood at the Planning Proposal stage”, this is not sufficient to warrant ‘sufficient environmental planning grounds to justify the contravention of the development standard’ as the Planning Proposal sought to amend the Floor Space Ratio control from 1:1 to 2.5:1; *the proponent’s economic report indicated that a Floor Space Ratio of 2:1 would be “somewhat viable”, while a Floor Space Ratio of 2.5:1 or greater was identified as viable.* Furthermore, the Applicant’s request for an alteration to the Gateway Determination to increase the FSR from 2.5:1 to 3:1 was supported. Therefore, the applicant’s justification provided in the Clause 4.6 stating that “*design resolution and capacity of the site was not fully understood at the Planning Proposal stage*” is not supported.
- Council’s calculation of the proposed FSR is 3.27:1 or 28,575.1 square metres which is a variation of 9%. Applicant states a FSR of 3.24:1 or 28,272square metres. This discrepancy comes from additional areas included in Council’s calculation which includes the corridors leading into the self-storage units and the horizontal fire exits on the ground floor (refer to figures below).
- As such, the insufficient onsite car parking to service the development is not acceptable. The justification to vary the FSR development standard on environmental planning grounds with respect to parking and traffic impacts is not supported by Council.

Additional areas included in Council’s GFA calculation.



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

The Cumberland Development Control Plan 2021 is relevant to the development proposal.

The development has been assessed using the following chapters:

- Part A - Introduction and General Controls.
- Part C - Development in Business Zones.
- Part E - Other Land Use Based Development Controls.
- Part G3 - Traffic, Parking, Transport & Access (Vehicle).
- Part G4 - Stormwater & Drainage.
- Part G5 - Sustainability, Biodiversity & Environmental Management.
- Part G7 - Tree Management & Landscaping.
- Part G8 - Waste Management.

The development is found to comply with the relevant provisions except for the following:

Cumberland DCP 2021 - Compliance Table

Control	Required	Provided	% variation
Sub-part 3.8, C1. Part C Development in Business Zones Chapter.	The minimum finished floor level (FFL) to finished ceiling level (FCL) in a commercial building, 3.3 metres for all commercial/retail levels above ground level.	All upper levels have a 2.7m FFL to FCL.	0.6m or 18.18%.
Sub-part 3.10, C1. Part C Development in Business Zones Chapter.	Continuous awnings are required to be provided to all active street frontages.	No awning provided.	100%
Sub-part 2.3, C2. Part G1 Advertising & Signage Chapter.	Total signage per street frontage not to exceed one (1) top-hamper sign, one (1) under-awning sign and one (1) wall sign.	30 wall signs along the Bachell Street frontage.	29 or 96.6%
Sub-part 4.3, C1 Part G3 Traffic, Parking, Transport & Access (Vehicle) Chapter.	926 car spaces	520 car spaces	406 car spaces or 43.84%.
Sub-part 4.4, C8. Part G3 Traffic, Parking, Transport & Access (Vehicle) Chapter.	The width of driveways is limited to a maximum of 8 metres at the boundary.	The driveway width for service vehicles - 15.4metres.	7.4m or 92.5%.

As indicated in the compliance table above, the proposed development departs from the ceiling levels for the upper levels, awning along the street frontage, number of signs, car parking provisions and driveway width provisions of Council's Cumberland Development Control Plan 2021.

Having regard to these departures, the variations relating to the ceiling levels for the upper levels, awning along the street frontage, number of signs and driveway width are considered satisfactory from an environmental planning viewpoint.

However, the proposal performs unsatisfactorily from an environmental planning viewpoint particularly in the deficiency of the car parking provided onsite.

Each departure is discussed in detail below.

Sub-part 3.8 Ceiling height (C1) - Part C Development in Business Zones

The objectives for this control are:

Objectives

- O1 *Ensure an acceptable level of amenity and future flexibility is provided for new commercial and residential developments.*
- O2 *Encourage articulation of the façade of the building by variation in the ceiling heights of the various floors, which gives the building a top, middle and base.*

Part C, sub-part 3.8 ceiling height, C1 requires a minimum finished floor level (FFL) to finished ceiling level (FCL in a commercial building, or the commercial component of a building, to be as follows:

- 3.5m for ground level (regardless of the type of development); and
- 3.3m for all commercial/retail levels above ground level

The proposal seeks a variation to the upper floors as detailed in the table below:

Storey	Floor to ceiling (DCP)	Proposed Floor to ceiling
Ground Floor & Level 1	3.5m	3.5m
Upper floors	3.3m	2.7m

Planning comment

The variation to this numerical control is acceptable and supported for the following reasons:

- This control is to allow for future flexibility of these spaces as well as encouraging articulation of the façade.
- The proposal has various storeys throughout with the maximum building being a 9 storey building. The proposal has provided ceiling heights on the upper levels less than 3.3m from the FFL -FCL, although non-compliant with the CDCP the proposal will still be compliant with the requirements to the National Construction Code (NCC) and would still be able to accommodate mechanical services to these levels such as air-conditioning.

Based on the above, the proposal is considered to allow for flexibility for other permissible uses to fit-out these spaces in the future.

Sub-part 3.10 Awnings (C1) - Part C Development in Business Zones

The objectives for this control are:

Objectives

- O1 Ensure the amenity of pedestrians through weather protection.*
- O2 Maintain a consistent streetscape and provide visual interest through a continuous awning theme.*

Part C, sub-part 3.8 ceiling height, C1 requires a continuous awnings are required to be provided to all active street frontages (except laneways).

The proposal does not provide an awning along the street frontage.

Planning comment

The variation to this requirement is acceptable and supported for the following reasons:

- The subject site is located adjacent to industrial uses which does not provide for continuous awnings.
- The subject site is not located in a town centre where ordinarily there is a theme to provide a consistent streetscape and visual interest through the use of a continuous awning.

Sub-part 2.3 Number of signs (C2) - Part G1 Advertising & Signage Objective

O1 Ensure that the visual and physical amenity of a locality is not impaired by a proliferation of signs.

Business zones

C2 Total signage per street frontage must not exceed one (1) top-hamper sign, one (1) under-awning sign and one (1) wall sign.

The proposal seeks the following variations:

- Fifteen projecting walls along the northwestern frontage (facing Bachell Avenue).
- Fifteen flush walls signs along the northwestern frontage (facing Bachell Avenue).

Planning comment

The variation to this numerical control is acceptable and supported for the following reasons:

- The development has more than one tenancy and provision is being made for signage for the various tenants.
- Signage is located at appropriate locations and does not result in any visual or physical amenity impacts and will not result in an unreasonable amount of signage particular along Bachell Avenue frontage.

- The total amount of signage is considered reasonable on this type of development where there are multiple tenancies.
- Having a business and building identification strategy will ensure a more uniformed approach to the development. It is therefore considered that the objective of the clause is met.

Sub-part 4.3, C1 - Part G3 Traffic, Parking, Transport & Access (Vehicle)

O1 Ensure adequate onsite facilities are provided within an industrial and commercial development for the loading and unloading of goods.

The car parking requirements are based on:

- Part G of the Cumberland DCP is used for the car parking requirements;
- The Guide to Traffic Generating Developments was used to calculate the parking requirements for particular aspect of the development, where a parking rate was not specified in the Cumberland DCP table; and
- TfNSW (formerly RMS) data and survey data where there are no specific car parking rates provided.

The proposal provides a total of 520 car parking spaces including 24 light industry loading spaces resulting in a short fall of 22 car spaces, according to the applicant's calculation.

The proposal provides the following car parking rates:

Use	GFA m ²	Survey Data	Part g3 CDCP rate	TfNSW RMS GT GD	Applicant's Total	Council's Total
Specialised retail	3432	1/70sqm			49	93
Light Industries	1813		1.3/100sqm		24	24
High Technology	7112		1.3/100sqm		92	93
Cafe	159		1/40sqm		4	190
Food & Drink premises	1167		1/40sqm		29	
Food & Drink - restaurant	1359		1/40sqm		34	195
Dog Daycare	303	1/100sqm			3	4
Health Services	2535			4spaces per 100sqm	101	102
Office	6041		1/40sqm		151	152
Centre based childcare facility	711		1/4 children (106 children)		27	27
Self storage	392				1	6
Gymnasium	86283		3/100sqm	3/100sqm	26	39
Neighbourhood shop			1/40sqm		1	1
Total					542	926

Council's assessment of the car parking rates has concluded that the proposal requires a total of 926 car spaces to service the development and therefore has a shortfall of 406 car spaces, a variation of 43.84%.

The applicant's car parking rates for the specialised retail, self-storage, food and drink premises components differ from Council's calculation. The following differences are observed:

Specialised retail

The applicant has based the rates on survey data at a rate of 1 space per 70sqm.

The land use provision as defined includes display of goods that are of a size, weight or quantity generally akin to bulky goods, and therefore the rate should be 2.7 spaces per 100sqm of gross floor area (GFA) as per the Guide to Traffic Generating Developments. This rate is an average taken of demand rates varied from 0.3 to 5.1 vehicles/100m² as per the Guide to Traffic Generating Developments.

Self-storage:

The Aurecon report prepared by Aurecon Australia Pty Ltd dated 8 July 2009 for Self-storage facilities recommends parking provision of 6 spaces for facilities with a GFA between 0 to 3000sqm. However, only 1 space is allocated for this use.

Food and drink

The parking rate adopted by the applicant is 1 space per 40m² of GFA.

Council's DCP for food and drink premises (outside the Town Centre) is 1 space/7sqm of GFA. Therefore, based on a GFA of 1326sqm, a total of 190 car spaces (rounded up to the nearest whole number) would be required to service this component.

Restaurant

The parking rate adopted by the applicant is 1 space per 40m² of GFA.

Council's DCP for food and drink premises (outside the Town Centre) is 1 space/7sqm of GFA. Therefore, based on a GFA of 1359sqm, a total of 195 car spaces (rounded up to the nearest whole number) would be required to service this component.

The applicant justifies the shortfall in parking with the submission of a Green Travel Plan (GTP) which includes *"bicycle parking, motorbike parking (12) spaces and 2 car share spaces and a ride share space which reduces the car parking dependency"*. A copy of this GTP was not provided to Council for assessment.

The applicant's Traffic and Parking Impact Assessment report states a 5% reduction has been adopted to implement the GTP and close proximity of an off road cycle path located north of the development site. However, Council is of the view that given the significant shortfall in parking the applicant's GTP would unlikely be supported even if a 5% reduction to the rates was supported, the proposal would still be significantly short of the required car parking spaces.

The rates used by Council above ensure that the proposal will provide sufficient car parking on site to cater for the development and will also future proof any potential changes to the individual uses/tenancies without a deficiency in parking in any future applications.

Therefore, the shortfall in carparking is not supported and this forms part of the reasons for refusal.

Sub-part 4.4, C8 - Part G3 Traffic, Parking, Transport & Access (Vehicle)

Objectives

- O1 *Minimise the impact of vehicle access on streetscape amenity, pedestrian safety and circulation within the centre.*
- O4 *Integrate vehicular access and service areas into building design and streetscape character.*

The width of driveways is limited to a maximum of 8 metres at the boundary, including development with commercial loading docks and servicing (including waste servicing).

The width of the proposed driveway for the service vehicles is 15.4 metres.

The variation to this numerical control is acceptable and supported for the following reasons:

- The subject site has a 203.835 metre frontage to Bachell Avenue and there are two driveways proposed. There is one driveway for the service vehicles which is located in the far northern end of the site and another vehicular entry towards the south western end of the site which will service the tenancy/general parking. Given the width of the frontage and multiple uses the proposed variation to the service vehicles driveway is considered acceptable and will not result in any streetscape impacts or pedestrian safety issues.
- Council's Senior Development Engineer has reviewed the application and did not raise any issues in relation to the driveway width.

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))

There is no draft planning agreement associated with the subject Development Application.

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 Regulation 2021* (EP&A Reg).

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

It is considered that the proposed development will have significant adverse environmental, social or economic impacts in the locality as discussed throughout the report.

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

The subject site and locality is not known to be affected by any natural hazards or other site constraints likely to have a significant adverse impact on the proposed development. However, the development is not considered to be suitable in the context of the site and surrounding locality due to the lack of parking, and unresolved stormwater management issues noted throughout this report.

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 Cumberland Development Control Plan 2021, the proposal was publicly notified for a period of 28 days between 2 May 2024 and 30 May 2024. In response one submission was received.

The amended plans and documentation were re-notified for 7 days between 24 October 2024 and 31 October 2024. In response one submission was received.

The issues raised in the public submissions are summarised and commented on as follows:

Issue	Planner's Comment
Number of levels which can block sunlight, cast a shadow and the visibility into windows for privacy	Shadow diagrams submitted with the development indicate that overshadowing in mid-June from the proposed development will provide for three hours of solar access to the residential properties located to the western side of Bachell Avenue between 8am and 4pm.
The large development will take time, truck traffic will increase, construction noise and dust or any other debris from construction will increase and degrade the environment for air quality and noise.	Construction noise, dust from building works, are matters that are dealt with by way of conditions of consent.
Will the flood zone classification zone change or reclassified that will be affected by any change due to this development?	The proposal will not change the flood classification that is affected by the site.
Will this affect any streams that flow into our or out of this flood zone (storm channel)	The proposal will not affect the flow into storm channels. The application was referred to Sydney Water as the proposal seeks the diversion of the Culvert. This matter was not satisfactorily resolved and has formed part of the reasons for refusal.
How land and buildings that are in the vicinity will change as far as change to resulting flood zone.	The flood zones within the area are not altered,
Will this increase in flooding affecting roads in this or new areas that are not in and this neighbourhood of the proposed development?	The proposal will not affect the flooding on the roads or impact areas not in the area of the development. The application was referred to Council's Senior Development Engineer who did not raise any issues on flooding, however the

	application is not supported in its current form.
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The public interest (EP&A Act s4.15(1)(e))

In view of the foregoing analysis, it is considered that the development as proposed would not be consistent with 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 is payable, pursuant to Section 7.12 of the EP&A Act 1979, calculated on the cost of works. A total contribution of \$1,015,251.00 would be payable. However, as the application is being recommended for refusal the payment of the s7.12 is not applicable in this instance.

HOUSING AND PRODUCTIVITY CONTRIBUTION (HPC)

In accordance with s7.24, s7.26 and s7.28 of the Environmental Planning and Assessment Act, 1979 the proposed development is subject to the (Housing and Productivity Contribution) Act 2023, and subject to the payment of the Housing and Productivity Contribution (HPC).

Any approval granted will require a condition of consent being imposed on the development consent in accordance with s7.28 of the EP&A Act 1979 requiring the payment of the HPC.

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

CONCLUSION

Having regard to the relevant matters of consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, Cumberland Local Environmental Plan 2021, Water Management Act 2000, State Environmental Planning Policy (Resilience and Hazards) 2021, State Environmental Planning Policy (Industry and Employment) 2021 and State Environmental Planning Policy (Transport and Infrastructure) 2021, and Cumberland Development Control Plan 2021 it is considered that the proposed development is unacceptable for the reasons outlined in this report. It is recommended that the development application be refused.

RECOMMENDATION

- 1. That the Clause 4.6 variation request to contravene the development standards for Floor Space Ratio, pursuant to the Cumberland LEP 2021, is not supported.**

2. **That Development Application 2023/0775 for the demolition of existing structures, construction of a mixed use development across nine-storeys with associated parking for specialised retail, high technology industries, light industrial, office and medical uses, storage units, recreation facility (indoor), food and drink premises, centre based child care facility, neighbourhood shop and an animal boarding facility. Integrated Development - sections 89 & 90(2) of the Water Management Act 2000 on land at 2 Bachell Avenue Lidcombe be refused subject to reasons listed in Council's assessment report.**
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 and landscape Plans.
3. Stormwater Plans.
4. Clause 4.6 Variation Request - Height of Building.
5. Clause 4.6 Variation Request - Floor Space Ratio.
6. Draft Plan of Management.
7. Loading Dock Management Plan.
8. Acoustic report.
9. Redacted Submissions.
10. Appendix A - State Environmental Planning Policy Assessment tables & Childcare Guidelines.
11. Appendix B - Cumberland LEP Assessment.
12. Appendix C - Cumberland DCP Assessment.
13. Design Excellence Panel Minutes.
14. Design Excellence Panel Minutes & applicant's response.