

TO: Sydney Central City Planning Panel

SUBJECT: 54-68 Hampstead Road AUBURN

APPLICATION No: DA2024/0200 / PPSSCC-590

Application lodged	4 June 2024.									
Applicant	J Matthews - Pacific Planning Pty Ltd.									
Owner	Raad Property Acquisition NO 65 Pty Ltd.									
Application No.	DA2024/0200 / PPSSCC-590.									
Description of Land	54-68 Hampstead Road AUBURN Lots 11-17 in DP 2867 and Lots D & E in DP 26290.									
Proposed Development	Stage 2 - Demolition of existing structures including removal of trees and construction of a seven storey mixed use development comprising specialised retail, office, childcare, food and drink premise over 3 levels of basement parking associated with the section 4.22 approved Concept DA2020/0310.									
Site Area	5,905.8 square metres.									
Zoning	E3 Productivity Support.									
Disclosure of political donations and gifts	Nil disclosure.									
Cost of works	\$37,786,591 (Capital Investment Value).									
Heritage	Not applicable.									
Principal Development Standards	<p><u>Minimum Lot Size</u> Permissible: 1500 square metres. Proposed: 5,905.8 square metres (Stage 2).</p> <p><u>FSR</u></p> <table border="1"> <thead> <tr> <th>Permissible FSR</th> <th>Proposed FSR</th> </tr> </thead> <tbody> <tr> <td>1:1 Maximum.</td> <td>0.223:1</td> </tr> <tr> <td>1.5:1 for specialised retail premises.</td> <td>1.017:1</td> </tr> <tr> <td>3:1 for office premises.</td> <td>1.118:1</td> </tr> </tbody> </table> <p><u>Height of Building</u> Permissible: 27 metres. Proposed: 28.75 metres.</p>		Permissible FSR	Proposed FSR	1:1 Maximum.	0.223:1	1.5:1 for specialised retail premises.	1.017:1	3:1 for office premises.	1.118:1
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1:1 Maximum.	0.223:1									
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3:1 for office premises.	1.118:1									
Issues	Building height exceedance. Car parking.									

SUMMARY

- Development Application 2024/0200 was lodged on the 4 June 2024 for the Stage 2 - Demolition of existing structures including removal of trees and construction of a seven storey mixed use development comprising specialised retail, office, childcare, food and drink premises over 3 levels of basement parking associated with the section 4.22 approved Concept DA2020/0310.

2. The application was publicly notified to occupants and owners of the adjoining properties for a period of 14 days between 27 June 2024 and 11 July 2024. In response, no submissions were received.
3. On the 9th of November 2024 and 27th of February 2025, the applicant lodged amended plans and documents. The amended plans did not require re-notification as the environmental impact is insignificant.
4. The subject site is not listed as a heritage item nor located within a heritage conservation area.
5. The variations are as follows:

Control	Required	Provided	% variation
Clause 4.3 Cumberland Local Environmental Plan 2021. Height of Building.	Maximum: 27 metres	28.75 metres	6.5%
Sub-part 3.8, C1. Part C Development in Business Zones Chapter Cumberland Development Control Plan 2021.	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.	Levels 3 - 6 - 3m	9.09%
Sub-part 3.23, C2. Part C Development in Business Zones Chapter CDCP 2021.	Minimum front setbacks for B6 Enterprise Corridor (now E3 Productivity Support) zones shall be 5m.	GF - 0.7m-4.4m L 1 & 2 - 0m Level 3 - 3.6m Levels 4-6 - 0m	86% and 12% 100% 28% 100%
Sub-part 4.4, C8. Part G3 Traffic, Parking, Transport & Access (Vehicle) Chapter CDCP 2021.	305 car spaces.	251 car spaces	54 Shortfall, a variation of 17.7%
Sub-part 4.4, C8. Part G3 Traffic, Parking, Transport & Access (Vehicle)	The width of driveways is limited to a maximum of 8 metres at the boundary.	12.241m-14.241m	53.0125% and 78.01%

Chapter 2021.	CDCP			
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6. 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.
7. The application is recommended Approval subject to the conditions as recommended in the Council's assessment report.

REPORT

SUBJECT SITE AND SURROUNDING AREA

The subject site (Stage 2) comprises the following parcels of land:

Lots in DP	Property Address
Lots D and E in DP 26290.	60-68 Hampstead Road, Auburn.
Lots 11, 12, 13, 14, 15, 16 and 17 in DP 2867.	54-58 Hampstead Road, Auburn.

The overall site comprises a total area of 10,080 square metres with a frontage to Hampstead Road of 172m. Stage 2 encompasses a site area of 5,905.8 square metres and a frontage to Hampstead Road of 112.95 metres. Improvements on the site comprise existing commercial and warehouse land uses including single storey brick and fibro shops with metal roofing, a factory building and bitumen sealed storage areas. There is some existing vegetation along the edges of the site including mature trees and associated landscaping.

There is an easement for stormwater which traverses the site in a north-easterly direction, through to Hampstead Road.

The locality is characterised by a mix of bulky goods retailing to the north and west of the site, corresponding with the E3 Productivity Support land use zoning, including a Harvey Norman flagship store and Baby Bunting store. To the south and southwest of the site are a mix of industrial land uses which is reflective of the E4 General Industrial land use zone. Immediately opposite the site to the east is R2 Low Density Residential zoned land, with the established built form comprising single and double storey dwellings. Also located opposite the site to the east is the RE1 Public Recreation zoned Hampstead Road Reserve which is an existing park.

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



Figure 1 – Locality Plan of subject site outlined in purple (Source: Intramaps)

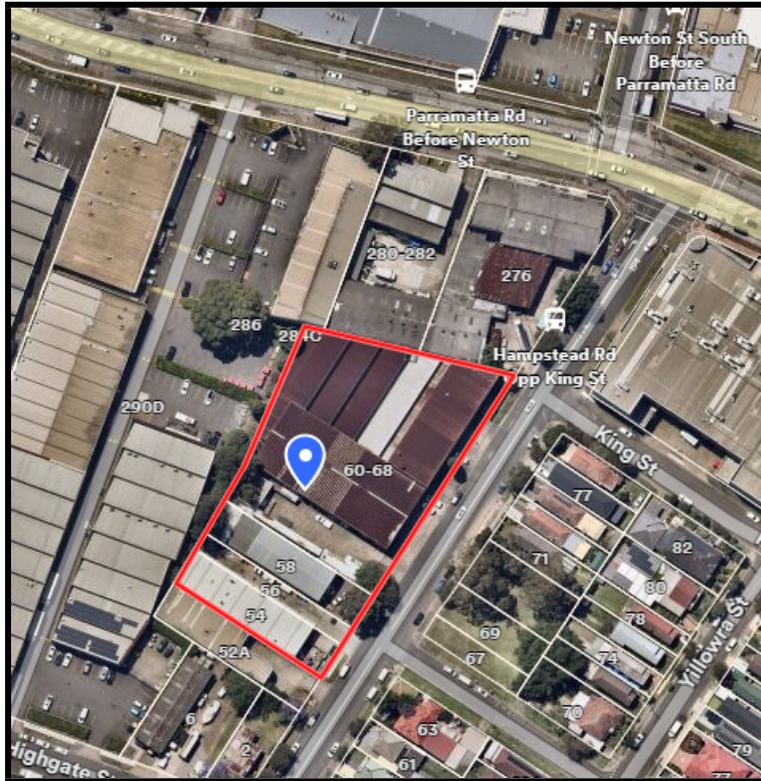


Figure 2 – Aerial view of subject site outlined in red (Source: NearMap October 2024)

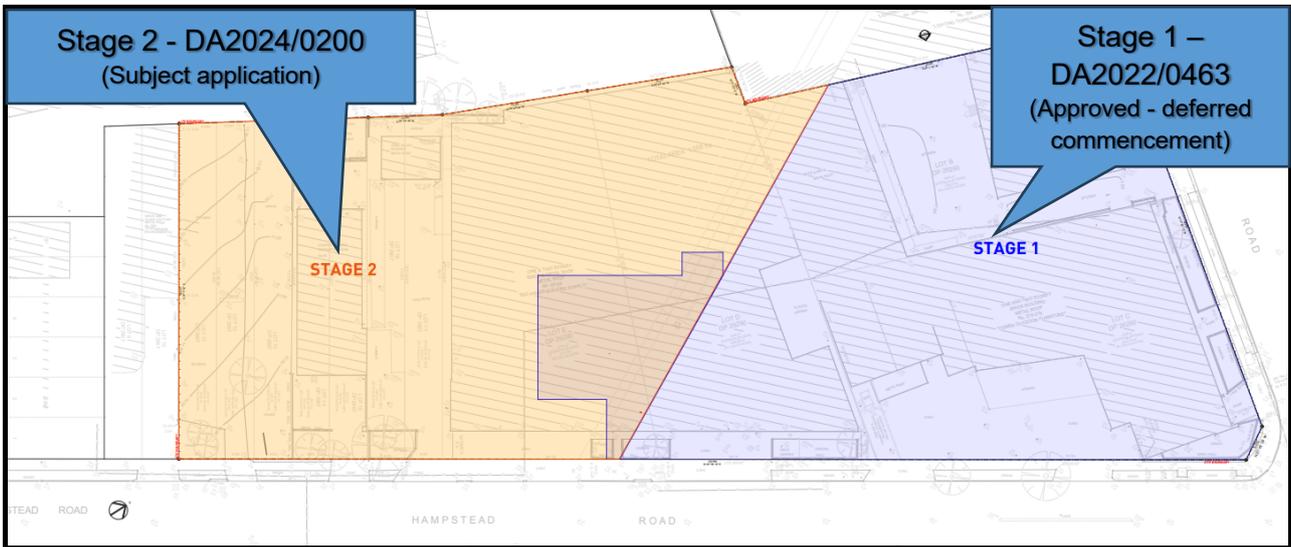


Figure 3 – Outline of Stage 1 & Stage 2 (Source: Smith & Tzannes)

DESCRIPTION OF THE DEVELOPMENT

Council has received a development application for the demolition of existing structures and construction of the second stage of the development against the approved concept approval. The proposed works include removal of eight (8) trees from the site and one (1) tree from outside the site. The development comprises a seven-storey mixed use commercial building with specialised retail, office, childcare centre and food and drink premises above three basement levels of parking.

A detailed breakdown of the proposal is outlined below:

Demolition:

- Buildings 4b, 5, 6, 7, and 8 and associated structures.

Construction:

Basement Level C3

- 91 x car parking spaces.
- 4 x motorcycle parking spaces.
- 3 x storerooms.
- Lift access.
- Fire stairs.

Basement Level C2

- 89 x car parking spaces (including 27 car spaces to service the centre based child care).
- 3 x motorcycle parking spaces.
- 2 x storerooms.
- Lift access.
- Fire stairs.
- Plant/pump rooms.

Basement Level C1

- 71 x car parking spaces (including 6 accessible spaces).
- 6 x motorcycle parking spaces.
- 38 x bicycle racks.
- 1 x storeroom.
- Lift access.
- Fire stairs.
- Plant/pump/electric switch rooms.

Ground Floor -Level 0

- Loading bays:
 - 1 x HRV loading bay.
 - 3 x MRV loading bays.
 - 5 x SRV loading bays.
 - 6 x van loading bays.
- Waste storage room.
- Centre management.
- Bathroom facilities.
- Lift access.
- Fire stairs.
- Escalator access.
- 1 x cafe.
- 2 x restaurants.
- 1 x Specialised retail tenancy.
- 1 x Neighbourhood shop.
- Park area.
- Chamber substation.
- Booster/Hydrant.

Level 1

- 11 x Specialised retail tenancies.
- Bathroom facilities.
- Lift access.
- Fire stairs.
- Escalator access.

Level 2

- 10 x Specialised retail tenancies.
- Bathroom facilities.
- Lift access.
- Fire stairs.
- Escalator access.

Level 3

- Centre based child care centre.
- 6 x Office tenancies.
- Bathroom facilities.
- Terrace.
- Breakout spaces.
- Lift access.
- Fire stairs.
- Escalator access.

Levels 4-6

- 10 x Office tenancies.
- Bathroom facilities.
- Terrace.
- Breakout spaces.
- Lift access.
- Fire stairs.
- Escalator access.

Roof

- Mechanical plant rooms.
- Compressor unit enclosure.
- Skylights
- Photovoltaic panels.

Hours of Operation:

Food and Drink Premises

- 6:00am - 1:00am on Mondays to Sunday and Public Holidays.

Specialised Retail

- 9:00am - 7pm on Mondays, Tuesdays, Wednesdays and Friday.
- 7:00am - 10pm on Thursdays and Public Holidays.
- 9:00am to 8:00pm - Saturday and Sunday and Public Holidays.

Office

- 7:00am - 6pm weekdays only excluding public holidays.

Childcare centre

- 7:00am - 6pm weekdays only excluding public holidays.

Neighbourhood shop

- 6:00am - 1:00am on Mondays to Sunday and Public Holidays.

HISTORY

On the 17th May 2021, the Sydney Central City Planning Panel (SCCPP) granted approval to Development Application 2020/0310 (Ref: PPSSCC-115) for a concept development application for building footprints, basement footprints and massing envelopes for a mixed use development comprising specialised retail premises, hotel and motel accommodation, office premises, child care facilities, café and open space.

On the 1st March 2023, Council under staff delegation granted approval to Modification Application No. MOD2022/0128 being a Section 4.55(1A) Modification to the approved concept development application 2020/0310 for various amendments to the mixed-use development comprising specialised retail premises, hotel and motel accommodation, office premises, child care facilities, café and open space including alterations to upper level building envelopes for the northern and central buildings, redefining basement footprints, park and site through-links, forecourt areas and amendments to Conditions 2 (plans), 4 (basement levels), 13 (future DAs), 19 (stormwater disposal), 26 (solar access to park), 30 (forecourt/park areas) and deletion of Condition 20 (stormwater pipe).

On the 17th October 2023, the Sydney Central City Planning Panel (SCCPP) granted deferred commencement to Development Application 2022/0463 for demolition of existing structures and construction of a seven (7) storey building comprising of specialised retail premises and a hotel over basement car parking within Stage 1 and partial demolition of structures and construction of a temporary loading bay within Stage 2 - of the approved Concept Approval for mixed use development. At the time of writing this report, the deferred commencement consent is not yet operational.

On the 26th March 2024, Modification Application 2024/0093 to the approved concept development application 2020/0310 and subsequent section 4.55(1A) modification 2022/0128 for various amendments to the mixed use development comprising specialised retail premises, hotel and motel accommodation, office premises, child care facilities, café and open space including consolidation of the southern and central building envelopes (Buildings 'B' and 'C') into one consolidated building form (Building 'B'), redefining associated basement level footprints and alterations to the park, forecourt and deep soil areas was approved on 17 February 2025 by Council.

On the 16th September 2024, Council staff granted partial approval to MOD2024/0034 being a Section 4.55(1A) modification to DA2022/0463 for amendments to the Stage 1 conditions 2, 4, 8, 9, 11, 23, 29, 30, 37, 46, 47, 63, 65, 66, 78, 91, 119, 125, 126, 134, 135, 143 and 155 pertaining to requirements from Transport for NSW, vehicular access and aisle design, use of the temporary loading area, stormwater drainage, flood risk/planning, section 7.12 contributions, substation/fire hydrant boosters, public domain/civil works, trading outside of the building, food premises fitout, general noise emissions criteria and hours of construction.

On the 29th October 2024, a Section 8.2 Review (REV2024/0034) of MOD2024/0034 was lodged with Council seeking approval to the proposed amendments to the Stage 1 conditions 2, 4, 8, 9, 11, 23, 29, 30, 37, 46, 47, 63, 65, 66, 78, 91, 119, 125, 126, 134, 135, 143 and 155. The application was approved on 06 March 2025.

APPLICANTS SUPPORTING STATEMENT

The applicant has provided a Statement of Environmental Effects prepared by Pacific Planning dated April 2024 and was received by Council on 10 May 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 development is satisfactory and therefore can be supported subject to recommended conditions of consent.

Environmental Health

The development application was referred to Council's Senior Environmental Health Officer for comment who has advised that the development is satisfactory therefore can be supported subject to recommended conditions of consent.

Tree Management Officer

The development application was referred to Council's Senior Tree Management Officer for comment who has advised that the development proposal is satisfactory and therefore can be supported subject to recommended conditions of consent.

Waste Management

The development application was referred to Council's Waste Management Officer for comment who has advised that the development is satisfactory and there is sufficient access for commercial waste management and no obvious safety concerns. The Waste Management Plan submitted with the application is satisfactory and therefore can be supported subject to recommended conditions of consent.

Design Excellence Panel

The development application was referred to the Design Excellence Panel (DEP) meeting of 28 August 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 12.

At the meeting of 28 August 2024, the Panel identified a number of matters to be addressed. The applicant has addressed and responded to those matters. The DEP assessment and applicant's response is contained in Attachment 13 for the Panels' consideration.

The matters raised by the DEP have been sufficiently addressed by the applicant and therefore the application can be supported in its current form.

EXTERNAL REFERRALS

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 21 March 2025, concluded as follows:

- *water and wastewater servicing should be available for the proposed development.*
- *Amplifications, adjustments, deviations and/or minor extensions may be required.*
- *A condition is required addressing the need for a S73 Certificate.*

The conditions provided by Sydney Water in its correspondence of 21 March 2025 will form part of any consent granted for this this application.

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 1st of July 2024 did not raise any objections to the proposal, subject to conditions.

Transport for New South Wales (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 11 July 2024 advised that:

".... the proposed development will not have any detrimental impact on the surrounding classified road network. As such, TfNSW has no further comments".

PLANNING COMMENTS

Environmental Planning and Assessment Act 1979 (EP&A Act)

Consent was granted to Concept Development Application DA2020/0310 and subsequent modifications pursuant to the provisions of Division 4.4 (Concept development applications) of the EP&A Act. An assessment of the development against the relevant provisions of Division 4.4 of the EP&A Act is provided below.

Section 4.22 Concept development applications	Discussion
(4) If consent is granted on the determination of a concept development	DA2020/0310 did not grant consent for any physical works.

<p>application, the consent does not authorise the carrying out of development on any part of the site concerned unless—</p> <p>(a) consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or</p> <p>(b) the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.</p> <p>The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.</p>	<p>This DA has been lodged pursuant to the provisions of Section 4.22(4)(a).</p>
<p>(1) The provisions of or made under this or any other Act relating to development applications and development consents apply, except as otherwise provided by or under this or any other Act, to a concept</p> <p>(2) While any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site.</p> <p>(3) Subsection (2) does not prevent the modification in accordance with this Act of a consent granted on the determination of a concept development application.</p>	<p>An assessment of the proposed development the subject of this DA has been undertaken against the Concept Approval conditions of consent in DA2020/0310 and subsequent modifications.</p> <p>Refer to the detailed assessment at Attachment 5 to this report.</p>

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

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

State Environmental Planning Policies (SEPPs)	Relevant Clause(s)	Compliance with Requirements
<ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity and Conservation) 2021. 	<p>Chapter 2 - Vegetation in non Rural Areas.</p>	<p>The development application includes the removal of four trees at the front of the site which has been assessed as:</p> <p><i>Melia azedarach</i> x1. <i>Eucalyptus botryoides</i> x1. <i>Melaleuca quinquernervia</i> x2.</p>

		<p>The proposal does not exceed the biodiversity offsets scheme threshold. Therefore, the proposed vegetation removal is considered acceptable.</p>
	<p>Chapter 6 - Water Catchments. Sydney Harbour Catchment.</p>	<p>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 Monday 21 November 2022.</p>
<p>• State Environmental Planning Policy (Resilience and Hazards) 2021.</p>	<p>Chapter 2 - Coastal Management.</p>	<p>The subject site is not identified as a coastal wetland or 'land identified as "proximity area for coastal wetlands" or coastal management area.</p>
	<p>Chapter 4 - Remediation of Land. Part 4.6.</p>	<p>Part 4.6 - Contamination and remediation to be considered in determining development application.</p> <p><u>Comments</u> Council's Senior Environmental Health Officer reviewed the proposal and has advised that the application can be supported subject to conditions in that:</p> <p><i>A detailed site investigation has been carried out and a report prepared by Sullivan Environmental Sciences with reference SES_617 Rev 01 dated 7 November 2024.</i></p> <p><i>A remedial action plan has been prepared by Sullivan Environmental Sciences with reference SES_617 dated 7 November 2024.</i> <i>The proposed remedial Action is the following.</i></p> <ul style="list-style-type: none"> - <i>Decommission the redundant USTs and infrastructure; and</i> - <i>Delineate localised areas of contaminated soil, excavate and transport the contaminated soils offsite to a licenced landfill for disposal.</i>

		<p>- <i>address asbestos and lead impacted surface and subsurface soils.</i></p> <p><i>There will be proposed back filling, air monitoring, during the remediation process – this will need to 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.	No signage is proposed as part of the development application and thus no assessment of signage is required.
<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 1st of July 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 11 July 2024 stated that “... <i>the proposed development will not</i></p>

		<p><i>have any detrimental impact on the surrounding classified road network. As such, TfNSW has no further comments”.</i></p>
	<p>Chapter 3 - Education Establishments and Child Care Facilities.</p>	<p>The proposal includes a centre based child care centre on level 3.</p> <p>A comprehensive SEPP assessment is contained in Attachment 9.</p>
<p>• State Environmental Planning Policy (Planning System) 2021</p>	<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 \$37,786,591 which exceeds the \$30 million threshold. While Council is responsible for the assessment of the application, determination of the Application will be made by the Sydney Central City Planning Panel.</p>
<p>• State Environmental Planning Policy (Sustainable Buildings) 2022</p>	<p>Chapter 3 – Standards for non-residential development</p>	<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 assessment has been submitted that addresses the energy performance gap and onsite fossil fuel used which identifies that the required offsets have been purchased and surrendered by the owner.</p> <p>The NABERS certificate demonstrates that the development meets the water and energy</p>

		requirements and is determined as being acceptable for approval.
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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 achieves compliance with the key statutory requirements of the Cumberland Local Environmental Plan 2021 and the objectives of the E3 Productivity Support zone.

(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
Cafe /restaurant	Food and drink premises;	Permitted with consent.
Childcare centre.	Centre-based childcare facilities.	Permitted with consent.
Neighbourhood shop	Neighbourhood shops	Permitted with consent.
Specialised retail uses	Specialised Retail Premises.	Permitted with consent.
Office premises	Office premises.	Permitted with consent.

The relevant matters to be considered under Cumberland Local Planning panel and the applicable clauses for the proposed development are summarised below. A comprehensive LEP assessment is contained in **Attachment 10**.

Figure 4 – Cumberland LEP 2021 Compliance Table

DEVELOPMENT STANDARD	COMPLIANCE	DISCUSSION
4.1 Minimum subdivision Lot Size 1500 square metres.	Yes	The proposal does not seek consent for subdivision however, the overall site area is calculated at 5,905.8 square metres.
4.3 Height of Buildings Permissible: 27 metres	No	The highest breach to the height of buildings is 28.75 metres. The application is accompanied by a Clause 4.6 Variation request.

<p>4.4 Floor Space Ratio</p> <p>Maximum 1:1</p> <p>4.4 (2B) The maximum floor space ratio for the following development on land in Zone E3 Productivity Support in the “Parramatta Road Precinct”, shown edged orange on the Floor Space Ratio Map, is as follows—</p> <p>(a) 1.5:1 for specialised retail premises, entertainment facilities, function centres and registered clubs,</p> <p>(b) 3:1 for office premises and hotel or motel accommodation.</p>	<p>Yes</p>	<p>The development includes both specialised retail premise, office and cafe.</p> <p>The specialised retail component of the development occupies a total gross floor area of 6,007 sqm, which equates to a floor space ratio (FSR) of 1.017:1. Whereas a floor space ratio of 1.5:1 is permitted.</p> <p>The office component of the development occupies a total gross floor area of 6,605sqm, which equates to an FSR of 1.118:1. Whereas a floor space ratio of 3:1 is permitted.</p> <p>The café/restaurant, neighbourhood shop, and child care component of the development proposes a total gross floor area of 1,316 sqm, which equates to an FSR of 0.223:1. Whereas a floor space ratio of 1:1 is permitted.</p> <p>In accordance with Condition 7 of MOD2022/0128 relating to the concept development application. <i>Details of the Gross Floor Area (GFA) (by use) in the development are to be provided for all subsequent Development Application/s. The maximum FSR for the entire site must not exceed:</i></p> <p><i>1:1, with the exception of the following use specific provisions:</i></p> <ul style="list-style-type: none"> <i>a) 1.5:1 for specialised retail premises; and</i> <i>b) 3:1 for office premises and hotel or motel accommodation.</i> <p>Based on the entire site area of 10,080sqm:</p> <p>The specialised retail component of the overall development is 15,067sqm, which equates to a FSR of 1.49:1.</p>
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		<p>The office and hotel accommodation component of the overall development is 15,410sqm, which equates to an FSR of 1.53:1.</p> <p>The 1:1 FSR component of the overall development is 1,316 sqm, which equates to an FSR of 0.223:1.</p>
4.6	Exceptions to Development Standards	Yes Refer to detailed assessment below.

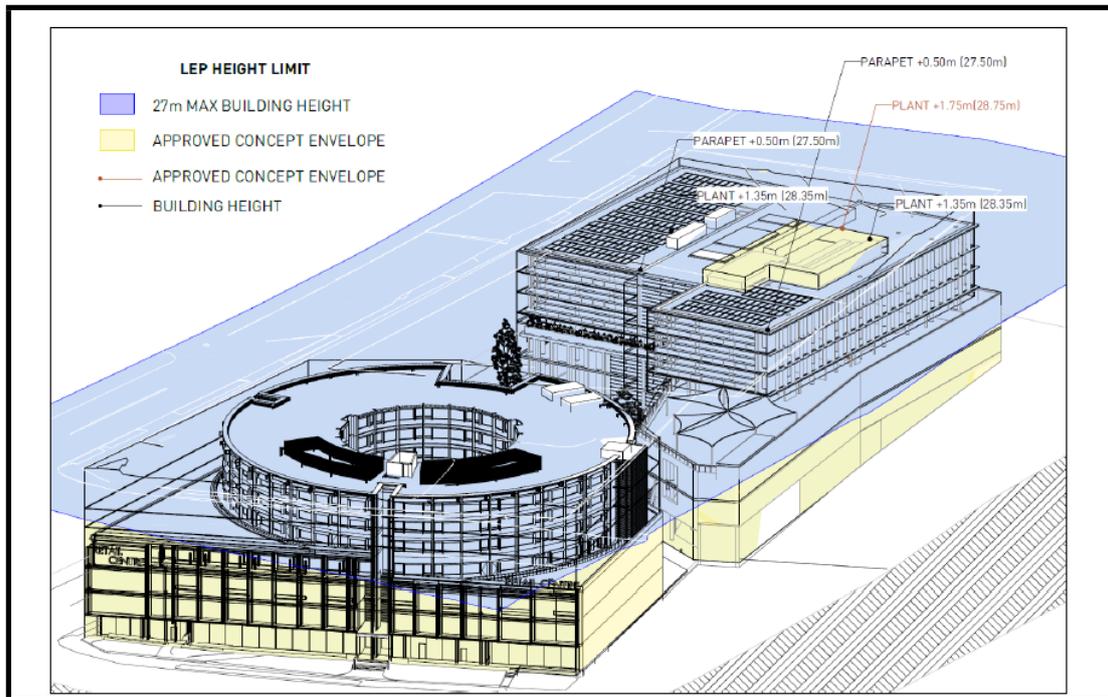
Clause 4.3 Height of Building

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 ‘Height of buildings’ of the Cumberland Local Environmental Plan 2021 which allows for a maximum of 27 metres.

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 5 – Height Plane



Source: Clause 4.6 – Pacific Planning

Breach location	Maximum height breach	% Variation
Plant and roof Services	1.75 metres	6.5%
Parapet	0.5 metres	1.85%

(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:

*Demonstrating consistency with the **desired character** must consider the predominant building height on the site, the setbacks, and the FSR. In this case, the site zoning allows for employment uses in a building which is 27 metres high, comprising a potential gross floor area of over 12,000m² (Stage 2 only) and a total gross floor area of 31,396m². It should be noted that the total allowable FSR on the overall site is 5.5:1, however the proposed FSR is approximately 3.14:1. This is a significant development site, and if the maximum FSR was achieved the total GFA would be just over 55,000m². This permissible scale of building speaks to its intended, or desired, future character.*

Relevantly, urban character is determined by visual cues, or how the environment is perceived using our eyes. It is therefore essential to examine whether the breach in height is perceptible to the public, or if it is offensive in any way.

As noted above, the building form has not gone close to maximized the available FSR, and this is largely due to the creation of a significant central park and through-site link.

This design approach shows that massing has been reduced to three storeys along the western portion of the site/building to enhance solar access to the courtyard. The top four levels are reduced in footprint to improve solar access to the park and reduce impacts to nearby residential properties. A lower building with a larger footprint could comply with the height control but would not result in a better planning outcome for the site.

The proposed heights are the same as the building on the northern part of the site. In fact, the stair overrun for Stage 1 was 2.23 metres above the 27 metre height limit, greater than the exceedance of the subject Stage 2 application. On this basis, the desired character is being achieved and is consistent with what is envisioned for the Parramatta Road Corridor. The height variation is limited to plant and parapets, which is provided for by Condition 8 of the Concept DA consent.

The impacts of the Stage 2 built form are considered below:

- *21 Jun 9am -No overshadowing to dwellings and park*
- *21 Jun 10am - No overshadowing to dwellings and park*
- *21 Jun 11am - No overshadowing to dwellings and park*
- *21 Jun 12pm - No overshadowing to dwellings and park*
- *21 Jun 1pm - Minimal overshadowing to park*
–Overshadowing to No. 59, 61 and 63 Hampstead Rd.
- *21 Jun 2pm - Minor overshadowing to park*
– Overshadowing to No. 59, 61 and 63 Hampstead Rd.
- *21 Jun 3pm – Some overshadowing to park*
– Overshadowing to No. 59, 61 and 63 Hampstead Rd.

Planner's comments:

- The applicant's justification in that the massing has been reduced to three storeys along the western portion of the site/building to enhance solar access to the courtyard. The upper four levels are reduced in footprint to improve solar access to the park and reduce impacts to the nearby residential properties on the eastern side of Hampstead Road.
- There are no adverse shadowing or privacy issues being created.
- There is no habitable floor space that will breach the building height plane.
- The highest breach being the plant is setback over 17.9 metres from the front boundary and therefore its visibility from the street will be minimal.
- The proposal will not impact on any view corridors and the built form for 'Stage 2' allows for a view corridor between the subject side and the adjoining site to the west to Hampstead Park (open space)
- The proposed built form is consistent with the recently approved amended concept plan for the overall site and also consistent with the heights approved being a maximum building height of 27 metres, with the exception of the plant, lift overruns and parapets.

(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:

- 1. The variations result from a larger single building footprint on the site, which has a slope. This means the non-compliance increases towards the north, albeit it is only the parapet that exceeds the 27 metre height limit to the north, and this is only 0.5 metres. No habitable floorspace exceeds the height limit.*
- 2. The consolidation of office uses to Stage 2 lead to the single larger building to generate greater opportunities for synergies between tenants.*
- 3. No significant new impact results from the height breaches.*
- 4. The breaches are south of the internal central park meaning there is no impact to the central park. The portion of the building that does have an impact on this park is restricted to three storeys only, which is well below the 27 metre height allowance.*
- 5. The proposed floor area is still well below the allowable FSR for the site, and strict enforcement would result in the loss of the entire top level, further reducing employment-generating uses.*

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

- The original design proposed significant open space in the middle of the site, at the expense of achieving the permissible FSR.*
- The site shape is quite unique and includes a stormwater easement, traversing the centre of the site, creating constraints to the development footprints and basements.*
- The larger building mass occurs towards the southern end of the site which has no significant new impact on any area of public open space.*
- The variation is the result of a more detailed design resolution, and an amendment to the concept approval for this site, and no significant environmental benefit would arrive from a site that complied.*

Planner's comments:

- The breach to the building height does not create any adverse overshadowing impacts and will provide sufficient solar access to Hampstead Road Reserve.
- The proposal provides for compliant solar access as required by condition 27 of the concept development application, in that the proposal demonstrates that 50% of the overall park area (being 870 sqm/ 2 = 435 sqm) will receive 3 hours of solar access from 11am – 2pm on the 21 of June.
- There is no habitable floor space that will breach the height of building plane and the height is consistent with that approved under the concept development application.

Conclusion

As the applicant's justification has satisfied the test under clause 4.6, the application is capable of being approved, subject to a satisfactory merit assessment.

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

Council has received a Gateway Determination (from the Department of Planning, Housing and Infrastructure for the Draft Woodville Road Corridor Planning Proposal. As part of this approval, public exhibition of the Draft Woodville Road Corridor Planning Proposal has commenced. The Public Exhibition period is from 4 March 2025 to 17 April 2025 inclusive.

The Draft Planning Proposal seeks to revitalise Woodville Road by amending planning controls in the Cumberland Local Environmental Plan (CLEP) 2021 for 31 sites located around the three (3) precincts of Woodville North, Merrylands East and Woodville South.

The subject application was received on 04 June 2024 and the site does not fall within the Draft Woodville Road Corridor. No further consideration is required.

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 E1 Centre based child care facilities.
- Part G Miscellaneous Development Controls.
 - Part G3 Traffic, Parking, Transport and Access.
 - Part G4 Stormwater and Drainage.
 - Part G5 Sustainability, Biodiversity and Environmental Management.
 - Part G7 Tree Management and Landscaping.
 - Part G8 Waste Management.

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

Figure 6 - Cumberland DCP 2021 - Compliance Table.

Sub-part	Control	Proposed	% 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.	Levels 3- 6 – 3m	9.09%
Sub-part 3.23, C2. Part C Development in Business Zones Chapter.	Minimum front setbacks for B6 Enterprise Corridor (E3 Productivity Support) zones shall be 5m.	GF – 0.7m-4.4m L 1 & 2 - 0m Level 3 – 3.6m Levels 4-6 – 0m	86% and 12% 100% 28% 100%

Sub-part 4.3, C1. Part G3 Traffic, Parking, Transport & Access (Vehicle) Chapter.	305 car spaces.	251 car spaces	54 shortfall a variation of 17.7%
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.	12.241m-14.241m.	53.0125% and 78.01%

As indicated in the compliance table above, the proposed development departs from the Floor to ceiling, minimum front setback, car parking and driveway width requirements of the Cumberland Development Control Plan (CDCP).

Irrespective of these departures, it is considered that the proposal performs adequately from an environmental planning viewpoint and may be supported for the reasons discussed 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	3.5m	5.1m
Levels 1 and 2	3.3m	3.5m
Levels 3-6	3.3m	3.0m

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 7 storeys in height. The development provides for ceiling heights on the upper levels of the office tenancies (levels 3-6) of 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 3.23 B6 Enterprise Corridor Zone (C2) - Part C Development in Business Zones

Objectives

- O1 *Ensure appropriate building setbacks along identified major routes to maintain built form.*
- O2 *Manage the size and hours of certain uses with the enterprise zone.*

The Minimum front setbacks for the former B6 Enterprise Corridor zones (Now E3 Productivity Support zone) shall be 5m. The development has varying setbacks from Hampstead Road ranging from nil to 4.4 metres. Despite the numerical non-compliance, the proposal is acceptable given the built form for 'Stage 1' which faces Parramatta Road along the major route being Parramatta Road which provides a 5 metre setback.

The subject application 'Stage 2', faces Hampstead Road which is the secondary frontage and is not considered to impact the built form setback along the E3 Productivity Support zone (former B6 Enterprise Corridor). The 'Stage 2' built form is generally consistent with the setbacks approved in the concept DA.

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

Objective

- 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 and TfNSW Guide to Transport Impact Assessment 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 the following car parking rates:

Use	GFA m ²	Survey Data	Part G3 CDCP rate	TfNSW GTGD & GTIA	Applica nt's Total	Council's Total

Specialised retail	5,354	1.403 spaces per 100sqm (as per applicant and based on a GFA of 5398 sq m)			76	108
		1 space per 50sqm (as per stage 1 approval under DA 2022/0463)				
Café/restaurant	472		1/7sqm		69	68
Office	6212			1.6 spaces per 100sqm of GFA – Category 1	100	100
Centre based childcare facility	688		1/4 children (106 children)		27	27
Neighbourhood shop	80		1/40sqm		2	2
Total required					274	305
Total provided					251	Shortfall 23 (applicant) 54 (Council)

Council’s assessment of the car parking rates has concluded that the proposal requires a total of 305 car spaces to service the development and therefore has a shortfall of 54 car spaces, a variation of 17.7%.

The applicant’s car parking rates for the specialised retail differ from Council’s calculation and the following differences are observed.

The applicant has based the specialist retail parking rates on survey data at a rate of 1.403 spaces per 100sqm, stating that this was the rate used for the ‘Stage 1’ development – (DA 2022/0463).

Council’s Development Control Plan does not provide a car parking rate for specialised retail premises. Council calculation is based on a rate of 1 per 50 square metres which is consistent with the rate used to calculate the car parking rate for the specialised retail to the ‘Stage 1’ development – DA 2022/0463.

The applicant justifies the shortfall in parking with the submission of a Green Travel Plan

(GTP) which includes the site being in close proximity to an off road cycle path located to the north of the development site.

The applicant's Traffic and Parking Impact Assessment report states a 5% reduction has been adopted to implement the GTP, a reduction of 5% reduction of the car parking rates. On the other hand, if the applicant's 5% reduction was adopted by Council, the development would require 290 car spaces, a short fall of 39 car spaces, a variation of 13.44%.

The proposal also incorporates a parking pay station in the basement levels, paid parking is applied for more than 2 hours between 10am and 5pm on weekdays. The parking strategy states that staff will be provided with a parking permit, and directed to not park in the express parking spaces.

Irrespective of the car parking shortfall, Council is of the view that the development is acceptable given the implementation of the Green Travel Plan and Parking Strategy.

Furthermore, the reduced car parking provision within the site is supported on merit by Council for the reasons that:

- *the provision of cumulative parking spaces is not considered appropriate in this instance because peak demand for each use does not coincide and therefore peak parking demand for the overall development is used to demonstrate the appropriate parking provision.*
- *The proposed uses including specialist retail premise/offices/childcare centre are not considered intensive in nature when compared to a typical shopping centre of same size and therefore, not likely to result in car parking spilling on to the surrounding local road network.*
- *The proposed incorporation of a parking pay station within the site will result in higher car parking turnover rate compared to standard un-timed car parking spaces.*
- *Council's Development Engineer has considered the Traffic Impact Assessment submitted with the application and the proposed 251 car parking spaces are considered adequate to service the proposed development.*

Loading Dock Management

A loading dock management plan has been submitted for the operation of the entire site, being 'Stage 1' & 'Stage 2'. This is necessary as temporary loading and waste collection facilities will be put in place during the construction phases of both 'Stage 1' & 'Stage 2' development.

The 'Stage 1' development application for the approved development to the northern part of the site approved a temporary waste collection and loading facilities within the portion of the existing building along the site's Hampstead Road frontage to be retained, with access to be gained via the existing driveway off Hampstead Road. The waste collection and loading facilities for both 'Stage 1' and 'Stage 2' of the development are proposed to be provided as part of the 'Stage 2' development application of the development. Therefore, a loading dock plan of management, which will focus on the operation of the loading dock area for both 'Stage 1' and 'Stage 2' is contained in **Attachment 7**.

Upon completion of 'Stage 2' all facilities on the north and south site will be operational. The main loading dock and truck parking area will be on the south site in accordance with the approved Concept Development Application (as amended). It is noted that one parking

space for small commercial vehicle and one car space for a B99 service vehicle will remain at Level C3 on the north site for the exclusive use of the Hotel associated with 'Stage 1' of the development.

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 leading to the ground floor loading area and basement is 12.241m (excluding 2m for a sight triangle) - 14.241m.

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

- Given the width of the frontage and multiple uses that are proposed on the site, the variation to the basement and 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.

A comprehensive CDCP assessment is contained in **Attachment 11**.

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 no significant adverse environmental, social or economic impacts in the locality.

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. Accordingly, it is considered that the development is 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, the proposal was publicly notified for a period of 14 days between 27 June 2024 and 11 July 2024. The notification generated no submissions in respect of the proposal.

The amended plans lodged on the 9th of November 2024 and 27th of February 2025 did not require re-notification as the environmental impact is less than that originally notified.

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 is payable, pursuant to Section 7.12 of the EP&A Act, calculated on the cost of works. A total contribution of \$417,744.00 would be payable prior to the issue of a Construction Certificate

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).

A condition of consent has been 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

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*, SEPP Planning Systems 2021, SEPP Industry and Employment 2021, SEPP Resilience and Hazards 2021, SEPP Transport and Infrastructure 2021, SEPP Biodiversity and Conservation 2021, SEPP Sustainable Buildings 2022, Cumberland Local Environmental Plan 2021 and Cumberland DCP and is considered to be satisfactory subject to conditions.

The proposed development is appropriately located within the E3 Productivity Support under the relevant provisions of the Cumberland LEP. The proposal is consistent with all statutory and non-statutory controls applying to the development. Minor non-compliances with Council's controls have been discussed in the body of this report. The development is considered to perform adequately in terms of its relationship to its surrounding built and natural environment, particularly having regard to impacts on adjoining properties.

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 height of building development standard, pursuant to the Cumberland LEP 2021, be supported.**
- 2. That Development Application 2024/0200 for Stage 2 - Demolition of existing structures including removal of trees and construction of a seven storey mixed use development comprising specialised retail, office, childcare, food and drink premise over 3 levels of basement parking associated with the section 4.22 approved Concept DA2020/0310 on land at 54-68 Hampstead Road Auburn approved subject to conditions listed in the attached schedule.**

ATTACHMENTS

1. Draft Notice of Determination.
2. Architectural Plans.
3. Landscape Plans.
4. Clause 4.6 Variation Request – HoB.
5. Assessment compliance table of Concept Approval Conditions of DA2020/0310 & subsequent modifications.
6. Plan of Management.
7. Loading Dock Plan of Management.
8. Child Care Centre Plan of Management.
9. Appendix A State Environmental Planning Policy (Infrastructure and Transport) 2021.
10. Appendix B Cumberland LEP 2021 Assessment.
11. Appendix C Cumberland DCP 2021 Assessment.
12. Design Excellence Panel Comments.
13. Design Excellence Panel Comments and Applicant's response.