

TO: Sydney Central City Planning Panel

SUBJECT: 1/4-4A Terminal Place, part 5 and part 7 McLeod Road
MERRYLANDS NSW 2160.

APPLICATION No: DA2024/0331 / PPSSCC-599

Application lodged	29 July 2024.
Applicant	Merrylands 88 Development Pty Ltd.
Owner	Merrylands 88 Pty Ltd.
Application No.	DA2024/0331 / PPSSCC-599.
Description of Land	1/4-4A Terminal Place, part 5, part 7 McLeod Road MERRYLANDS. Lot 1 in DP 1173048, part Lot 11 in DP 1305248, part Lot 10 in DP 1305248.
Proposed Development	Alterations and additions to the approved development (DA2022/0776) seeking to facilitate affordable housing and Build-to-rent housing (BTR) to part of the development pursuant to the State Environmental Planning Policy (Housing) 2021.
Site Area	15,429 square metres including the RE1 and E2 portions of the land. Development 'Site 2' occupies 6,155.7 square metres.
Zoning	<ul style="list-style-type: none"> Part R4 High Density Residential. The proposed building works only relates to the R4 portion of the site. Part E2 Commercial Centre zone. Part RE1 Public Recreation.
Disclosure of political donations and gifts	Nil disclosure.
Cost of works	\$28,169,239.00 (Capital investment value).
Heritage	Not applicable.
Principal Development Standards	<p><u>Minimum Lot Size</u> Permissible: 900 square metres. Proposed: 6,155.7 square metres ('Site 2').</p> <p><u>FSR</u> Permissible: 5:1 for 'Site 2' under the CLEP 2021 plus 30% bonus pursuant to clause 16 of the Housing SEPP 2021 equates to 6.5:1. Proposed: 40,012.38 square metres or 6.5:1.</p> <p><u>Height of Building</u> Permissible: Part 54 metres and part 39 metres under the CLEP 2021 plus 30% bonus pursuant to clause 16 of the Housing SEPP 2021, part 70.2 metres and part 50.7 metres respectively.</p>

	<p>Proposed:</p> <ul style="list-style-type: none">• Building B - 74.76 metres.• Building C - 55.71 metres.• Building D - 55.92 metres. <p><u>Landscaped Area</u> Clause 19(2)((b)(ii) SEPP (Housing) 2021.</p> <p>Required: 1,846.71square metres. Proposed: 793.2 square metres.</p>
Issues	Height of Building. Landscaped Area. Submissions.

SUMMARY

1. Development Application 2024/0331 was lodged on the 29 July 2024 for alterations and additions to the approved development (DA2022/0776) seeking to facilitate affordable housing to part of the development pursuant to State Environmental Planning Policy (Housing) 2021, internal and external design changes including increasing the building height and number of storeys to range from 14 to 22 storeys.
2. The application was publicly notified to occupants and owners of the adjoining properties for a period of fourteen (14) days between 8 August 2024 and 22 August 2024. In response, five (5) submissions were received.
3. The applicant submitted a revised scheme on the 21st of November 2024 for alterations and additions to the approved development (DA2022/0776) seeking to facilitate affordable housing and Build-to-rent housing (BTR) to part of the development pursuant to the State Environmental Planning Policy (Housing) 2021. The proposal seeks three levels of basement parking, updated dwelling mix, internal and external design changes and adjustments to the ground floor plane which removes the neighbourhood tenancies and replace with communal space associated with the BTR component.
4. The amended plans/application was publicly notified to occupants and owners of the adjoining properties for a period of fourteen (14) days between the 16 January 2025 and 30 January 2025. In response, no submissions were received during the second notification period.
5. The subject site is not listed or identified as a heritage item nor located within the heritage conservation area in the Cumberland Local Environmental Plan 2021.
6. The variations are as follows:

Control	Required	Provided	% variation
Clause 16(3)	Part 70.2 metres for the R4 zoned land).	<u>Building B</u> - 74.76 metres.	6.4%.

SEPP (Housing) 2021. Building Height	Part 50.7 metres for the remainder of the R4 zoned land.			<u>Building C</u> - 55.71 metres. <u>Building D</u> - 55.92 metres.	9.88%. 10.29%.
Clause 19(2)((b)(ii) SEPP (Housing) 2021. Landscaped area	30% of the site as landscaped area, this is equivalent to 1,846.71square metres.			793.2 square metres.	57%.
Part 3F-1 Apartment Design Guide Visual Privacy		Habitable rooms and balconies	Non-habitable rooms	<u>Building D1 and D2</u> Over 9 storeys 13.58m habitable to habitable. <u>Building C and D</u> Over 9 storeys 22.9m habitable to habitable.	43.417%. 4.58%.
	Building separation required is 24 metres.				
Part 4E-1 Apartment Design Guide Balcony size	Dwelling Type	Min Area	Min Depth	<u>Building C</u> 2-bedroom apartment with 9 sqm balconies 210, 211, 310, 311, 410, 411, 510, 511. 1-bedroom apartments with 6 sqm balconies 925, 926, 1025,1026,1125, 1126,1225, 1226, 1325, 1326, 1425, 1426, 1525 and 1526.	10%. 25%.
	Studio	4m ²	-		
	1 bedroom	8m ²	2m		
	2 bedroom	10m ²	2m		
	3+ bedroom	12m ²	2.4m		
Part 4F-1 Apartment Design Guide Common circulation spaces	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.			<u>Building B</u> : 174 apartments with three lifts, average of 58 units per lift.	30%.

7. The application is referred to the Panel as the development is identified as being Regionally Significant Development as the proposal is for affordable housing with a cost of more than \$5 million.

8. The application is recommended approval subject to the conditions as recommended in the Council's assessment report.

REPORT:

Subject Site and Surrounding Area

The site is legally described as being Part 5 and Part 7 McLeod Road and 1/4-4A Terminal Place Merrylands within the following allotments:

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

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

A railway line adjoins the site to the immediate east. The southern half of 'Site 2' adjoins land to the west that is now a sealed roadway known as McLeod Road and a future park which includes an open space corridor. The associated development application for the future park - DA2023/0485 was determined by the Sydney Central City Planning Panel on the 16th of September 2024.

The site is irregular in shape and according to Council records, the overall site occupies an area of 15,429 square metres. The development site occupies an area of 6,155.7 square metres and is identified as 'Site 2'.

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

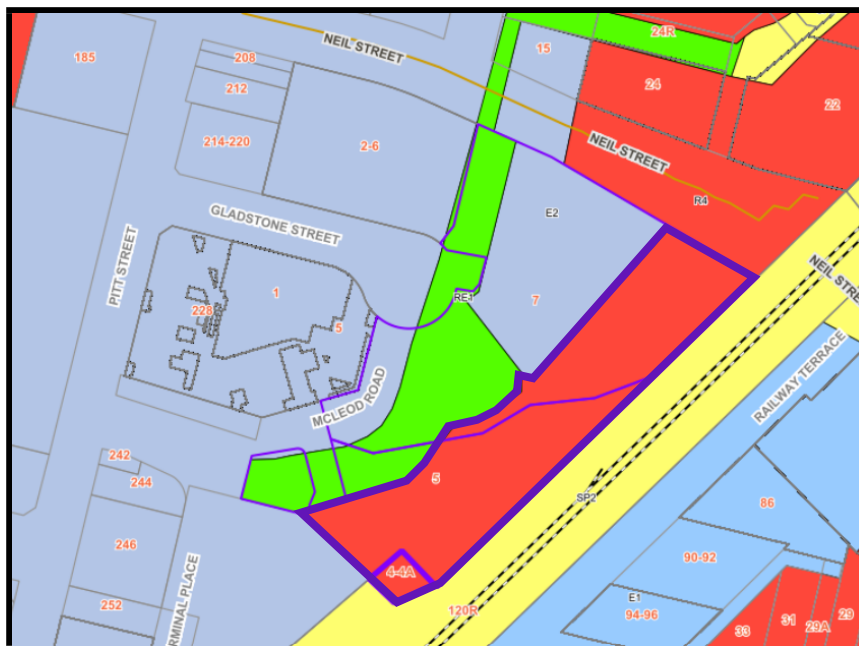


Figure 1 - Land Zoning Map of subject site (Source: Intramaps).



Figure 2 - Aerial view of development site (in blue outline) (Source: Nearmaps).



Figure 3 - Street view of subject site (from Neil Street).

Description of The Development

Council has received a development application for alterations and additions to the approved development (DA2022/0776) seeking to facilitate affordable housing and Build-to-rent housing (BTR) to part of the development pursuant to State Environmental Planning Policy (Housing) 2021. The proposal seeks three levels of basement parking, updated dwelling mix, internal and external design changes and adjustments to the ground floor plane which removes the neighbourhood tenancies and replace with communal space associated with the build to rent component.

The key elements of the development to be constructed are demonstrated within the table below:

Main Features	Approved DA (DA2022/0776)	Proposed Amending DA
Basement car park.	<p>6 levels of basement with a total of 439 car parking spaces.</p> <ul style="list-style-type: none"> • 351 x Residential car parking spaces. • 1 x Car wash bay. • 79 x Residential visitor car parking spaces. • 11 x Retail car parking spaces. 	<p>3 levels of car parking, with a total of 274 car parking spaces and 1 car wash bay.</p> <p>It is noted that under the parking provisions of Clause 19(2)(e) & (f) and Chapter 3, Part 4 of SEPP Housing 2021, the development would require 240 residential car parking spaces whereas 274 residential car parking spaces are provided within the development and is therefore compliant.</p>
Ground Floor.	<ul style="list-style-type: none"> • 6 x neighbourhood shop tenancies. 	<ul style="list-style-type: none"> • Removal of neighbourhood shop tenancies and reconfigure to provide communal space (amenity rooms) associated with the BTR component, concierge desk and manager's room. • Addition of a sub-station.
Apartments.	<p>303 apartments.</p> <ul style="list-style-type: none"> • 28 x 1 bedroom. • 228 x 2 bedrooms. • 47 x 3 bedrooms. 	<p>449 apartments.</p> <ul style="list-style-type: none"> • 23 x Studio. • 153 x 1 bedroom. • 243 x 2 bedrooms. • 30 x 3 bedrooms.
Number of apartments per building.	<ul style="list-style-type: none"> • Building B: 126 apartments. • Building C 43 apartments. • Building D 134 apartments. 	<ul style="list-style-type: none"> • Building B: 174 apartments, all of which are market housing/build to sell. • Building C 73 apartments all of which are affordable housing. • Building D 202 apartments of which 194 apartments are BTR and 8 apartments are for affordable housing.
Building Height	<ul style="list-style-type: none"> • Building B - 55.5 metres. • Building C - 43.05 metres. • Building D - 42.6 metres. 	<ul style="list-style-type: none"> • Building B: 74.76 metres. • Building C: 55.71 metres. • Building D: 55.92 metres.

The overall floor plates of the development remain generally the same as that approved under Development Consent 2022/0776. Other changes occurring to the development are mainly within the basement and the internals of the buildings, with the exception of additional heights which form part of the height bonus pursuant to Clause 16 of the State Environmental Planning Policy (Housing) 2021.

History

DA2022/0722 was approved by the Sydney Central City Planning Panel on the 26 March 2024 for the construction of a 21-storey mixed use development on 'Site 1' comprising 4 commercial tenancies and 236 apartments over 5 levels of basement parking.

DA2022/0776 was approved by the Sydney Central City Planning Panel on the 13 April 2024 for the construction of three buildings B, C & D ranging in height from 12 to 17 storeys and comprising of 6 neighbourhood shops and 303 apartments over six levels of basement parking with associated site works. The works were identified on development site known as 'Site 2'.

DA2023/0485 was approved by the Sydney Central City Planning Panel on the 16 September 2024 for public domain and civil works including a public open space area, public art, water feature and associated landscaping.

The proposed amending Development Application is located within 'Site 2' and DA2022/0776 is the most relevant approval to this application.

Applicants Supporting Statement

The applicant has provided an addendum Statement of Environmental Effects prepared by Think Planners dated 14 November 2024 and was received by Council on 21 November 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 proposal is satisfactory therefore can be supported subject to recommended conditions of consent.

Environmental Health

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

Tree Management Officer

The development application was referred to Council's 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 proposal is satisfactory and therefore can be supported subject to recommended conditions of consent.

Planning Systems

A Voluntary Planning Agreement has been executed for the site for the approved base DA.

The amending DA will not amend the objectives of the VPA that has been executed. The proposal seeks an additional 174 apartments, all of which are market housing/build to sell in building B. Building C will provide 73 apartments all of which are affordable housing and will be managed by a community housing provider and Building D seeks 202 apartments of which 194 apartments are BTR and 8 apartments are for affordable housing managed by a community housing provider.

Public Spaces Planning and Design

The development application was referred to Council's Public Spaces Planning and Design section for comment who have not raised any issues with the amending Development Application.

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 greater than 25 metres.

At the meeting of 28 August 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 and Council's response is contained in Attachment 11 for the Panels' consideration.

While the proposal results in a number of numeric changes, the amendments are considered satisfactory to the extent that it does not significantly alter the overall external design of the buildings except for the additional heights.

External Referrals

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 14 August 2024 TfNSW stated that *"the proposed development will not have any detrimental impact on the surrounding classified road network. As such, TfNSW has no further comments"*.

Sydney Water

The development application was referred to Sydney Water pursuant to s78 of the Sydney Water Act 1994. Sydney Water in its correspondence dated 4 February 2025 and 11 April

2025 state that the application cannot be supported until revised wastewater modelling has been undertaken. Sydney water outlined the next steps required being:

- *Revised wastewater modelling under CN211586 and Sydney Water acceptance of a mitigation measure for the increased yield will be required.*
- *A Feasibility application should be lodged containing details of the proposed work over the stormwater channel and the zone of influence of the stormwater channel.*
- *The proponent's Water Servicing Coordinator should contact their Sydney Water case manager under CN211586 to notify them of the proposed amendments to ensure their Notice of Requirements reflects the amendments.*

Without the updated wastewater modelling and approved mitigation measures this may prevent the issue of the Section 73 Compliance certificate, and future modelling outputs may result in changes to the development application.

There is no statutory requirement to obtain approval from Sydney Water prior to determination of the subject application.

Pursuant to Section 78(2)(b) of the Sydney Water Act, the consent authority is not required to give notice of the application if it decides to approve the application with a condition that the developer must obtain a compliance certificate from the Corporation.

In addition, as per, Section 78(4) of the Sydney Water Act 1994, the Sydney Water Act states that *"the consent authority must take into account any submissions made by the Corporation in relation to a development application in determining whether to approve the development application or to attach conditions to it. The consent authority may, however, approve the application at any time if it imposes a condition that the developer must obtain a compliance certificate from the Corporation."*

Therefore, a condition has been imposed on the consent requiring that the applicant obtain a Section 73 Compliance Certificate from Sydney Water.

Endeavour Energy

The development application was referred to Ausgrid pursuant to s2.48 of the SEPP (Transport and Infrastructure) 2021. Endeavour Energy in its correspondence dated 14 January 2025 did not raise any objections to the proposal, subject to conditions previously provided.

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 2.98 of the SEPP (Transport and Infrastructure) 2021. Sydney Trains in its correspondence received on 3 February 2025 did not raise any objections to the proposal, subject to conditions that were provided in the previous application DA2022/0776.

Planning Comments

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

State Environmental Planning Policies

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

State Environmental Planning Policies (SEPPs)	Relevant Clause(s)	Compliance with Requirements
<ul style="list-style-type: none"> State Environmental Planning Policy (Biodiversity and Conservation) 2021. 	Chapter 2 - Vegetation in non Rural Areas.	<p>The subject development application does not include the removal of trees.</p> <p>DA2022/0776 stated that there was no significant vegetation removal proposed as part of the development application. 'Site 2' is generally devoid of any trees or significant vegetation. This application does not alter this conclusion.</p>
	<p>Chapter 6 - Water Catchments.</p> <p>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 21 November 2022.</p>
<ul style="list-style-type: none"> State Environmental Planning Policy (Resilience and Hazards) 2021. 	Chapter 2 - Coastal Management.	<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.</p> <p>Part 4.6.</p>	<p>Part 4.6 - Contamination and remediation to be considered in determining development application.</p> <p><u>Comments</u></p> <p>Council's Senior Environmental Health Officer has reviewed the application and advised that given that the current proposal is increasing density of use but not changing use of the premises.</p> <p><i>"It is noted that contamination has been adequately addressed in the approved DA2022/0776, dated 13 June 2024. The conditions are to remain with the site subject to an approved remediation action plan"</i></p>

		<p><i>referred to in the consent, along with Site Audit Statement requirements to confirm remediation prior to the issue of a construction certificate.</i></p> <p><i>The current proposal is reducing the amount of excavation on site by reducing the number of basement levels.</i></p> <p><i>No further assessment of contamination is therefore required, noting that the approval of a residential building confirms the site can be made suitable for its intended purpose, and appropriate mechanisms are in place to manage this process”.</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 Endeavour Energy for assessment. As per their correspondence of 14 January 2025 did not raise any objections to the proposal, subject to conditions.</p>

	<p>Clause 2.98 Clause 2.99 Clause 2.100</p>	<p><i>Development adjacent to railway corridors</i></p> <p>The application is subject to clause 2.98 of the SEPP, because the subject site is located within or adjacent to a railway corridor.</p> <p><i>Clause 2.99 - Excavation in, above, below or adjacent to rail corridors</i></p> <p>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 corridor, or within 25m (measured horizontally) of a rail corridor.</p> <p><i>Clause 2.100 - Impact of rail noise or vibration on non-rail development</i></p> <p>The application is subject to clause 2.100 of the SEPP as the site is in or adjacent to a rail corridor or is likely to be adversely affected by rail noise or vibration.</p> <p><u>Comment</u> Given the proximity to the railway to the south-west the application was referred to Sydney Trains pursuant to Section 2.98 of the SEPP (Transport and Infrastructure) 2021. Sydney Trains in its correspondence received on 3 February 2025 did not raise any objections to the proposal, subject to conditions that were provided in the previous application DA2022/0776 are applicable to the development.</p>
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	<p>Clause 2.119 Clause 2.122</p>	<p>Clause 2.119 - Frontage to classified road</p> <p>The application is subject to clause 2.119 of the SEPP as the site has frontage to a classified road.</p> <p>Neil Street is a classified regional road</p> <p>Clause 2.122 - Traffic generation developments</p> <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 14 August 2024 TfNSW stated that <i>“the proposed development will not have any detrimental impact on the surrounding classified road network. As such, TfNSW has no further comments”</i>.</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 includes affordable housing component has a Capital Investment Value (CIV) of \$28,169,239.00 which exceeds the \$5 million threshold. While Council is responsible for the assessment of the DA, determination of the</p>

			application will be made by the Sydney Central City Planning Panel.
<ul style="list-style-type: none"> • State Environmental Planning Policy (Housing) 2021 	Chapter Affordable housing	2	<p>The development is In-fill affordable housing pursuant to Chapter 2, Division 1.</p> <p>The proposal generally complies with Chapter 2 with the exception of Clause 19(2)((b)(ii) relating to the landscape area. Refer to discussion following this table.</p> <p>A detailed assessment of the relevant sections is contained in Attachment 7.</p>
	Chapter 3 Diverse housing		The development includes Build-to-rent housing pursuant to Chapter 3, part 4. A detailed assessment of the relevant sections is contained in Attachment 7.
	Chapter 4 Design of residential apartment development	4 - of	<p>Chapter 4 of SEPP (Housing) 2021 applies to the development as the building is 3 storeys or more and contains more than 4 dwellings. A design statement addressing the design quality principles prescribed by Chapter 4 SEPP (Housing) 2021 was prepared by the project architect. Integral to Chapter 4 of SEPP (Housing) 2021 is the Apartment Design Guide (ADG) which sets benchmarks for the appearance, acceptable impacts and residential amenity of the development.</p> <p>The development is a building that is more than 3 storeys and contains more than 4 dwellings therefore Chapter 4 applies to this development.</p> <p>Refer to discussion following this table and Attachment 8 for a detailed compliance table assessment.</p>
<ul style="list-style-type: none"> • State Environmental Planning Policy (Sustainable Buildings) 2022 	Chapter Standards residential	2 for	A BASIX Certificate number 1346701M_03 has been submitted and determined as being acceptable for approval.

	Development - BASIX.	
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(a) State Environmental Planning Policy (Housing) 2021– Chapter 2 Affordable housing and Chapter 4 Design of residential apartment development

Following a detailed assessment of the proposal against the provisions of Chapter 2 and Chapter 4 of SEPP (Housing) 2021 and Apartment Design Guide, it is considered the proposal is generally compliant with the exception of the landscaped area, building separation, balcony sizes and common circulation spaces. These variations are discussed below:

Control	Required			Provided	% variation
Clause 19(2)((b)(ii) SEPP (Housing) 2021. Landscaped area	30% of the site as landscaped area, this is equivalent to 1,846.71square metres.			793.2 square metres.	57%.
Part 3F-1 Apartment Design Guide Visual Privacy		Habitable rooms and balconies	Non-habitable rooms	<u>Building D1 and D2</u> Over 9 storeys 13.58m habitable to habitable.	43.417%
	over 25m (9+ storeys)	12m	6m	<u>Building C and D</u> Over 9 storeys 22.9m habitable to habitable.	4.58%
Part 4E-1 Apartment Design Guide Balcony size	Dwelling Type	Min Area	Min Depth	<u>Building C</u> 2-bedroom apartment with 9 sqm balconies 210, 211, 310, 311, 410, 411, 510, 511	10%
	Studio	4m ²	-		
	1 bedroom	8m ²	2m		
	2 bedroom	10m ²	2m		
	3+ bedroom	12m ²	2.4m		
	Building separation required is 24 metres.			1-bedroom apartments with 6sqm balconies 925, 926, 1025, 1026, 1125, 1126, 1225, 1226, 1325, 1326, 1425, 1426, 1525 and 1526.	25%
Part 4F-1	For buildings of 10 storeys and over, the maximum number of			<u>Building B:</u> 174 apartments with	30%

Apartment Design Guide	apartments sharing a single lift is 40.	three lifts, average of 58 units per lift.	
Common circulation spaces			

Clause 19(2)((b)(ii) - Landscaped area

(2) *The following are non-discretionary development standards in relation to the*

(b) *a minimum landscaped area that is the lesser of—*

- (i) *35m² per dwelling, or*
- (ii) *30% of the site area,*

Based on a site area of 6,155.7 square metres, the proposal requires a landscaped area of 1,846.71 square metres, however the proposal provides 793.2 square metres. Despite the non-compliance the amending DA does not seek to make changes to the footprint of the building as approved under DA2022/0776 and therefore would not be able to achieve compliance, unless substantial changes are made to the ground floor plane. The proposal provides more than the ADG required communal open space which is spread across the four roof areas of the buildings.

Given the non-compliance to the landscaped area is to a non-discretionary development standard under the SEPP (Housing) 2021 this is further addressed in detail under the heading 'Clause 4.6 - Exceptions to development standards' of this report.

Part 3F-1 - Visual Privacy

The separation distance within Building D and between Buildings C and D are less than the requirements stated. In this regard, a building separation of 24 metres for 9+ storeys is required. The north and south towers of Building D1 and D2 provides a building separation distance of 13.58 metres. The separation between Building C and D is 22.9 metres.

The architectural plans are showing appropriate design elements (fritted glass) and screens being applied to the affected apartments to retain a satisfactory level of privacy between apartments. For this reason, the proposal is satisfactory.

Part 4E-1- Private open space and balconies

The variation to the balconies is considered reasonable given that residential amenity is not adversely impacted. The apartments are close to the new proposed public park to be constructed and the development provides 28.5% of communal open space which exceeds the requirement under the Apartment Design Guide and this also aligns with the design guidance of the Guide that reads "*Increased communal open space should be provided where the number or size of balconies are reduced*". With a satisfactory aspect, the variation is considered to have no adverse impact to the functioning of the affected apartments.

A comprehensive assessment against SEPP Housing Chapter 4 and the ADG is contained in Attachment 9.

Part 4F-1 - Common circulation spaces

Design Criteria 2 requires for buildings over 10 storeys that the maximum number of apartments sharing a single lift is 40. The applicant has consulted with KONE Elevators who have undertaken a traffic study for building B and advised that 3 x lifts with a speed at 2.5m/s will work for the uplift to the proposal. Therefore, on this basis it is considered that the number of lifts proposed to Building B is satisfactory and meets objective 4F-1 and will properly service the number of apartments.

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 R4 High Density Residential.

(a) Permissibility:

The proposed development is defined as a 'residential flat building' and is permissible in the R4 High Density Residential zone with consent.

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.

Note.

Residential flat buildings are a type of **residential accommodation**—see the definition of that term in this Dictionary.

Further to the above, the proposal relies on Chapter 2, Division 1 'Infill affordable housing' and Chapter 3, Part 4 'Build to rent' housing pursuant to the State Environmental Planning Policy (Housing) 2021. Refer to Attachment 8 for a detailed assessment of these provisions.

The relevant matters to be considered under the Cumberland Local Environmental Plan and the applicable clauses for the proposed development are summarised below. A comprehensive LEP assessment is contained in Attachment 9.

Figure 4 - Cumberland LEP 2021 Compliance Table

DEVELOPMENT STANDARD	COMPLIANCE	DISCUSSION
4.1 Minimum Subdivision lot size 900sqm (applicable to lots 10 and 11 in DP 1305248)	Yes	'Site 2' is identified to have a site area of 6,155.7square metres.

4.3 Height of Buildings <ul style="list-style-type: none"> Part 54 metres for part of the site. Part 39 metres for the remainder of the site. <p>Plus 30% bonus pursuant to Chapter 2, Division 1, Clause 16 of the Housing SEPP 2021 - part 70.2 metres and part 50.7 metres respectively.</p>	No	<ul style="list-style-type: none"> Building B - 74.76 metres, which exceeds the 70.2m development standard by 4.56m or 6.4%. Building C - 55.71 metres, which exceeds the 50.7m development standard by 5.01m or 9.88%. Building D - 55.92 metres, which exceeds the 50.7m development standard by 5.22m or 10.29%.
4.4 Floor Space Ratio <p>5:1 for 'Site 2' under the CLEP 2021 plus 30% bonus pursuant to Chapter 2, Division 1, Clause 16 of the Housing SEPP 2021 equates to 6.5:1.</p>	Yes	<p>The proposed development has a gross floor area of 40,012.38 square metres, an FSR of 6.5:1 which meets the requirements of Chapter 2, Division 1, Clause 16 of the Housing SEPP 2021 which overrides Council's LEP 2021.</p> <p>Refer to detailed discussion below the table on floor space ratio.</p>
4.6 - Exceptions to Development Standards.	Yes	Refer to detailed assessment below.

Floor space ratio

The floor space ratio for the development is governed by Chapter 2, Division 1, Clause 16 of State Environmental Planning Policy (Housing) 2021 which allows for increases providing that a compliant level of affordable housing is achieved within the development. The proposal provides the required affordable housing component being 6016.04 square metres representing (15.0355%) whereas 6,001.817square metres (15%) is required and therefore is complaint.

Building height

In this regard, developments that are eligible for the additional floor space ratio is also eligible for a corresponding increase to the height of the building in the same percentages as that to floor space ratio. In relation to this development, the maximum building height permitted on the site as per Clause 16(3) of the SEPP (Housing) 2021 is 50.7 metres and 70.2 metres. The proposal provides for a building height of 74.76 metres to building B, 55.71 metres to building C and 55.92 metres to Building D, a variation of 6.4%, 9.88% and 10.29% respectively. The breach to the building height is addressed in detail under the heading of 'Clause 4.6 - Exceptions to development standards' below.

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.

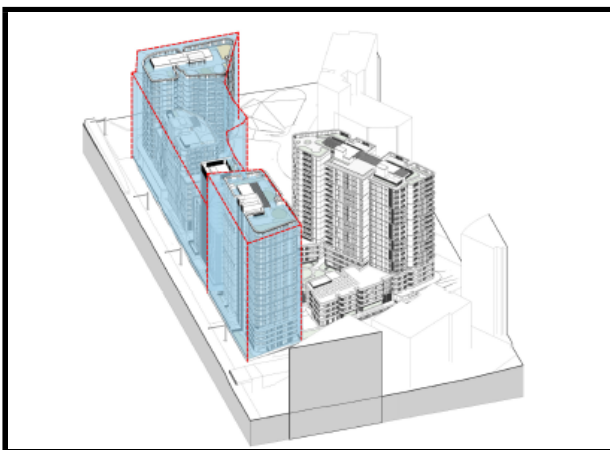
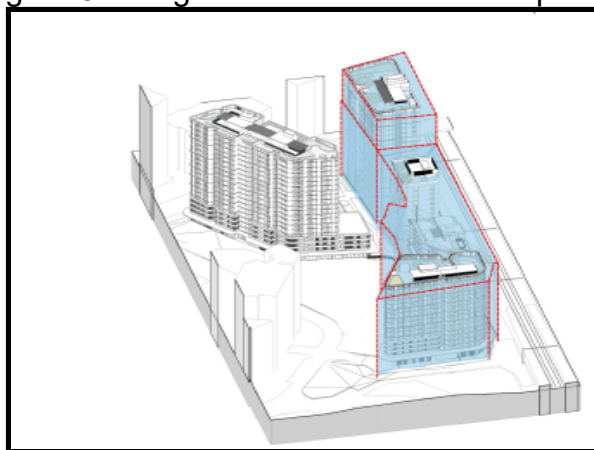
The application seeks to vary the development standard and non-discretionary development standard respectively for the maximum building height and landscaped area under Chapter 2, Division 1, Clauses 16(3) and 19(2)(b)(ii) of the State Environmental Planning Policy (Housing) 2021.

Clause 16(3) Additional building height

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.

	Clause 16 SEPP Housing 2021	Proposed	Variation	Location of height breach
Building B	70.2 metres	74.76 metres	4.56 metres or 6.4%.	• lift overrun.
Building C	50.7 metres	55.71 metres	5.01 metres or 9.88%.	• small part of parapet to screen the upper roof area.
Building D	50.7 metres	55.92 metres	5.22 metres or 10.29%.	• lift over-run.

Figure 5 - Height Blanket for the development.



Source: Think Planners

(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 applicant relies on the first Wehbe point: *The objectives of the standard are achieved notwithstanding non-compliance with the standard*, stating that:

It is considered that this approach can be followed in this instance. The objectives of the Height development standard, drawn from the LEP given the lack of specific objectives under the Housing SEPP, are stated as:

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

Despite the height breach, the proposal remaining consistent with the objectives of the clause because:

- The proposal also continues the additional break between Building C and B that is not required by the DCP- but provides a better design response. It is noted that the FSR of the site is 6.5:1 under the Housing SEPP 2021, with the proposal complying, and therefore satisfying objective (a).*
- The visual impact of the non-compliance is limited noting the departure is primarily to the centrally located plant, stair, and lift core areas and communal open space screening which are not easily 'read' in terms of the character of the locality and satisfies objective (b).*
- The shadow diagrams show the adjoining properties received adequate solar access, and the breach of the height to the buildings is centrally located with no meaningful additional shadow impacts- which aligns with part of objective (c).*
- The development is designed to follow the landform, whilst acknowledging the impact of overland flow/flooding and a suitable design response noting that the ground floor is marginally raised to deal with flooding.*

Planner's comments:

Council concurs with the applicant's justification and considers strict compliance with the height provision to be unnecessary in this instance given that it does not result in any unreasonable impact on the adjoining neighbours or developments and that the proposed development is consistent with the zone and associated zone objectives and provides a high

degree of residential amenity within a town centre environment and provides for a variety of housing to meet the needs of the community including affordable housing.

(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 following points demonstrate that sufficiently environmental planning grounds exist to justify contravening the height development standard and further demonstrates that the height departure does not give rise to any environmental impacts. Council can be satisfied that the proposal is an appropriate design response for the subject site for the following reasons:

- The design and provision of the rooftop communal rooftop terrace that necessitates balustrading, lift cores and fire stairs which protrudes beyond the permitted height plane. The proposal as designed seeks to maximise amenity for future occupants via the provision of this communal rooftop open space area.*
- Proposed rooftop structures i.e. lift overrun, lobby, seating, bbq facilities are directly correlated to the design, function and intended use of the rooftop communal open space area which forms an integral part of the proposed development. The structures service the rooftop communal open space area which has been provided to benefit the future occupants of the site. The noncompliance relates to features of the property which will significantly improve the amenity of the occupants.*
- The services zones identified are centrally located and not visually dominant but are a necessary component of a building of this size and scale.*
- The additional height proposed does not result in detrimental environmental planning outcomes, as it does not give rise to adverse solar access, view loss or visual or acoustic privacy impacts on site, or to neighbouring properties.*
- The flood affectation that necessitates a suitable freeboard level to be achieved.*

Planner's comments:

Council concurs with the applicant's justification and that there are sufficient planning grounds to justify the contravention to the height breach as the development does not result in any unreasonable impact on the adjoining neighbours or developments, provides a high degree of amenity which is improved by breaking the development into three separate buildings with each building having different design forms and building material finishes and the development is addressing the site constraints notably flooding.

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.

Clause 19(2)(b)(ii) Landscaped area

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.

The site has an area of 6155.7 square metres. Clause 19(2)(b)(ii) requires 30% of the site as landscaped area for in-fill affordable housing and this is equivalent to 1,846.71 square metres, the proposal provides 793.2 square metres which is a variation of 1,053.51 square metres or 57%.

(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:

- (vi) the objectives of the development standard are achieved notwithstanding non-compliance with the standard.
- (vii) the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.
- (viii) the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
- (ix) 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.
- (x) 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 landscape non-compliance is a technical non-compliance given that 2,036.37 sq m of landscaping is provided on site, which is 33% of the site area.*
- *There is no specific objective for the landscape area standard, nor in the in-fill affordable housing practice note (December 2023) is landscaping discussed, including a reason for the development standard.*
- *The proposal is consistent with the Principles of The Housing SEPP 2021, in particular:*
 - *Principle A through the provision of diverse housing types.*
 - *Principle B through providing 81 affordable housing units, consistent with the requirements of Part 2, Division 1 of the Housing SEPP 2021.*

- *Principle C by providing apartments that comply with ADG design criteria, along with high quality areas of public domain.*
- *Principle D by increasing the housing within an accessible location, making use of existing and planned infrastructure and services.*
- *Principle E through providing high quality areas of landscaped communal open spaces, private open spaces and landscaped public domain.*
- *Principle F through providing additional yield that is consistent with the desired future character of the Merrylands Town Centre, as established in its Master Plans and LEP development standards.*
- *Principle H by providing 81 affordable rental homes in an area with high need as articulated in Council's Housing Strategy.*
- *The proposal provides more than 15% affordable housing and is consistent with Objective 15A, despite the technical departure from the landscape standard, noting that the existing approved landscaped area at ground level has been retained unchanged.*
- *Importantly, the proposal will be in keeping with the character of new apartments delivered in the area, including those that apply the infill affordable housing provisions of the Housing SEPP 2021.*
- *Further, the proposal provides an attractive public domain and communal open spaces on the site, noting its R4 High Density Residential zoning and town centre context.*
- *The footprint of the building has been established by the original approved DA which is under construction. The proposal continues to provide for high quality landscaping across the building and on the site itself, making a significant contribution to environmental sustainability and water management, along with exceptional amenity for users of the public domain and also private and communal areas.*
- *The proposal is part of an overall development which will dedicate land to council for a public park of over 4,000 sq m.*

Planner's comments:

The area used in calculating the landscaped area excludes part of the site to be occupied by building (as per the landscaped area definition). Despite the non-compliance the amending DA does not seek to make changes to the footprint of the building as approved under DA2022/0776 and therefore would not be able to achieve compliance, unless substantial changes are made to the ground floor plane. The proposal provides more than the ADG required communal open space which is spread across the four roof areas of the buildings.

Therefore, it would be unreasonable and unnecessary to seek compliance with the standard, given the above and that the subject site is located within the Merrylands Town Centre and will be located to the eastern side of the proposed public park being delivered via a separate development application.

(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 following points demonstrate that sufficiently environmental planning grounds exist to justify contravening the landscaped area development standard and further demonstrates that the landscaped area departure does not give rise to any environmental impacts. Council can be satisfied that the proposal is an appropriate design response for the subject site for the following reasons:

- *The landscape non-compliance is a technical non-compliance given that 2,036.37 sq m of landscaping is provided on site, which is 33% of the site area.*
- *The site is part of a larger development with the footprint already established and with a significant area of land being dedicated to council as a public park.*
- *The non-compliance with the development standard will not result in any adverse environmental impacts to surrounding developments, or the amenity that they currently have, or their future development potential. Despite the technical non-compliance, there is no resulting detrimental impact on privacy, overshadowing, or traffic impacts.*
- *There is no specific objective for landscaped area under the Housing SEPP 2021, however, as shown in this application, the proposal does not represent an overdevelopment of the site when considered against other planning controls.*
- *The proposal is consistent with the intent of the In-fill Affordable Housing provisions of the housing SEPP by providing at least 15% of the GFA as affordable housing, despite the technical departure from the landscaped area development standard.*
- *Overall, the minor departure enables a better design outcome, consistent with the following Objects of the Environmental Planning and Assessment Act 1979:*
 - (a) to promote the delivery and maintenance of affordable housing,*
 - (b) to promote good design and amenity of the built environment,*

Planner's comments:

Council generally concurs with the reasoning provided by the applicant. The amenity of residents both within the development and of surrounding properties would not be adversely affected by the proposed deficiency in landscaped area as ample landscaping and plantings are to be provided within the adjoining proposed public park. Furthermore, the amending development application does not request any significant changes to the ground floor building plane approved under DA2022/0776. On this basis, it is considered that there are sufficient environmental planning grounds to justify contravention of this development standard.

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 been undertaken and has now concluded.

The public exhibition was carried out between the 4 March 2025 to 17 April 2025.

The Draft Planning Proposal seeks to revitalise Woodville Road by amending the 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 the 29th of July 2024 and the site does not fall within the Draft Woodville Road Corridor. Therefore, 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 F2-6 - Merrylands Town Centre.
- Part F2.7 - Merrylands Neil Street Precinct.
- Part G - Miscellaneous Development Controls.

The development is generally found to comply with the relevant provisions of the CDCP, whilst non-compliances occurs in relations to building height and number of storeys, they are generally overridden by the State Environmental Planning Policy (Housing) 2021 which allows for a bonus to the height and FSR of up to 30% if affordable housing is provided. See discussions under Appendix 10 of this report.

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))

A Planning Agreement has been entered into in connection with the base development application to deliver a public domain within the precinct including Neil Street Park, Terminal Park and Boulevard Park.

The Planning Agreement was executed on the 18th of September 2024, this application does not seek to alter the planning agreement.

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 2021, the proposal was publicly notified for a period of 14 days between 8 August 2024 and 22 August 2024. The notification generated 5 submissions in respect of the proposal with none disclosing a political donation or gift.

The amended plans/application was publicly re-notified for a period of fourteen (14) days between 16 January 2025 and 30 January 2025. In response, no submissions were received during the second notification period.

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

Figure 7 - Submissions summary table

Issue	Planner's Comment
<i>Building B will already obstruct a significant portion of the views from my apartment. The proposed 19-meter extension to its height would further exacerbate this.</i>	<p>The scale and height of the proposed development generally complies with the State Environmental Planning Policy (Housing) 2021 controls.</p> <p>Furthermore, the proposed development is not considered to adversely impact on any significant views, there is no document acknowledging the importance of any views of a national, state or local heritage significance or any planning regimes that requires the retention or protection of public domain views.</p>
<i>The proposed increase in population density without a corresponding upgrade to the road infrastructure will inevitably lead to even more traffic congestion. The current road network is ill equipped to handle the increased traffic volume, which will adversely affect the quality of life for existing residents. It will also potentially lead to safety issues, especially due to the increased foot</i>	<p>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 14 August 2024 TfNSW stated that <i>"the submitted DA will not have any detrimental impact on the surrounding classified road network. As such, TfNSW has no further comments.</i></p>

<p><i>traffic heading towards the nearby train and bus stations.</i></p>	
<p><i>The extension of Building B will also result in increased sun blockage for my apartment. This is of particular concern as the reduced sunlight will likely exacerbate existing condensation problems on my apartment windows.</i></p>	<p>The objector's property is located to the west of the subject site and based on the submitted solar diagrams the proposal will not impact the solar access to the objector's site.</p>
<p><i>The proposed amendment will affect the direct sunlight we badly needed.</i></p> <p><i>Furthermore, it also reduces airflow and robbed us of the view we now enjoy.</i></p>	<p>The objector's property is located to the west of the subject site and based on the submitted solar diagrams the proposal will not impact the solar access to the objector's site. The proposed development is not considered to impact on the air flow of adjoining properties as there is sufficient building separation to adjoining sites.</p>
<p><i>Could a shadow diagram please be provided to show the impacts of increasing the height of the building from 14 to 22 levels.</i></p> <p><i>This is a significant height increase in the direction of morning sun that likely has a high impact on the proposed parklands between this new development and existing Gladstone Village.</i></p>	<p>An email was sent to the submitter on the 26 August 2024 with a link to Council's website and access to the shadow diagrams. No further submissions have been received to date in response to Council's email and re-notification.</p>
<p><i>I have concerns re the affordable housing component of this development. I wish to know what type of affordable housing this is and the type of tenants that will inhabit it (eg elderly, families, couples, singles).</i></p> <p><i>Areas with government introduced controls around housing (eg housing commission) tend to have higher than average crime rates and anti-social behaviours.</i></p>	<p>Chapter 2 Affordable housing of the SEPP Housing 2021 defines 'Affordable housing' as:</p> <p>(1) <i>In this Policy, a household is taken to be a very low income household, low income household or moderate income household if—</i></p> <p>(a) <i>the household—</i></p> <p>(i) <i>has a gross income within the following ranges of percentages of the median household income for Greater Sydney or the Rest of NSW—</i></p> <p>(A) <i>very low income household—less than 50%,</i></p> <p>(B) <i>low income household—50–less than 80%,</i></p> <p>(C) <i>moderate income household—80–120%, and</i></p> <p>(ii) <i>pays no more than 30% of the gross income in rent, or</i></p> <p>(b) <i>the household—</i></p> <p>(i) <i>is eligible to occupy rental accommodation under the National Rental Affordability Scheme, and</i></p>

	<p>(ii) <i>pays no more rent than the rent that would be charged if the household were to occupy rental accommodation under the Scheme.</i></p> <p>A person or persons is able to reside in an apartment that is nominated as 'affordable housing' as long as they meet the household income test stated above.</p>
<p><i>I would like to vote NO on behalf of myself and my wife on this application.</i></p>	<p>This submission did not provide any specific reasons for objecting to the proposal and therefore no further discussion can be made on the reasons for not supporting the application.</p>

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 7.11, a total contribution of \$502,387.00 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*, Cumberland Local Environmental Plan and Cumberland DCP and is considered to be satisfactory for approval subject to conditions.

The proposed development is appropriately located within the R4 High Density Residential zone under the relevant provisions of the Cumberland LEP, however variations in relation to the building height and landscaped area under the State Environmental Planning Policy (Housing) 2021, Apartment Design Guide and Cumberland Development Control Plan in relation to the number of storeys are sought.

Having regard to the assessment of the proposal from a merit perspective, the Panel may be satisfied that the development has been responsibly designed and provides for acceptable levels of amenity for future residents. It is considered that the proposal successfully minimises adverse impacts on the amenity of neighbouring properties. Hence the development, irrespective of the departures noted above, is consistent with the intentions of Council's planning controls and represents a form of development contemplated by the relevant statutory and non-statutory controls applying to the land.

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

RECOMMENDATION

- 1. That the Clause 4.6 variation request to contravene clause 16(3) Additional building height development standard, pursuant to the State Environmental Planning Policy (Housing) 2021, be supported.**
- 2. That the Clause 4.6 variation request to contravene clause 19(2)(b)(ii) landscaped area non-discretionary development standard, pursuant to the State Environmental Planning Policy (Housing) 2021, be supported.**
- 3. That Development Application No. DA2024/0331 for alterations and additions to the approved development (DA2022/0776) seeking to facilitate affordable housing and Build-to-rent housing (BTR) to part of the development pursuant to the State Environmental Planning Policy (Housing) 2021 on land at 1/4-4A Terminal Place, part 5 and part 7 McLeod Road Merrylands be approval subject to conditions listed in the attached schedule.**
- 4. Persons whom have lodged a submission in respect to the application be notified of the determination of the application.**

ATTACHMENTS

1. Draft Notice of Determination.
2. Architectural Plans.
3. Landscape Plans.
4. Clause 4.6 Variation Request – HoB.
5. Clause 4.6 Variation Request – Landscape.
6. Submissions Redacted.
7. Appendix A Chapter 2, Division 1 and Chapter 3, Part 4 of SEPP Housing 2021.
8. Appendix B Chapter 4 SEPP Housing 2021 & ADG Assessment.
9. Appendix C Cumberland LEP 2021 Assessment.
10. Appendix D Cumberland DCP 2021 Assessment.
11. Design Excellence Panel Comments and Applicant's and Council response.

