

## Cumberland Local Environmental Plan 2021

Clause	Comments	Compliance
<b>1.2 Aims of Plan</b>	<p>The particular aims of this Plan are as follows:</p> <ul style="list-style-type: none"> <li>(aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,</li> <li>(a) to provide a comprehensive planning framework for the sustainable development of land in Cumberland,</li> <li>(b) to provide for a range of land uses and development in appropriate locations to meet community needs,</li> <li>(c) to facilitate economic growth and employment opportunities within Cumberland,</li> <li>(d) to conserve and maintain the natural, built and cultural heritage of Cumberland,</li> <li>(e) to provide for community facilities and services in Cumberland to meet the needs of residents, workers and visitors,</li> <li>(f) to promote development that is environmentally sustainable.</li> </ul> <p><u>Comment:</u> It is considered that the aims of the plan are complied with. In particular, the following aims are achieved: Clause 1.2(2)(b), (c), (d) and (f).</p>	Yes
<b>2.3 Zone Objectives and Land Use Table</b>	<p>The objectives of the E1 Local Centre zone are:</p> <ul style="list-style-type: none"> <li>• • <i>To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.</i></li> <li>• • <i>To encourage investment in local commercial development that generates employment opportunities and economic growth.</i></li> <li>• • <i>To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.</i></li> <li>• • <i>To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.</i></li> <li>• • <i>To promote active street frontages on the ground floor of buildings that attract pedestrian traffic and that facilitate active and vibrant centres with inviting public domain areas.</i></li> </ul> <p><u>Comment:</u> The proposal is for a mixed-use development consisting of ground floor commercial, levels 1-3 co-living housing and levels 4-14 being used as a boarding house. The commercial and boarding house are permissible within consent in the E1 Local Centre zone.</p> <p>Pursuant to Section 67 (b) of SEPP (Housing) 2021, co-living housing development may be carried out with consent on land in a zone which development for the</p>	Yes

	<p>purposes of residential flat buildings or shop top housing is permitted under Chapter 5, Chapter 6 or another environmental planning instrument. Shop-top housing is permissible in the E1 Local Centre under the CLEP 2021 and in addition the subject site is identified within the Transport Oriented Development Area under Chapter 5 of the SEPP (Housing) 2021 in which pursuant to Chapter 5, Section 154(1)(b) development for the purposes of residential flat buildings is permitted with development consent on land in the following zones in a Transport Oriented Development Area which includes E1 Local Centre therefore the proposed development is permissible pursuant to Section 67 of the SEPP (Housing) 2021.</p> <p>The proposal will provide a range of retail/business to meet the community needs and will generate employment opportunities. The proposal provides for residential development on the upper levels and an active street frontage along Mark and Marsden Street.</p> <p>The proposal is consistent with the objectives of the zone.</p>	
<b>2.6 Subdivision-consent requirements</b>	Subdivision is not proposed under this application.	N/A
<b>2.7 Demolition requires development consent</b>	Consent is sought as part of the application for the demolition of structures on site.	Yes
<b>4.3 Height of Buildings</b>	<p>(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</p> <p><u>Comment:</u> The height of a building is not to exceed 45 metres. The proposal has a maximum building height of 46.685 metres, variation of 1.685 metres or 3.74% to the uppermost roof located on the western portion of the eastern tower.</p>	No. Refer to main body of the report for clause 4.6 variation request discussion.
<b>4.4 Floor Space Ratio</b>	<p>(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.</p> <p><u>Comment:</u> The maximum floor space ratio (FSR) for a building on the site shall not exceed 5:1. The proposal also relies on a bonus under Section 24(2)(a) of 30%, if the additional floor space is used only for the purposes of the boarding house. Therefore, the maximum FSR is 6.5:1.</p> <p>FSR complies at 6.49:1 or 15,856.25 square metres.</p>	Yes
<b>4.6 Exceptions to development standards</b>	<p>(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:</p> <p>(a) that compliance with the development</p>	Yes. Refer to main body of the report for detailed discussion.

	<p>standard is unreasonable or unnecessary in the circumstances of the case, and</p> <p>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</p> <p><u>Comment:</u> A written request in accordance with Clause 4.6 of CLEP 2021 to vary the building height development standard was submitted.</p> <p>The exceedance in building height is supported in this instance, having regard to the circumstances of the case. Refer to the discussion in the body of the report.</p>	
<b>5.10 Heritage Conservation</b>	The site is not identified as a heritage listed item and is not located within a heritage conservation area.	N/A
<b>5.21 Flood planning</b>	<p>(2) Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development—</p> <ul style="list-style-type: none"> <li>(a) is compatible with the flood function and behaviour on the land, and</li> <li>(b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and</li> <li>(c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and</li> <li>(d) incorporates appropriate measures to manage risk to life in the event of a flood, and</li> <li>(e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of riverbanks or watercourses.</li> </ul> <p>(3) In deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—</p> <ul style="list-style-type: none"> <li>(a) the impact of the development on projected changes to flood behaviour as a result of climate change,</li> <li>(b) the intended design and scale of buildings resulting from the development,</li> <li>(c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,</li> <li>(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.</li> </ul> <p><u>Comment:</u></p>	Yes, subject to conditions.

	Council's Senior Development Engineer has reviewed the proposal and did not raise any objections subject to conditions.	
<b>6.1 Acid Sulphate Soils</b>	Development impacted by Class 5 acid sulphate soils. The detailed site investigation report states that " <i>a review of the acid sulfate soil (ASS) risk map of the locality indicates that acid sulphate soil materials are unlikely to be present at the site</i> ". Therefore, no conditions are required in this instance.	Yes
<b>6.2 Earthworks</b>	The proposed earthworks will not have a detrimental effect on existing drainage patterns or soil stability. The proposal will not affect the amenity of adjoining properties. The proposal is satisfactory subject to compliance with standard conditions.	Yes
<b>6.4 Essential Services</b>	<p>(1) Development consent must not be granted to development unless the consent authority is satisfied that any of the following services that are essential for the proposed development are available or that adequate arrangements have been made to make them available when required:</p> <ul style="list-style-type: none"> <li>a) the supply of water,</li> <li>b) the supply of electricity,</li> <li>c) the disposal and management of sewage,</li> <li>d) stormwater drainage or on-site conservation,</li> <li>e) suitable vehicular access.</li> </ul> <p><u>Comment:</u> The development will have access to water, electricity and disposal of sewage, stormwater disposal and vehicular access to the car parking via Marsden Lane. These matters can be addressed by the imposition of conditions in any approval of the development.</p>	Yes
<b>6.7 Stormwater management</b>	<p>(2) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development—</p> <ul style="list-style-type: none"> <li>(a) is designed to maximise the use of water permeable surfaces on the land having regard to the soil characteristics affecting on-site infiltration of water, and</li> <li>(b) includes, if practicable, on-site stormwater retention for use as an alternative supply to mains water, groundwater or river water, and</li> <li>(c) avoids significant adverse impacts of stormwater runoff on adjoining properties, native bushland and receiving waters, or if the impact cannot be reasonably avoided, minimises and mitigates the impact.</li> </ul> <p><u>Comment:</u> Council's Senior Development Engineer has reviewed the application and raised no objections, subject to conditions.</p>	Yes
<b>6.9 Salinity</b>	<p>(3) Development consent must not be granted to development on land to which this clause applies unless the consent authority has considered the following—</p> <ul style="list-style-type: none"> <li>(d) whether the development is likely to have an adverse impact on salinity processes on the land,</li> </ul>	N/A

	<p>(e) whether salinity is likely to have an impact on the development,</p> <p>(f) appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p> <p>(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—</p> <p>(a) the development is designed, sited and will be managed to avoid a significant adverse environmental impact, or</p> <p>(b) if a significant adverse environmental impact cannot be avoided—the development is designed, sited and will be managed to minimise the impact, or</p> <p>(c) if a significant adverse environmental impact cannot be minimised—the development will be managed to mitigate the impact.</p> <p><u>Comment:</u> The subject site is not affected by Salinity.</p>	
<b>6.12 Urban Heat</b>	<p>In deciding whether to grant development consent for the purposes of commercial premises, industries or residential accommodation, the consent authority must consider whether—</p> <p>(a) the facade and roof of the proposed building and paved surfaces are designed to reduce adverse effects of solar heat on the surrounding land, including private open space and the public domain, and</p> <p>(b) the awnings and eaves of the building are designed to provide shelter from the sun and improve public comfort at street level, and</p> <p>(c) the heating, ventilation and air conditioning systems of the building are designed to minimise the release of heat in the direction of private open space and the public domain, and</p> <p>(d) the development maximises the use of green infrastructure that is strategically designed and managed to support a good quality of life in an urban environment, and</p> <p>(e) the development accommodates sufficient tree canopy, open space and deep soil zones to achieve urban cooling benefits, and</p> <p>(f) the building is designed to achieve high passive thermal performance.</p> <p><u>Comment:</u> The building will consist of a brick and painted finish. This includes colours such as Dulux 'White on White', 'Goldie' and 'Myall', the brickwork is a mid-brown colour. The use of some lighter colours will reduce heat absorption. The</p>	Yes

	<p>proposal also includes photovoltaic/solar panels of the roof areas of both towers.</p> <p>The proposal also incorporates on-structures planting within the communal open areas.</p> <p>The proposed development is considered to be satisfactory with regard to the provisions of this clause.</p>	
<b>6.13 Ground Floor development in Zones E1, E2 and MU1</b>	<p>(3) <i>Development consent must not be granted to development for the purposes of commercial premises, mixed use development that includes commercial premises or a change of use of a building to commercial premises on land to which this clause applies unless the consent authority is satisfied that the ground floor of the building—</i></p> <ul style="list-style-type: none"> <li>(a) <i>will not be used for the purposes of residential accommodation or serviced apartments, and</i></li> <li>(b) <i>will not be used for a car park or to provide ancillary car parking spaces, and</i></li> <li>(c) <i>will provide for uses and building design elements that encourage interaction between the inside of the building and the external public areas adjoining the building.</i></li> </ul> <p>(4) <i>Subclause (3)(b) does not apply to a site that—</i></p> <ul style="list-style-type: none"> <li>(a) <i>is greater than 60 metres in depth from all street frontages, or</i></li> <li>(b) <i>has a gradient steeper than 15%, measured from boundary to boundary, or</i></li> <li>(c) <i>is owned by a public authority and is to be used as a public or commuter car park.</i></li> </ul> <p>(5) <i>Subclause (3)(c) does not apply to a part of a building that—</i></p> <ul style="list-style-type: none"> <li>(a) <i>faces a service lane that does not require active street frontages, or</i></li> <li>(b) <i>is used for one or more of the following purposes—</i> <ul style="list-style-type: none"> <li>(i) <i>a lobby for a commercial, residential, serviced apartment or hotel part of the building,</i></li> <li>(ii) <i>access for fire services,</i></li> <li>(iii) <i>vehicular access.</i></li> </ul> </li> </ul> <p><u>Comment:</u> The ground floor of the building will not be used for residential accommodation, a car park or ancillary car parking. The waste and loading area is located off David Place and is not contrary to this clause.</p>	Yes
<b>6.14 Design Excellence</b>	<p>(2) <i>This clause applies to development involving the construction of a new building, or external alterations to an existing building, that will result in—</i></p> <ul style="list-style-type: none"> <li>(a) <i>a building that is greater than 30 metres in height on land shown as “Area 1” on the <a href="#">Design Excellence Map</a>, or</i></li> <li>(b) <i>a building that is greater than 55 metres in height on land shown as “Area 2” on the <a href="#">Design Excellence Map</a>, or</i></li> <li>(c) <i>a building that is on land shown as “Area 3” on the <a href="#">Design Excellence Map</a>.</i></li> </ul>	N/A

	<p><u>Comment:</u></p> <p>The subject site does not fall within an area mapped under the Design Excellence Map. This Clause does not apply to the development.</p>	
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