

**TO: SYDNEY CENTRAL CITY PLANNING PANEL**

**SUBJECT:** 2 Mark Street, 1A, 1 and 3 Marsden Street Lidcombe.

**APPLICATION No:** DA2025/0095 / PPSSCC-679

<b>Application lodged</b>	9 April 2025.
<b>Applicant</b>	Marque Eight Pty Ltd C/- The Planning Hub.
<b>Owner</b>	Marque Eight Pty Ltd.
<b>Application No.</b>	DA2025/0095.
<b>Description of Land</b>	2 Mark Street, 1A, 1 and 3 Marsden Street Lidcombe.  Lots 7 to 12 Sec 2 in DP 846.
<b>Proposed Development</b>	Demolition of existing structures and construction of a mixed-use development comprising of 6 commercial tenancies, 101 co-living rooms and 305 boarding rooms and 3 levels of basement car parking pursuant to State Environmental Planning Policy (Housing) 2021.
<b>Site Area</b>	2,441 square metres.
<b>Zoning</b>	E1 Local Centre.
<b>Disclosure of political donations and gifts</b>	Nil disclosure
<b>Cost of works</b>	\$70,287,966.34 (excluding GST)
<b>Heritage</b>	The site is not a Heritage item and is not located in a Heritage Conservation Area.
<b>Principal Development Standards</b>	<u>FSR</u> Permissible: 5:1 plus 30% pursuant to s24(2)(a)(ii) SEPP Housing 2021 = 6.5:1.  Proposed: 6.496:1.  <u>Height of Building</u> Permissible: 45 metres.  Proposed: 46.685 metres (at the highest point).
<b>Issues</b>	Submissions. Height of Building. Communal Open Space.

## SUMMARY

1. Development Application 2025/0095 was lodged on the 9 April 2025 for the demolition of existing structures and construction of a mixed-use development comprising of 6 commercial tenancies, 107 co-living rooms and 306 boarding rooms and 3 levels of basement car parking pursuant to State Environmental Planning Policy (Housing) 2021.

2. The application was publicly notified to occupants and owners of the adjoining properties for a period of 14 days between 1 April 2025 and 15 April 2025. In response, two unique submissions were received.
3. On the 20<sup>th</sup> of August 2025, the applicant lodged amended plans and documents. The application was publicly re-notified to occupants and owners of the adjoining properties for a period of 7 days between 4 September 2025 and 11 September 2025. In response, four unique submissions were received during the second notification, resulting in a total of six unique submissions.

The proposal also included change to the development proposal description as follows: *'Demolition of existing structures and construction of a mixed-use development comprising of 6 commercial tenancies, 101 co-living rooms and 305 boarding rooms and 3 levels of basement car parking pursuant to State Environmental Planning Policy (Housing) 2021'*.

4. The variations are as follows:

Control	Required	Provided	% variation
Chpt 2, Part 2, Division 2, s24(2)(h)(i) SEPP (Housing) 2021.  Communal Open Space (Boarding house component).	488.2 sqm.	356 sqm.	27.08%.
Chpt 2, Part 2, Division 2, s25(2)(c) SEPP (Housing) 2021.  Building Separation (Boarding house component).	Level 8 -18m.  Levels 9-13 - 24m.	12.450-16.235 m.  12.450-16.235m.	9.80%-30.83%.  32.35%-48.125%.
Chpt 3, Part 3, s68(d)(i) SEPP (Housing) 2021.  Communal Open Space (Co-living housing component).	488.2 sqm.	135.95sqm.	72.15%.
Chpt 3, Part 3, s69(2)(b) SEPP (Housing) 2021.  Building Separation (Co-living housing component).	Level 1 communal room - 6m.	Nil to boundary and 3.1 metres to centreline of lane.	48.33% - 100%.
Chpt 3, Part 3, s69(2)(c) SEPP (Housing) 2021.  Solar Access Communal living area (Co-living housing component).	Communal room number 2.  at least 3 hours of direct solar access will be provided	Nil.	100%.

	between 9am and 3pm at mid-winter.		
Clause 4.3 Cumberland Local Environmental Plan 2021.  Height of Building.	45 m (max).	46.685m (at the highest point).	3.74%.
Sub-part 3.8, C1.  Ceiling Height  Part C Development in Business Zones.	3.5m (ground floor) FFL to FCL.	Part 3.45m FFL to FCL.	Part 1.43%.
Sub-part 2.1, C1.  Setbacks  Part F2-5 Lidcombe Town Centre.	4-6 m.	Part 3.62 m (south elevation).  Part 3.875 metres (west elevation).	9.5%.  3.125%.
Sub-part 4.3, C2.  Basement parking.  Part G3 Traffic, Parking, Transport and Access (Vehicle).	Basement parking shall be located within the building footprint.	Portion of basement protrudes outside the building footprint along the northern, west and southern side.	100%.
Sub-part 4.4, C8.  Development in Business Zones - Driveway width.  Part G3 Traffic, Parking, Transport and Access (Vehicle).	8 m (max).	11 m.	37.5%.

5. The application is referred to the Panel as the development is identified as being Regionally Significant Development with a capital investment value of greater than \$30 million.
6. The application is recommended for approval subject to the conditions as recommended in the Council's assessment report.

## REPORT:

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### ***Subject Site and Surrounding Area***

The site comprises 6 allotments and is legally described as Lots 7 to 12, Sec 2 in DP 846 and known as 2 Mark Street, 1A, 1 and 3 Marsden Street Lidcombe. The site is zoned E1 Local Centre and is situated on the north-eastern corner intersection of Mark Street and Marsden Street, Lidcombe.

The subject site is located within the 'Lidcombe Town Centre' and is identified as Key Site 7 in section F2-5 of the Business Site Specific Part of the Cumberland Development Control Plan (CDCP) 2021. The land is regular in shape and has a frontage to Mark Street along the western boundary, Marsden Street along the southern boundary and David Place along the northern boundary. The site has a combined frontage width of 35.355m to Mark Street to the west and the common side boundary to the east and 69.035m to Marsden Street to the south and David Place to the north, creating a total combined land area of 2,441 square metres.

Surrounding developments in the immediate vicinity are currently characterised by a mix commercial/retail land uses and high density residential and mixed use developments of various size and scale. Once the area completes redevelopment, the area will transition to and be characterised predominantly by commercial and mixed use developments given the context and zoning of the locality.

The subject site is identified within a Transit oriented development area, pursuant to Chapter 5 'Transit oriented development' of the State Environmental Planning Policy (Housing) 2021.

The location of the sites are shown below edged in purple.



*Figure 1 – Locality Plan of subject site (Source: Nearmaps)*



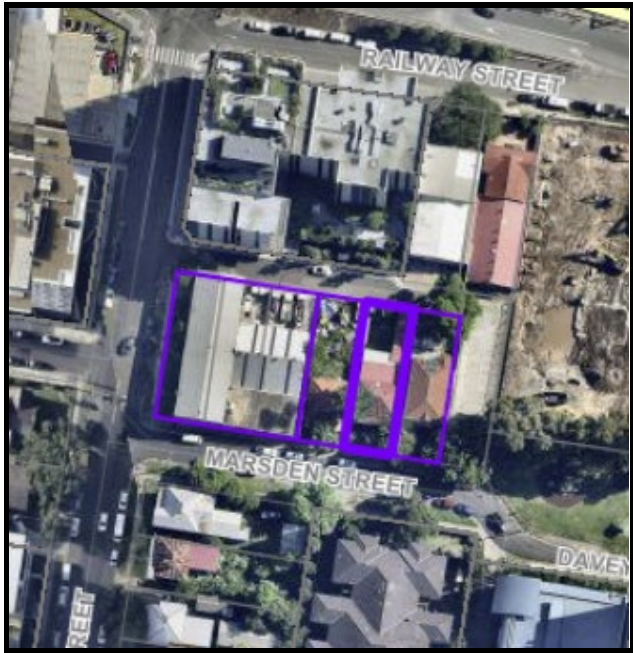


Figure 2 – Aerial view of subject site (Source: Nearmaps)



Figure 3 – Street view of subject site - View from Mark Street (left) & View of Marsden frontage (right)

**Description of The Development**

Council has received a development application for the demolition of existing structures and construction of a mixed-use development comprising of 6 commercial tenancies, 101 co-living rooms and 305 boarding rooms and 3 levels of basement car parking pursuant to State Environmental Planning Policy (Housing) 2021.

A summary of the proposed development is provided within the table below:

Level	Proposed
• Demolition of existing structures.	
Basement 3	<ul style="list-style-type: none"><li>• 51 x residential car parking spaces.</li><li>• 6 x motorcycle spaces.</li><li>• 145 x bicycle spaces.</li><li>• 6 x lifts.</li><li>• 2 x residential lift lobbies.</li></ul>

	<ul style="list-style-type: none"> <li>• 3 x fire stairs.</li> <li>• 5 x Storage areas.</li> </ul>
Basement 2	<ul style="list-style-type: none"> <li>• 44 x residential car parking spaces.</li> <li>• 30 x motorcycle spaces.</li> <li>• 117 x bicycle spaces.</li> <li>• 6 x lifts.</li> <li>• 2 x residential lift lobbies.</li> <li>• 3 x fire stairs.</li> <li>• 3 x Storage areas.</li> </ul>
Basement 1	<ul style="list-style-type: none"> <li>• 10 x residential car parking spaces.</li> <li>• 18 x motorcycle spaces.</li> <li>• 36 x bicycle spaces.</li> <li>• 21 x commercial car parking spaces.</li> <li>• 28 x commercial motorcycle spaces.</li> <li>• 111 x commercial bicycle spaces.</li> <li>• 6 x lifts.</li> <li>• 1 x residential lift lobby.</li> <li>• 1 x commercial &amp; residential lift lobby.</li> <li>• 3 x fire stairs.</li> <li>• 1 x Storage area.</li> <li>• 1 x pump room.</li> <li>• Boom gate to control access for residential parking.</li> </ul>
Ground Floor	<ul style="list-style-type: none"> <li>• 6 x commercial tenancies.</li> <li>• Communal living area No. 1 (for commercial tenants).</li> <li>• Communal open space (for commercial tenants).</li> <li>• Parcel/locker room.</li> <li>• Residential waste storage area.</li> <li>• Commercial waste storage area.</li> <li>• Bulk waste storage.</li> <li>• 6 x lifts.</li> <li>• 2 x residential lift lobbies (B &amp; C).</li> <li>• 1 x commercial &amp; residential lift lobby (A).</li> <li>• 4 x fire stairs.</li> <li>• Substation.</li> </ul>
Level 1 (Co-living housing)	<ul style="list-style-type: none"> <li>• 27 x co-living rooms (including 2 accessible rooms and a managers' room).</li> <li>• Communal living area No.2.</li> <li>• Communal open terrace.</li> <li>• 2 x lift access only.</li> <li>• Waste storage rooms.</li> <li>• 2 x fire stairs.</li> </ul>
Levels 2 & 3 (Typical Co-living housing)	<ul style="list-style-type: none"> <li>• 37 x co-living rooms (including 2 accessible rooms).</li> <li>• 2 x lift access only.</li> <li>• Waste storage rooms.</li> <li>• 2 x fire stairs.</li> </ul>
Level 4 (Boarding house)	<ul style="list-style-type: none"> <li>• 37 x boarding rooms (including 2 accessible rooms and a managers' room).</li> <li>• 2 x lift access only.</li> <li>• Waste storage rooms.</li> </ul>

	<ul style="list-style-type: none"> <li>• 2 x fire stairs.</li> </ul>
Level 5 (Boarding house)	<ul style="list-style-type: none"> <li>• 37 x boarding rooms (including 2 accessible rooms).</li> <li>• 1 x Communal living room No.3.</li> <li>• 2 x lift access only.</li> <li>• Waste storage rooms.</li> <li>• 2 x fire stairs.</li> </ul>
Levels 6-7 (Typical) (Boarding house)	<p><u>East tower</u></p> <ul style="list-style-type: none"> <li>• 13 x boarding rooms (including 1 accessible room).</li> <li>• 2 x lift access only.</li> <li>• Waste storage rooms.</li> <li>• 1 x fire stair.</li> </ul> <p><u>West tower</u></p> <ul style="list-style-type: none"> <li>• 14 x boarding rooms (Including 1 accessible room).</li> <li>• 2 x lift access only.</li> <li>• Waste storage room.</li> <li>• 1 x fire stair.</li> </ul> <p><u>Other features</u></p> <ul style="list-style-type: none"> <li>• Communal Living room No. 6 and 7.</li> </ul>
Level 8- (Boarding house)	<p><u>East tower</u></p> <ul style="list-style-type: none"> <li>• 14 x boarding rooms (including 1 accessible room).</li> <li>• 2 x lift access only.</li> <li>• Waste storage room.</li> <li>• 1 x fire stair.</li> </ul> <p><u>West tower</u></p> <ul style="list-style-type: none"> <li>• 14 x boarding rooms (Including 1 accessible room).</li> <li>• 2 x lift access only.</li> <li>• Waste storage room.</li> <li>• 1 x fire stair.</li> </ul> <p><u>Other features</u></p> <ul style="list-style-type: none"> <li>• Communal open terrace on level 8 only.</li> </ul>
Level 9 -13 (Typical) (Boarding house)	<p><u>East tower</u></p> <ul style="list-style-type: none"> <li>• 14 x boarding rooms.</li> <li>• 2 x lift access only.</li> <li>• Waste storage room.</li> <li>• 1 x fire stair.</li> </ul> <p><u>West tower</u></p> <ul style="list-style-type: none"> <li>• 14 x boarding rooms.</li> <li>• 2 x lift access only.</li> <li>• 1 x communal laundry tub area.</li> <li>• Waste storage room.</li> <li>• 1 x fire stair.</li> </ul>
Level 14 (Boarding house)	<p><u>East tower</u></p> <ul style="list-style-type: none"> <li>• 14 x boarding rooms.</li> <li>• 2 x lift access only.</li> </ul>

	<ul style="list-style-type: none"> <li>• Waste storage room.</li> <li>• 1 x fire stair.</li> </ul> <p><u>West tower</u></p> <ul style="list-style-type: none"> <li>• Communal open space.</li> <li>• 1 x fire stair.</li> <li>• Provision for 40kW photovoltaic system.</li> </ul>
Roof Plan	<p><u>East tower</u></p> <ul style="list-style-type: none"> <li>• Provision for 30kW photovoltaic system.</li> </ul>

The proposal provides a total of 126 car parking spaces and allocated as follows:

34 x commercial/retail;  
61 x boarding house;  
21 x co-living; and  
10 x spaces for residential visitor.

The proposal also incorporates 82 motorcycle spaces and 406 bicycle spaces for the residential component and 2 bicycle spaces for the commercial/retail.

The proposed development meets the requirements for car parking, bicycle and motorcycle parking as outlined in the Cumberland Development Control Plan 2021 and the State Environmental Planning Policy (Housing) 2021.

### ***History***

Development Application 2022/0253 was approved by the Sydney Central City Planning Panel on the 16<sup>th</sup> of November 2022 for the demolition of existing structures and construction of a mixed use development comprising of four (4) commercial tenancies, 83 co-living housing rooms, 100 residential units and three (3) levels of basement car parking pursuant to State Environmental Planning Policy (Housing) 2021 subject to conditions.

PL2024/0022 was finalised on the 8 July 2024 for the proposed alterations and additions to the mixed-used development under DA2022/0253 to convert the approved residential apartments to co-living housing, provision of additional floor space on levels 2-13 to provide additional co-living housing rooms.

### ***Applicants Supporting Statement***

The applicant has provided a Statement of Environmental Effects prepared by The Planning Hub dated 20 February 2025 and received by Council 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 proposal is satisfactory and therefore can be supported subject to recommended conditions of consent.

#### **Environmental Health**

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

#### **Tree Management**

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

#### **Design Excellence Panel**

The development application was presented to the Cumberland Design Excellence Panel on the 04<sup>th</sup> of June 2025 for discussion. This occurred as the building exceeds a height of 25 metres. The Panel's comments are attached to the assessment report at Attachment 11 for Panel consideration.

Following from the comments provided by the Panel, the applicant has provided a response to each matter raised. The applicant's and Council's response is provided in Attachment 12 for Panel consideration.

#### **External Referrals**

##### **Ausgrid**

The development application was referred to Ausgrid pursuant to s2.48 of the SEPP (Transport and Infrastructure) 2021. Ausgrid in its correspondence dated 1st of May 2025 did not raise any objections to the proposal, subject to conditions. The conditions provided by Ausgrid will form part of any consent granted for this application.

##### **NSW Police**

The application was referred to the Auburn Police Area Command for comment. Correspondence was received from the Auburn Police Area Command that provided recommendations that can be imposed on any consent issued relating to specific design features and social conditions that may reduce the potential for crime to occur.

##### **Transport for New South Wales**

The application was referred to Transport for NSW (TfNSW) for advice in accordance with the clause 2.122 of the State Environment Planning Policy (Transport and Infrastructure) 2021 and their comments dated 16 May 2025 state that:

*TfNSW advises that as this new development proposal results in a decrease in traffic generation when compared to the previously approved development, TfNSW has no further comment.*

### **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:

<b>State Environmental Planning Policies (SEPPs)</b>	<b>Relevant Clause(s)</b>	<b>Compliance with Requirements</b>
<ul style="list-style-type: none"> <li><b>State Environmental Planning Policy (Biodiversity and Conservation) 2021.</b></li> </ul>	Chapter 2 - Vegetation in non Rural Areas.	<p>The development application includes the removal of three trees which has been assessed as:</p> <ul style="list-style-type: none"> <li><i>Callistemon linearis.</i></li> <li><i>Cupressus sempervirens.</i></li> <li><i>Callistemon viminalis.</i></li> </ul> <p>The proposal does not exceed the biodiversity offsets scheme threshold. Therefore, the proposed vegetation removal is considered acceptable.</p>
	Chapter 6 - Water Catchments.  Sydney Harbour Catchment.	It is determined that given the location of the development, 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 considered acceptable.
<ul style="list-style-type: none"> <li><b>State Environmental Planning Policy (Resilience and Hazards) 2021.</b></li> </ul>	Chapter 2 - Coastal Management.	The subject site is not identified as a coastal wetland or 'land identified as "proximity area for coastal wetlands" or coastal management area.
	Chapter 4 - Remediation of Land.  Part 4.6.	<p>Part 4.6 - Contamination and remediation to be considered in determining development application.</p> <p><u>Comments</u></p>

		<p>Council's Environmental Health Officer has reviewed the application and has stated the following:</p> <p>The Detailed Site Investigation (DSI) concludes that the site is considered suitable for the proposed development and Council's Environmental Health Officer raised no objections, subject to conditions.</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"> <li>• <b>State Environmental Planning Policy (Industry and Employment) 2021.</b></li> </ul>	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"> <li>• <b>State Environmental Planning Policy (Transport and Infrastructure) 2021.</b></li> </ul>	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 was referred to Ausgrid pursuant to s2.48 of the SEPP (Transport and Infrastructure) 2021. Ausgrid in its correspondence dated 1st of May 2025 did not raise any objections to the proposal, subject to conditions. The conditions provided by Ausgrid will form part of any consent granted for this application</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>The application was referred to Transport for NSW (TfNSW) for</p>

		<p>advice in accordance with the clause 2.122 of the State Environment Planning Policy (Transport and Infrastructure) 2021.</p> <p><i>TfNSW advises that as this new development proposal results in a decrease in traffic generation when compared to the previously approved development, TfNSW has no further comment.</i></p>
<ul style="list-style-type: none"> <li>• <b>State Environmental Planning Policy (Planning System) 2021</b></li> </ul>	Schedule 6.	<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 \$70,287,966.34 which exceeds the \$30 million threshold. While Council is responsible for the assessment of the DA, determination of the Application will be made by the Sydney Central City Planning Panel.</p>
<ul style="list-style-type: none"> <li>• <b>State Environmental Planning Policy (Sustainable Buildings) 2022</b></li> </ul>	<p>Chapter 2 Standards for residential Development - BASIX</p> <p>Chapter 3 – Standards for non-residential development</p>	<p>As the development comprises co-living housing and boarding house development, with a gross floor area exceeding 300sqm that will accommodate more than 12 residents, the development is not defined as a 'BASIX building' and a BASIX Certificate is therefore not required.</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.</p> <p>The proposal demonstrates that the development meets the water and energy requirements and is</p>

		determined as being acceptable for approval.
<ul style="list-style-type: none"> <li>• <b>State Environmental Planning Policy (Housing) 2021 (SEPP (Housing) 2021)</b></li> </ul>		<p>The proposed development is for a mixed-use development comprising commercial, co-living housing and boarding house. As such, an assessment against the relevant provisions of Chapter 2 and Chapter 3 of the SEPP (Housing) 2021 was undertaken.</p> <p>The proposal is generally compliant with the relevant requirements of the Policy, the areas of non-compliance are detailed below this table. The detailed assessment is addressed in the compliance table at Attachment 8.</p>

**(a) State Environmental Planning Policy (Housing) 2021 (SEPP (Housing) 2021)**

Following a detailed assessment of the proposal against the provisions of Chapter 2 and Chapter 3 of SEPP (Housing) 2021, it is considered the proposal is generally compliant with the exception of the communal open space, building separation and solar access to the communal living area. The variations are discussed below:

A comprehensive assessment against Housing SEPP is attached in Attachment 8 of this report.

Chapter 2, Part 2, Division 2, Section 24(2)(h)(i) - Communal Open Space (Boarding house component)

*(2) The following are non-discretionary development standards in relation to the carrying out of development to which this Division applies:*

*(h) communal open spaces—*

*(i) with a total area of at least 20% of the site area, and*

*(ii) each with minimum dimensions of 3m.*

Based on a site area of 2441 square metres, a communal open space of 488.2 square metres is required, only 356 square metres is provided for the boarding house component.

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

Chapter 2, Part 2, Division 2, Section 25(2)(c) – Building Separation (Boarding house component)

*(2) Development consent must not be granted under this Division unless the consent authority considers whether—*

*(c) if the boarding house has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide.*

The variation occurs on Level 8 where an internal building separation between the east and western towers should be 18 metres. The proposal provides 12.450 to 16.235 metres and similarly on levels 9-13 which requires a 24 metres building separation but 12.450-16.235 metres is provided.

The windows affected by the reduced building separation identified above are provided with highlight windows. The windowsills to these rooms provide a 1.8m sill from the finished floor level (FFL) and are off set from each other, therefore will not impact on any visual or acoustic amenity. Therefore, it is considered that the proposed development, notwithstanding the variation sought will still achieve an appropriate level of visual and acoustic privacy, natural ventilation and solar access. The variation is therefore supported in this instance.

#### Chapter 3, Part 3, Section 68(2)(d) - Communal Open Space (Co-living housing component)

*(2) The following are non-discretionary development standards in relation to development for the purposes of co-living housing—*

*(d) communal open spaces—*

- (i) with a total area of at least 20% of the site area, and*
- (ii) each with minimum dimensions of 3m,*

Based on a site area of 2,441 square metres, a communal open space of 488.2 square metres is required. However, only 135.95 square metres is provided for the co-living house component.

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

#### Chapter 3, Part 2, Section 69(2)(b) – Building Separation (Co-living component)

*(2) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether—*

*(b) if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide,*

The variation occurs on:

Level 1 communal room which requires a 6m building separation to the boundary. Proposal provides a nil setback to the boundary and 3.1 metres to the centreline of the lane.

The communal open space is in a similar location to that approved under DA2022/0253 and has been reduced in area. An acoustic report has been provided and reviewed by Council's Environmental Health Officer who did not raise any objections to the proposal subject to conditions. The location of the level 1 communal open space will still ensure that appropriate level of visual and acoustic privacy is provided to the adjoining properties. The variation is therefore supported in this instance.



Chapter 3, Part 2, Section 69(2)(c) – Solar access to communal living area (Co-living component)

*(2) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether—*

*(c) at least 3 hours of direct solar access will be provided between 9am and 3pm at mid-winter in at least 1 communal living area*

The co-living housing provides a communal living room on level 1. However, the communal living room will not receive any direct solar access given its location in the building being within level 1. Further, the 11-storey building located to the north of the subject site will obstruct the solar access to the communal living room. The proposed location of the level 1 communal living area is in a similar location to that approved under DA2022/0253. The subject site is also located in walking distance to a number of local public parks being a 100 metres from Friends Park and 250 metres from Remembrance Park, which provides for alternate locations for recreational spaces and solar access. The variation is therefore supported in this instance.

**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 E1 Local Centre

**(a) Permissibility:**

The proposed development is defined as a ‘mixed-use development’ comprising ‘commercial premises’, ‘co-living housing’ and ‘boarding house’ and is permissible in the E1 Local Centre with consent. However, the ‘co-living housing’ is made permissible in the E1 Local centre pursuant to s67 and s154 of the SEPP (Housing) 2021 which is addressed below.

A boarding house is defined as:

**boarding house** means a building or place—

- (a) that provides residents with a principal place of residence for at least 3 months, and*
- (b) that contains shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*
- (c) that contains rooms, some or all of which may have private kitchen and bathroom facilities, and*
- (d) used to provide affordable housing, and*
- (e) if not carried out by or on behalf of the Land and Housing Corporation—  
managed by a registered community housing provider,  
but does not include backpackers’ accommodation, co-living housing, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.*

Co-living housing is defined as:

**co-living housing** means a building or place that—

- (a) *has at least 6 private rooms, some or all of which may have private kitchen and bathroom facilities, and*
- (b) *provides occupants with a principal place of residence for at least 3 months, and*
- (c) *has shared facilities, such as a communal living room, bathroom, kitchen or laundry, maintained by a managing agent, who provides management services 24 hours a day,*  
*but does not include backpackers' accommodation, a boarding house, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.*

**Note—**

*Co-living housing is a type of **residential accommodation**—see the definition of that term in this Dictionary.*

Commercial premises is defined as:

**commercial premises** means any of the following—

- (a) business premises,
- (b) office premises,
- (c) retail premises.

Pursuant to Section 67 of SEPP (Housing) 2021, co-living housing development may be carried out with consent on land in a zone which development for the 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 permitted with consent in an E1 Local Centre zone under the CLEP 2021. Furthermore, under Chapter 5, Section 154 of the SEPP (Housing) 2021, development for the purpose of residential flat building is permitted with consent on land zoned E1 Local Centre in a Transit Oriented Development Area. Therefore, the proposed development is permissible pursuant to Sections 67 and 154 of the SEPP (Housing) 2021.

The relevant matters to be considered under the Cumberland Local Environmental Plan 2021 and the applicable clauses for the proposed development are summarised below. A comprehensive LEP assessment is contained in Attachment 9.

*Figure 4 - Cumberland LEP 2021 Compliance Table*

DEVELOPMENT STANDARD	COMPLIANCE	DISCUSSION
4.3 Height of Buildings Insert standard:  Max. 45m	No	The proposed development has a building height of 46.685 metres at the highest point being the uppermost roof on the western portion of the eastern tower. A variation of 1.685 m or 3.74% occurs. Refer to detailed assessment below.
4.4 Floor Space Ratio Insert standard:	Yes	The proposed development will result in a FSR of 6.496:1 or 15,856.25 square metres.

5:1 plus 30% pursuant to s24(2)(a)(ii) SEPP Housing 2021 = 6.5:1.		
4.6 Exceptions to Development Standards	Yes	Refer to detailed assessment below.

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 height of building and communal open space for the boarding housing and co-living house under Clause 4.3 of the Cumberland Local Environmental plan 2021, Chapter 2, Part 2, Division 2, s24(2)(h)(i) and Chapter 3, Part 3, s68(d)(i) of SEPP (Housing) 2021, respectively.

### 1 - Clause 4.3 Height of building



Source: Zhinar Architects

Breach location	Maximum height breach	% Variation
Uppermost roof on the western portion of the eastern tower	46.685 m.	3.74%.
Parapet (eastern tower)	46.6 m.	3.5%.
Parapets (easter tower)	45.1 & 45.85 m.	0.22% & 1.89%.
Lift overrun (western tower)	46.675 m.	3.72%.
Parapet (western tower)	46.46 m.	3.22%.

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.

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

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

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

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

Applicant's justification: The applicant relies on the first Wehbe point being objectives of the development standard are achieved notwithstanding non-compliance with the standard, stating that:

*Strict compliance with the maximum building height development standard is considered unnecessary in the circumstances of the case. The design of the development is site responsive and achieves compliance with the maximum floor space ratio provision, acknowledging the 30% bonus that is applicable to the boarding house component of the development at Section 24(2)(ii) of the Housing SEPP. The development has been designed to achieve compliance with the applicable boarding house and co-living development non-discretionary development standards of the Housing SEPP to afford a high degree of amenity for future residents of the development.*

*The development has been sited and designed to preserve the existing amenity of the adjoining sites and the locality. The proposed building setbacks will adequately mitigate overlooking, overshadowing and acoustic impacts, which are also mitigated through the internal building layout, materiality and operational measures. The development will make a positive contribution to the streetscape through a cohesive built form and landscape design, acknowledging that the building footprint approved under DA2022/0253 is generally retained.*

*The DA is accompanied by hourly shadow diagrams which demonstrate that the proposed built form results in a reduced overshadowing impact (to that which has been approved) on*

*the properties to the south of the site, owing to the redistribution of building bulk and scale. The shadow diagrams also demonstrate that the proposed development will receive adequate arrangements of solar access to communal open space and living areas on the Ground and upper levels. Overall, the amended building design provides an improved amenity outcome for the adjoining properties as well as for the future residents of the development.*

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 E1 Local Centre zone objectives and provides a high degree of amenity within a town centre environment.

The non-compliances to the height of building includes the lift over-run, parts of the parapet and small portion of the upper level of the eastern tower. The areas of non-compliances are located towards the centre and southern side of the building which minimise impacts to the adjoining properties.

***(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:

*It is our opinion that there are sufficient environmental planning grounds to justify contravening the maximum building height standard in this instance. These are as follows:*

- The proposed development is consistent with the objectives of the zone and development standard.*
- The parts of the development which exceeds the height standard are centrally located and towards the front elevations and do not arise adverse amenity impacts on adjoining residents.*
- The built form continues to be appropriately stepped down towards lower heights (opposite Mark Street) to reflect the desired transition in building heights.*
- The bulk and scale of the building and extent of the variation to the maximum building height is consistent in terms of context and scale with adjoining and surrounding approved developments, where Clause 4.6 has enabled flexibility in the application of the maximum building height development standard.*
- The development is site responsive and has been designed to achieve compliance with the maximum floor space ratio provision (as prescribed by the Housing SEPP) as well as achieving compliance with the applicable boarding house and co-living non-discretionary requirements of the Housing SEPP.*

- *The development of the site will not preclude the future development of the adjoining land.*
- *The proposed development will not create an undesirable precedent.*

Planner's comments:

The breach to the building height does not create any adverse overshadowing impacts.

It is noted that the development as proposed does not result in an unreasonable amenity impact by way of privacy, overshadowing or visual impact to the immediately surrounding properties. The proposed development seeks a 30% bonus to the floor space ratio (FSR) that is applicable to the boarding house component of the development pursuant to Section 24(2)(ii) of the SEPP Housing 2021. The proposal complies the FSR including the 30% bonus and is considered that the proposal meets the objectives of the height of building clause and the objectives of the E1 Local Centre.

It is considered that the non-compliance with the building height can be supported in the circumstance of the case, as there are sufficient environmental planning grounds for contravening the 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.

**2 - Chapter 2, Part 2, Division 2, Section 24(2)(h)(i) Communal open space (Boarding House)**

The application seeks to vary the non-discretionary development standard for communal open space under Chapter 2, Part 2, Division 2, Section 24(2)(h)(i) of the State Environmental Planning Policy (Housing) 2021.

Breach location	Required	Proposed	Variation %
Communal Open Space (Boarding House component)	488.2 sqm	356 sqm	27.08%

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

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

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



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

Applicant's justification: The applicant relies on that the proposal satisfies at least one of the five ways established in Wehbe that demonstrate that the development standard is unreasonable and unnecessary for the reasons set out below.

*The specific objective/intent of the minimum communal open space requirement is linked to ensuring sufficient an adequate area of communal open space (COS) is provided to enhance residential amenity and to provide opportunities for landscaping. The implied objectives of the development standard are not undermined by the proposed variations as follows:*

- *The proposed development relates to a mixed-use development accommodating commercial operation and two types of residential accommodation. Collectively, the site achieves 492m<sup>2</sup> of communal open spaces which exceeds the minimum area.*
- *The only reason for the shortfall is the requirement to have two separate areas of 488.2m<sup>2</sup> servicing the boarding housing and co-living housing units. Collectively, this would warrant a total of 976m<sup>2</sup> of COS which is considered excessive and does not promote the suitable economic use of land.*
- *The proposed shortfall would not reduce the level of amenity achieved by residents given each unit is provided with private open space in the form of balconies. This is not a requirement under the Housing SEPP, LEP and DCP.*
- *The boarding houses are also provided with adequate arrangements of internal communal living areas which are fitted out with a range of furniture, cooking facilities, and dining facilities to encourage additional opportunities for communal interactions and enhanced residential amenities.*
- *The communal open space on both levels will provide amenity in the form of:*
  - *Landscape character and design.*
  - *Opportunities for group and individual recreation and activities.*
  - *Opportunities for social interaction.*
  - *Amenity and outlook for residents.*
- *The roof top communal open space area also provides for a range of diverse and appropriate planting that can provide shade and amenity for residents.*
- *The site sits within a commercial area and zoned Local Centre and the opportunity for landscape on sites of this nature is limited.*

Planner's comments:

Council concurs that collectively the boarding house and co-living housing achieve a total of 492 square metres of communal open space. However, the SEPP Housing 2021 provides separate non-discretionary development standards for the boarding house and co-living and hence the non-compliance.

The majoring of boarding rooms are serviced by their own private balcony. In addition, the boarding house component provides for complaint communal living areas which are located over various floors, allowing for social interaction and gathering and also 'another space' for residents to spend time in, other than their rooms

***(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 proposed development is consistent with the objectives of the zone and development standard where applicable.*
- *The only reason for the shortfall is the requirement to have two separate areas of 488.2m<sup>2</sup> servicing the boarding housing and co-living housing units. Collectively, this would warrant a total of 976m<sup>2</sup> of COS which is considered excessive and does not promote the suitable economic use of land.*
- *Collectively, the site achieves 492m<sup>2</sup> of communal open spaces which exceeds the minimum area.*
- *The proposed shortfall would not reduce the level of amenity achieved by residents given each unit is provided with private open space in the form of balconies and adequate arrangements for communal living areas are provided.*
- *A high level of amenity is awarded to residence on the proposed communal open space areas owing the proposed fit out comprising a range of facilities.*
- *The shared arrangement is unlikely to reduce residential amenity as it ensures the site achieves a suitable level of social cohesion and interaction between occupants throughout the development.*

Planner's comments:

Council concurs with the applicant's justification above, in that the shortfall occurs with the development requiring two separate areas for communal open areas one being for the boarding house component and the other for the Co-living housing. The communal rooms to the boarding house will receive solar access and a high level of amenity is provided.

It is considered that the non-compliance with the communal open space can be supported in the circumstance of the case, as there are sufficient environmental planning grounds for contravening the non-discretionary 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.

### **3 - Chapter 3, Part 3, Section 68(2)(d)(i) Communal open space (Co living)**

The application also seeks to vary the non-discretionary development standard for the communal open space (Co-living housing component) under Chapter 3, Part 3, Section 68(2)(d)(i) of the State Environmental Planning Policy (Housing) 2021.

Breach location	Required	Proposed	Variation
Communal Open Space (Co-living component)	488.2 sqm	135.95sqm	72.15%

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

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

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

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

Applicant's justification: The applicant relies on that the proposal satisfies at least one of the five ways established in *Wehbe* that demonstrate that the development standard is unreasonable and unnecessary for the reasons set out below.

- *The proposed development is consistent with the objectives of the zone and development standard where applicable.*

- *The only reason for the shortfall is the requirement to have two separate areas of 488.2m<sup>2</sup> servicing the boarding housing and co-living housing units. Collectively, this would warrant a total of 976m<sup>2</sup> of COS which is considered excessive and does not promote the suitable economic use of land.*
- *The co-living units will have access to a total of 492m<sup>2</sup> of communal open spaces which exceeds the minimum area.*
- *The proposed shortfall would not reduce the level of amenity achieved by residents given each unit is provided with private open space in the form of balconies and adequate arrangements for communal living areas are provided.*
- *A high level of amenity is awarded to residence on the proposed communal open space areas owing the proposed fit out comprising a range of facilities and amenities.*
- *The shared arrangement is unlikely to reduce residential amenity as it ensures the site achieves a suitable level of social cohesion and interaction between occupants throughout the development.*

Planner's comments:

Council concurs that collectively the co-living and boarding house achieve a total of 492 square metres of communal open space. However, the SEPP Housing 2021 provides separate non-discretionary development standards for the boarding house and co-living and hence the non-compliance.

All the co-living housing rooms are serviced by their own private balcony. In addition, a 298 square metre communal living room is located on level 1 which provides for various activities and for social interaction and gatherings and can also be 'another space' for residents to spend time in, other than their rooms.

***(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 development standard does not take into consideration the mixed-use nature of the development accommodating commercial operation and two types of residential accommodation. Collectively, the site achieves 492m<sup>2</sup> of communal open spaces which exceeds the minimum area for both boarding houses and co-living housing.*
- *Compliance within the overall development would warrant a total of 976m<sup>2</sup> of COS which is excessive and does not promote the suitable economic use of land.*
- *Compliance with the development standard would not assist in meeting the growing diverse housing needs of the local and wider community.*
- *The shared arrangements align with the recommendation of the Cumberland Design Excellence Panel (PL2024/0022) as the design permits access to all communal spaces by all residents.*

- *The proposed shared communal open space arrangement ensures ample communal open space areas are achieved to service the co-living housing development whilst encouraging objectives of social cohesion and interaction between occupants throughout the development.*
- *The shared arrangement promotes a sense of community, supports passive surveillance, and enhances the overall livability of the building without compromising the privacy or comfort of individual residents*
- *The proposed shortfall does not reduce residential amenity given residents are provided with alternative communal areas in the form of living areas. Residents are also provided with private open space in the form of balconies which accommodate additional outdoor activities and outlook.*
- *The proposed development is consistent with the objectives of the zone and objectives of the development standard.*
- *The communal open space areas are sited and designed to maximise landscaping where possible and contribute to the landscape character of the area.*
- *The proposal does not result in any adverse impacts on adjoining properties or the streetscape.*

Planner's comments:

Similarly to the non-compliance with the boarding house communal open space, Council concurs with the applicant's justification above, in that the shortfall occurs with the development requiring two separate areas for communal open areas one being for the boarding house component and the other for the Co-living housing. The communal room to the col-living housing provides a library, table and chairs. The communal open space provides for landscaping and an outdoor space and additionally each room has a private balcony, therefore the shortfall in the communal open space will not adversely impact the level of amenity afforded to the residents.

It is considered that the non-compliance with the communal open space can be supported in the circumstance of the case, as there are sufficient environmental planning grounds for contravening the non-discretionary 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. 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 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 9 April 2025 and the site does not fall within the Draft Woodville Road Corridor and 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 Parts:

- Part A1 Introduction.
- Part A3 Site Amalgamation and Isolated Sites.
- Part B Development in Residential Zones.
  - Part B3 Residential Flat Building.
  - Part B5 Adaptable Housing and Housing Mix.
- Part C Development in Business Zones.
- Part F2-5 Lidcombe Town Centre.
- Part G3 Traffic, Parking, Transport and Access (Vehicles).
- Part G4 Stormwater and Drainage.
- Part G5 Sustainability, Biodiversity and Environmental Management.
- Part G7 Tree Management and Landscaping.
- Part G8 Waste Management.

As indicated in the compliance table above, the proposed development departs from the ceiling height, setback, basement parking and driveway width provisions of the Cumberland Development Control Plan 2021.

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 ground floor 3.75m- 5.1 m FFL to FFL minus 300mm slab thickness (to allow for services and so forth). Ground floor will have a FCL-FFL in the range of 3.45-4.8m.

#### **Planning comment**

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



- Despite the varying ceiling height, the building allows for flexibility of the tenancies.
- Although parts of the ground floor are 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 such as air-conditioning and other mechanical services.

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 2.1, C1 - Part F2-5 Lidcombe Town Centre**

The objective for this control is:

- O1 The built edge of development fronting the street contributes to a sense of enclosure, scale and appropriate transition within the town centre.*

#### Planning comment

The DCP states that the setbacks along Mark and Marsden to be 4-6m setback, the proposal provides for various setbacks along Mark and Marsden Street with the closest parts of the building being setback 3.62m from the southern boundary along Marsden Street and 3.875m along the western boundary along Mark Street. The encroachment within the required setback includes balustrade walls and along the southern side of the building a small portion of the balconies.

The objective to the setback control relates more to buildings requiring a 'build to boundary'. The proposed setbacks are very similar to those approved under DA2022/0253 which also marginally encroached within the 4 metre setback. The proposed setbacks will not result in any amenity impacts to adjoining properties, in that the reduced setback will not impact on any solar access or privacy impacts and therefore in this case, the variation can be supported.

### **Sub-part 4.3, C2 - Part G3 Traffic, Parking, Transport and Access (Vehicle)**

The objectives for this control are:

- O1 Provide safe, well designed, and functional basement parking within buildings.*

#### Planning comment

Portion of basement protrudes outside the building footprint along the northern, west and southern side. The area of basement that extends beyond the building footprint is not considered to result in any amenity impacts as it is located wholly underground. It is not uncommon for basements to these types of developments extending beyond the building footprint, this is generally to cater for ramps services and manoeuvrability.

Furthermore, the northeast corner of the site not occupied by basement or building and will provide for a deep soil area

The basement will accommodate all required car parking to service the development on site and is designed to comply with the relevant Australian Standards. The variation to control C2 is supported in this instance.

## **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.*

### Planning comment

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 is 11 metres.

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

- The driveway is 11 metres wide, when combined with the loading dock. Although greater than 8 metres, the width is required for the combined 2 way entry/exit and loading dock and avoids the creation of multiple vehicular access crossings.
- Council's Senior Development Engineer has reviewed the application and did not raise any issues in relation to the driveway width.

**The provisions of any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4 (EP&A Act s4.15(1)(a)(iia))**

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

**The provisions of the Regulations (EP&A Act s4.15 (1)(a)(iv))**

The proposed development raises no concerns as to the relevant matters arising from the *Environmental Planning and Assessment Regulation 2021* (EP&A Reg).

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

It is considered that the proposed development will have 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 1 April 2025 and 15 April 2025. The notification generated two unique submissions in respect of the proposal and not disclosing a political donation or gift.

On the 20<sup>th</sup> of August 2025, the applicant lodged amended plans and documents. The application was re-notified to occupants, owners of the adjoining properties and those who made a submission during the original notification for a period of 7 days between 4 September 2025 and 11 September 2025. In response, four unique submissions were received during the notification period.

It is noted that four submissions were received after the conclusion of the notification period. Schedule 1, Part 1, Division 3, Section 15(3) of the *Environmental Planning and Assessment Act 1979* (the Act) states that submissions made after the end of the notification period is not a submission for the purposes of the Act, the regulations or an environmental planning instrument. Therefore, the number of unique submissions made during the second public exhibition period was four. Pursuant to Section 15(4) of the Act at subclause (3) *does not prevent a consent authority from considering submissions made after the end of the exhibition period*. Council received four submissions (three of which three were unique) outside the exhibition period and have been considered as part of this assessment. Furthermore, as less than ten unique submissions by way of objection were received during the exhibition period, this does not trigger a public meeting.

The issues raised in the public submission is summarised and commented on as follows:

*Figure 6 - Submissions summary table*

<b>Issue</b>	<b>Planner's Comment</b>
<i>Construction Disruption.</i>	Standard conditions are included relating to demolition and construction and demolition noise.
<i>Loss of privacy and sunlight.</i>	The development is considered to maintain appropriate level of privacy to both existing and future residents.  The proposed development is to the south of the objector's property and will not impact on sunlight or solar access.
<i>Traffic and parking overload.</i>	The proposed development will provide a total of 126 car spaces on site which is compliant with Council's Development Control Plan and the State Environmental Planning Policy (Housing) 2021. Therefore, the proposal will provide all required car parking onsite and will not rely on offsite parking.
<i>Local infrastructure is not ready.</i>  <i>Public transport, waste services and other infrastructure already under strain.</i>	The development is located with the Lidcombe Town Centre and also within the Transport Oriented Development area in which the NSW Government to address housing shortages and therefore this is a type of development that is expected within the area.

<p><i>This is an overdevelopment.</i></p> <p><i>Would significantly change the established residential character of the area.</i></p> <p><i>This project does not align with the long term interest or wellbeing of the existing community.</i></p>	<p>The development is permissible in the E1 Local Centre zone and satisfies the relevant State Environmental Planning Policies, Cumberland Local Environmental Plan 2021 and Cumberland Development Control Plan 2021. The proposal has a compliant floor space ratio.</p> <p>Furthermore, the subject site is also located within the Transport Oriented Development area which aims to increase housing density around transport.</p>
<p><i>David Place is a narrow lane. Entrance to 2A Mark Street is also very narrow. Due to the tight space, ...several occasions when the residents of 2A Mark St have accidentally hit the intercom and bollards. The proposed entrance/exit is very close to the entrance/exit at 2a mark Street.</i></p>	<p>The development application was referred to Council's Senior Development Engineer for comment who has advised that the development proposal is satisfactory and therefore can be supported subject to recommended conditions of consent. This also includes a splay corner at the Mark St and David Place and Mark and Marsden Street corner. The proposal also includes a wide driveway off David Place that will enable the larger vehicles (Heavy Rigid Vehicles) being able to enter and exit the site.</p>
<p><i>Excessive height and overshadowing.</i></p>	<p>The development satisfies the overshadowing and solar access requirements of the Housing SEPP and the CDCP. The non-compliance of the building height has been discussed in detail under the head of 'Cumberland Local Environmental Plan 2021', Clause 4.6 variation request.</p>
<p><i>The deadline for opposing the DA was poorly communicated to all residents at 2A Mark Street.</i></p>	<p>The application was notified in accordance with the requirements of procedures identified under subpart 2.52 and 2.8.2 of Part A1 of the Cumberland Development Control Plan 2021. In addition, site notices were also placed on site with details of the notification and proposal. The amended plans were also re-notified in accordance with the requirements of the CDCP 2021.</p>
<p><i>The pedestrian crossing on Mark St is positioned in a very busy and dangerous area. A relocation should be considered prior to increasing foot traffic that will come as a result of the Lidcombe Central Development and now this proposed development.</i></p>	<p>The consideration of the pedestrian crossing on Mark Street is outside the scope of works for this subject application. This matter should be addressed separately to Council's Traffic and Transport Team for further investigation.</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 PLANS 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 of the EP&A Act, calculated on the cost of works. A total contribution of \$3,040,043.00 (plus CPI) would be payable prior to the issue of a Construction Certificate.

### **HOUSING AND PRODUCTIVITY OF 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 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**

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The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*,

- State Environmental Planning Policy (Planning System) 2021;
- State Environmental Planning Policy (Resilience and Hazards) 2021;
- State Environmental Planning Policy (Housing) 2021;
- State Environmental Planning Policy (Transport and Infrastructure) 2021;
- State Environmental Planning Policy (Biodiversity and Conservation) 2021;
- State Environmental Planning Policy (Sustainable Buildings) 2022;
- Cumberland Local Environmental Plan 2021; and
- Cumberland Development Control Plan 2021.

The proposed development is appropriately located within the E1 Local Centre under the relevant provisions of the Cumberland Local Environmental Plan 2021, however some variations under the State Environmental Planning Policy (Housing) 2021, Cumberland Local Environmental Plan 2021 and Cumberland Development Control Plan 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**

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- 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 the Clause 4.6 variation request to contravene the communal open space ('Boarding house component') non-discretionary development standard, pursuant to the State Environmental Planning Policy (Housing) 2021, be supported.**
- 3. That the Clause 4.6 variation request to contravene the communal open space ('Co-living component') non-discretionary development standard, pursuant to the State Environmental Planning Policy (Housing) 2021, be supported.**
- 4. That Development Application 2025/0095 for the demolition of existing structures and construction of a mixed-use development comprising of 6 commercial tenancies, 101 co-living rooms and 305 boarding rooms and 3 levels of basement car parking pursuant to State Environmental Planning Policy (Housing) 2021 on land at 2 Mark Street and 1A, 1 and 3 Marsden Street Lidcombe be approved subject to conditions listed in the attached schedule.**
- 5. 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. Submissions Redacted.
5. Clause 4.6 Variation Request - Height of Building.
6. Clause 4.6 Variation Request - Communal open space - Boarding house.
7. Clause 4.6 Variation Request - Communal open space - Co-living housing.
8. Appendix A State Environmental Planning Policies.
9. Appendix B Cumberland LEP 2021 Assessment.
10. Appendix C Cumberland DCP 2021 Assessment.
11. Design Excellence Panel minutes.
12. Response to Cumberland DEP minutes.
- 13 - Plan of Management - Co-living.
- 14 - Plan of Management - Boarding House.