

TO: Sydney Central City Planning Panel (SCCPP)

SUBJECT: 233 Merrylands Road, MERRYLANDS NSW 2160
249-259 Merrylands Road, MERRYLANDS NSW 2160
52-54 McFarlane Street, MERRYLANDS NSW 2160

APPLICATION No: DA2020/0220

Application lodged	14 April 2020
Applicant	Mr C Gorton
Owner	Merrylands Investment Co Pty Ltd
Application No.	DA2020/0220
Description of Land	233 Merrylands Road, MERRYLANDS NSW 2160 249-259 Merrylands Road, MERRYLANDS NSW 2160 52-54 McFarlane Street, MERRYLANDS NSW 2160
Proposed Development	Construction of mixed use development comprising 5 mixed use buildings, including retail and commercial tenancies, childcare facility and 790 residential apartments, over 4 levels of basement parking, associated stormwater, public domain and landscaping works - Integrated Development (Water Management Act 2000)
Site Area	12,418m ²
Zoning	B4 Mixed Use & SP2 Infrastructure (Local Road)
Disclosure of political donations and gifts	Nil disclosure
Heritage	The site is not a heritage item and is not within a heritage conservation area
Principal Development Standards being varied	Height of Building FSR Residential FSR
Issues	<ul style="list-style-type: none"> • Development standard variations to maximum building height, maximum FSR and maximum residential FSR • ADG non-compliances • DCP non-compliances • Submissions – 2 submissions received

SUMMARY

1. Development Application No. DA2020/0220 was received on 14 April 2020 for the construction of a mixed use development comprising 5 mixed use buildings, including retail and commercial tenancies, childcare facility and 790 residential apartments, over 4 levels of basement parking, associated stormwater, public domain and landscaping works - Integrated Development (Water Management Act 2000).
2. Pursuant to Section 4.46 of the EP&A Act, the proposal is classified as 'Integrated Development' as it requires a water management work approval from Water NSW,

pursuant to the provisions of Part 3 Chapter 3 Section 90 of the Water Management Act 2000. The application has been referred to NSW Water and concurrence has been issued.

3. The application was publicly notified to occupants and owners of the adjoining properties for a period of 31 days between 6 May 2020 and 5 June 2020. In response, two (2) submissions were received.
4. The development includes variations to the provisions of the Apartment Design Guide (ADG) in relation to communal open space, building separation, deep soil provision and ceiling heights. These non-compliances have been assessed and are considered acceptable on merit.
5. The development includes variations to the provisions of the Holroyd Local Environmental Plan 2013 (HLEP 2013) in relation to the maximum building height, maximum floor space ratio (FSR) and maximum residential FSR. Variations to these development standards have been sought through a Clause 4.6 Variation Request. The Clause 4.6 variations are considered acceptable on merit.
6. The development includes variations to the provisions of the Holroyd Development Control Plan 2013 (HDCP 2013) in relation to the provision of car parking, residential mix, child care centre location, street setbacks to Merrylands Road and the location of Main Lane. These non-compliances have been assessed and are considered acceptable on merit.
7. The application is referred to the Panel as the proposal has a Capital Investment Value (CIV) in excess of \$30 million.
8. The application is recommended for deferred commencement approval subject to the conditions as provided in the attached schedule.

REPORT

SUBJECT SITE AND SURROUNDING AREA

The subject site comprises a total of fifteen (15) allotments, as detailed below:

233 Merrylands Road, MERRYLANDS NSW 2160

Lot 5 DP 17401
Lot 10 DP 814298
Lot 22 Section A DP 7916
Lot 25 Section A DP 7916
Lot 26 Section A DP 7916

249-259 Merrylands Road, MERRYLANDS NSW 2160

Lot 27 Section A DP 7916
Lot 28 Section A DP 7916
Lot 29 Section A DP 7916
Lot 9 DP 244047
Lot 10 DP 244047
Lot 5 DP 244047

Lot 6 DP 244047
Lot 7 DP 244047
Lot 8 DP 244047

52-54 McFarlane Street, MERRYLANDS NSW 2160

Lot 12 DP 1178575

The site maintains an 'L' shaped configuration with frontages to McFarlane Street to the north, Merrylands Road to the south and Treves Street to the west. The site has a total area of 12,418m²; the exclusion of the SP2 zoned laneway land results in the site having a total area of 11,365m².

There is an existing Sydney Water box culvert stormwater channel that traverses the site from the Merrylands Road frontage in a north-easterly direction through the site (refer to Figure 2 below). As part of the previous approval for the site, consent was granted for the realignment of this channel under the proposed Main Lane. This same arrangement has been proposed as part of the current application.

In accordance with DA2020/0009, demolition works have been undertaken across the site and the site is now largely cleared of all structures.

The site is situated within the Merrylands Town Centre.

Immediately to the north of the site, on the opposite side of McFarlane Street is the Stockland Merrylands Shopping Centre, opposite to the west of the site along Treves Street are recently developed four storey mixed use development as well as established walk-up residential flat buildings. Development immediately to the south of the site, along Merrylands Road comprises a mix of existing retail/commercial shops and a recently constructed mixed use development. Existing development to the east of the site includes a Council owned carpark.

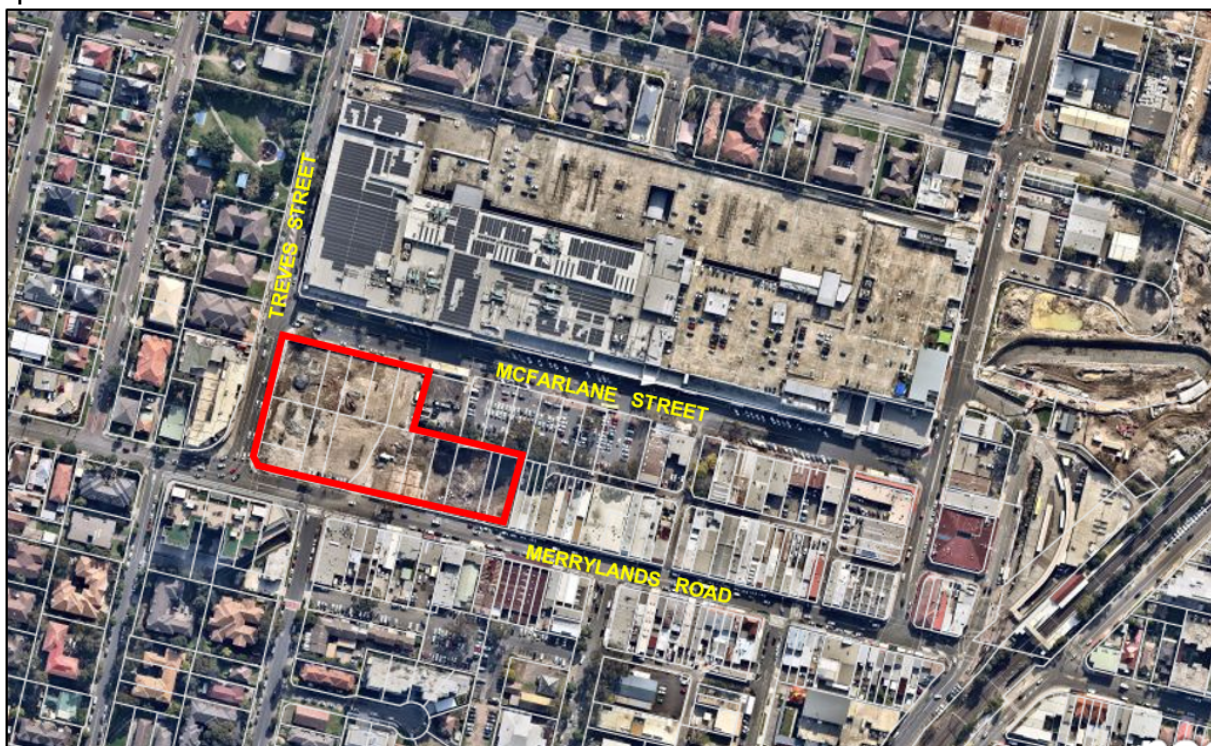


Figure 1: Locality Map including the Site (outlined red) (from NearMap)

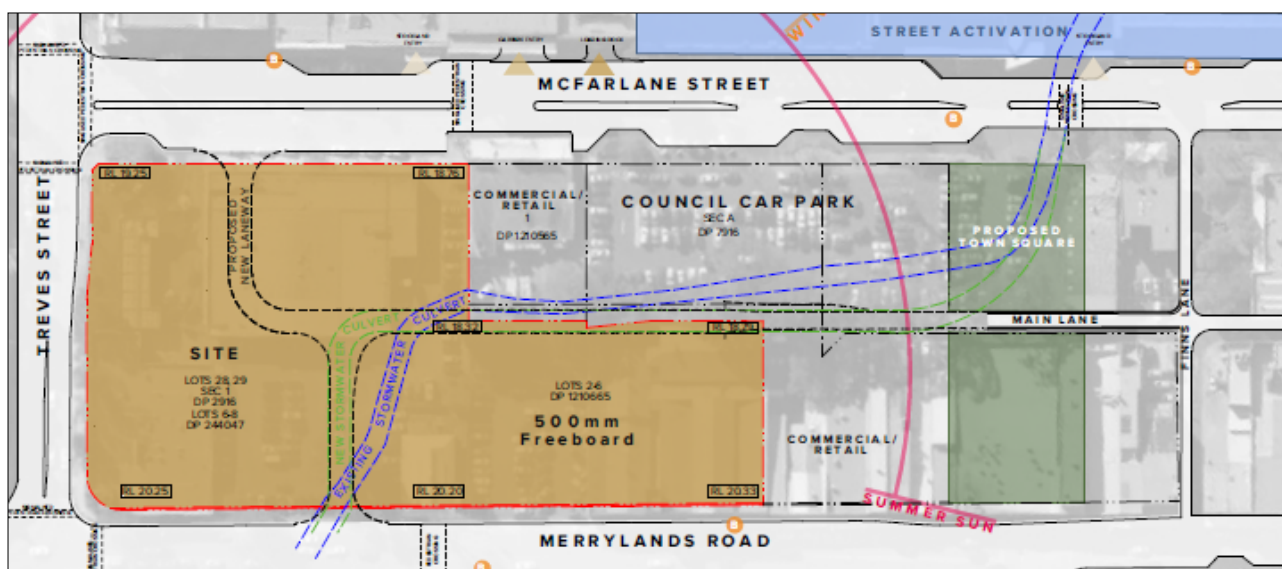


Figure 2: Site Plan extract showing the existing stormwater culvert (Turner)

DESCRIPTION OF THE PROPOSED DEVELOPMENT

Consent is sought for the construction of a mixed use development comprising 5 mixed use buildings, including retail and commercial tenancies, a childcare facility and 790 residential apartments, over 4 levels of basement parking, associated stormwater, public domain and landscaping works.

The five (5) building are proposed as follows:

Building	No. of storeys	Description
A	25	<ul style="list-style-type: none"> 229 residential units: <ul style="list-style-type: none"> 46 x Studio (20.1%) 90 x 1 Bedroom Unit (39.3%) 93 x 2 Bedroom Unit (40.6%) 6 x ground floor retail tenancies 6 x first floor commercial tenancies
B	17	<ul style="list-style-type: none"> 120 residential units: <ul style="list-style-type: none"> 30 x Studio (25.0%) 16 x 1 Bedroom Unit (13.3%) 74 x 2 Bedroom Unit (61.7%) 4 x ground floor retail tenancies 1 x ground floor Co-Share commercial tenancy First floor childcare centre for 60 children, including simulated outdoor play area
C	13	<ul style="list-style-type: none"> 80 residential units: <ul style="list-style-type: none"> 30 x 1 Bedroom Unit (37.5%) 40 x 2 Bedroom Unit (50.0%) 10 x 3 Bedroom Unit (12.5%) 4 x ground floor retail premises (including 'Eat Street Market') 1 x ground floor commercial tenancy

		<ul style="list-style-type: none"> • 4 x first floor commercial tenancies
D	17	<ul style="list-style-type: none"> • 140 residential units: <ul style="list-style-type: none"> ○ 74 x 1 Bedroom Unit (52.9%) ○ 60 x 2 Bedroom Unit (42.9%) ○ 6 x 3 Bedroom Unit (4.3%) • 8 x ground floor retail tenancies (including a supermarket)
E	25	<ul style="list-style-type: none"> • 221 residential units: <ul style="list-style-type: none"> ○ 53 x Studio (24.0%) ○ 54 x 1 Bedroom Unit (24.4%) ○ 112 x 2 Bedroom Unit (50.8%) ○ 2 x 3 Bedroom Unit (0.9%) • 1 x ground floor retail tenancy

Table 1: Proposed Development

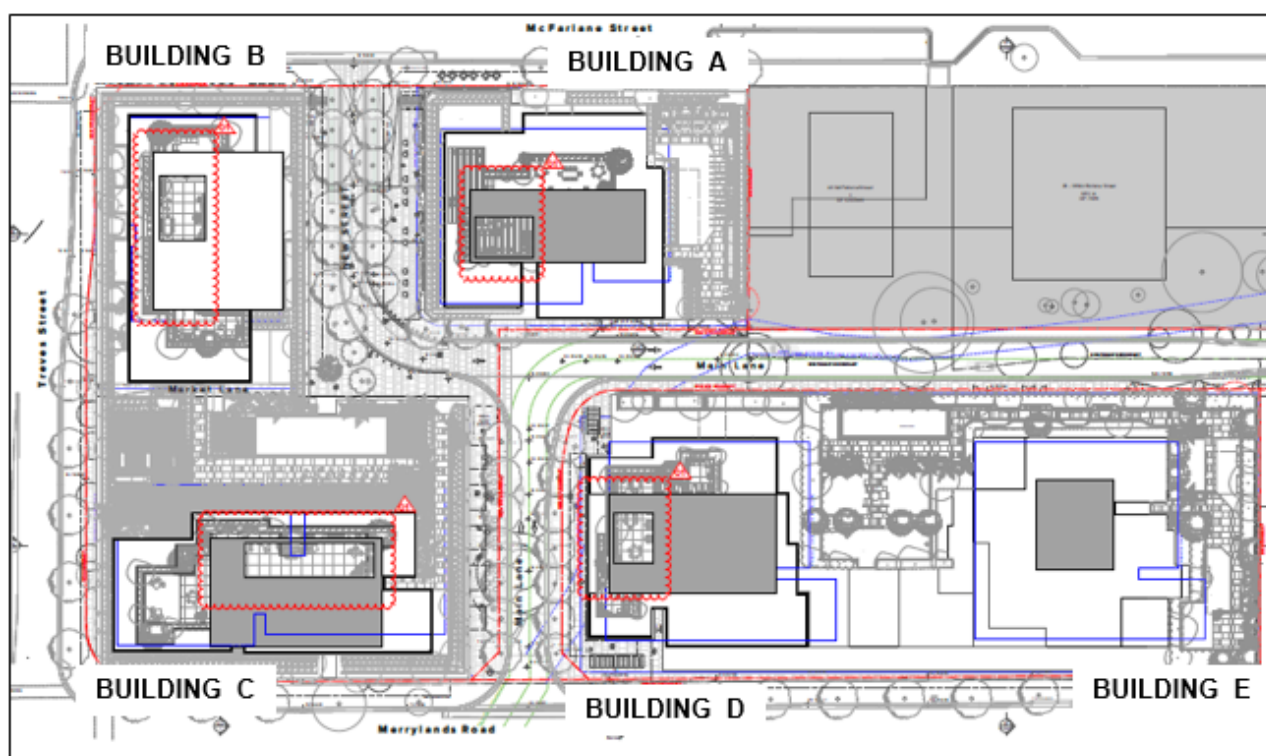


Figure 3: Site Plan extract showing the locations of Buildings A-E (Turner)

A total of 790 residential units are proposed, with the following unit mix:

- 129 x Studios (16.3%)
- 264 x 1 Bedroom Unit (33.4%)
- 379 x 2 Bedroom Unit (48.0%)
- 18 x 3 Bedroom Unit (2.28%)

The gross floor areas (GFA) of the various components of the development are summarised below:

Residential GFA	60,554m ²
Commercial GFA	3,724m ²
Retail/Supermarket GFA	4,687m ²
Child Care Centre GFA	752m ²

Communal GFA	685m ²
Total GFA	70,402m²

Table 2: GFA Distribution

The use of the proposed child care centre and fitout and use of the retail and commercial tenancies will be subject to future separate approvals, which will regulate the operation of these tenancies, including hours of operation.

Parking is proposed across four (4) levels of basement, with a separate basement servicing Building A, B and C and a second separate basement servicing Building D and E. A total of 936 car parking spaces are proposed, with the following distribution of spaces:

- 828 residential car parking spaces including 167 accessible car parking spaces including:
 - Residential: 671 including 160 accessible spaces
 - - Residential Visitor: 157 including 7 accessible spaces
- 55 retail car parking spaces including 3 accessible spaces
- 38 commercial car parking spaces including 4 accessible spaces
- 15 child care facility car parking spaces including 1 accessible space

There is a laneway (Main Lane) which traverses the site which is zoned SP2 pursuant to the provisions of the HLEP 2013. This land is to be constructed as a road, with a dedicated north-south road reserve width of 9.5 metres off Merrylands Road and a 9 metre wide dedicated east-west road reserve. Upon completion of construction as a road, Main Lane is to be dedicated to Council for the purpose of public road. The laneway continues through to Pitt Street to the east of the site. As part of the proposed works, the existing Sydney Water stormwater channel is to be realigned under Main Lane, in consultation with Sydney Water and Cumberland City Council.

The development also includes the construction of 'Eat Street', a north-south connection off Main Lane to McFarlane Street. Eat Street comprises a 4 metre wide roadway, which will provide one-way access to a left-out only turn onto McFarlane Street. A 2 metre wide footpath is proposed either side of the roadway, with future footpath dining envisaged either side of the roadway. It is the intention for Eat Street to serve a predominantly pedestrian function, with limited vehicular access. A speed limit of 10km/hr is proposed for Eat Street, to manage the movement of vehicles through the space, having regard to pedestrian safety.

The development includes the subdivision of land to create four (4) Torrens Title lots:

Lot No.	Area	Description
1	6,774m ²	Residential lot containing Buildings A, B & C with an easement for public access for Eat Street.
2	4,463m ²	Residential lot containing Buildings D & E.
3	754.7m ²	Proposed Road – 9, 9.5m wide and variable for dedication to Council.
4	343m ²	Proposed Road – variable width for dedication to Council.
-	83.6m ²	Road widening along Merrylands Road in accordance with HDCP 2013.

Table 3: Proposed Subdivision

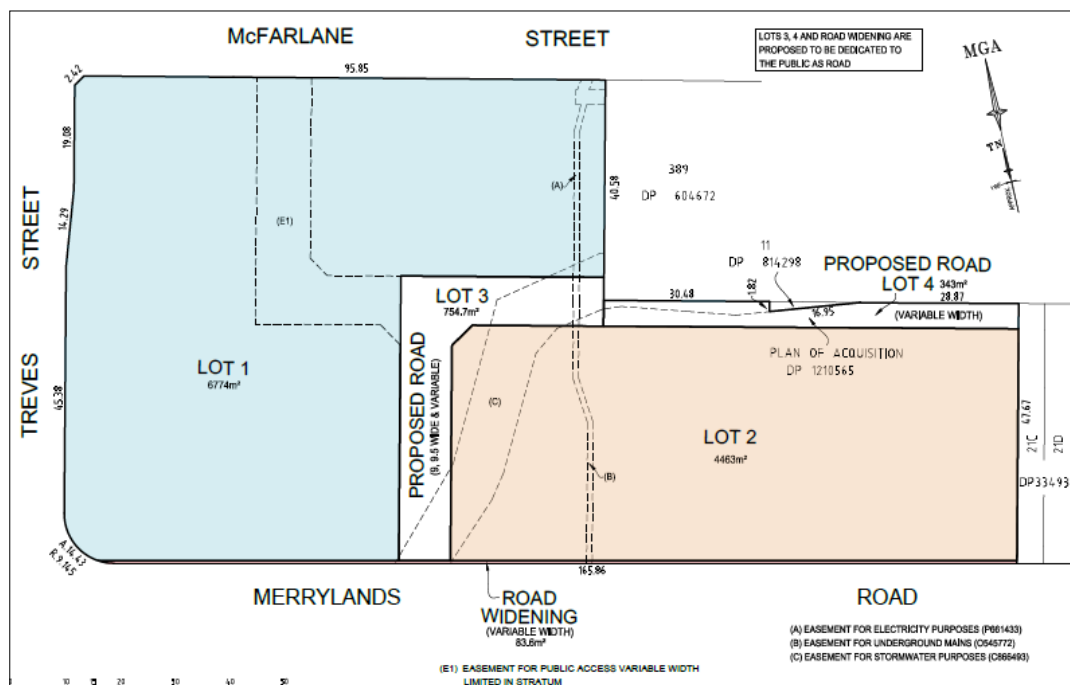


Figure 4: Proposed Plan of Subdivision (LTS)

In order to enable Council to commence the drainage realignment works, proposed Lot 4 is to be dedicated to Council prior to the issue of any Construction Certificate (CC) for the development. Proposed Lot 3 will be dedicated to Council, prior to the issue of any Occupation Certificate (OC) for the development.

It is acknowledged that no signage is proposed as part of this application, any future signage associated with the commercial, retail or child care uses will be subject to separate approvals.

The development is proposed to be undertaken in stages:

STAGE	WORKS
1	Subdivision of land and dedication of eastern portion of new road, i.e. proposed Lot 4 to Council. Construction of Main Lane temporary access road
2a	Construction of Basement Levels 1-4 (Northern Wing)
2b	Construction of ground floor Buildings A, B & C (Northern Wing) Construction of Eat Street
2c	Construction of Building A
2d	Construction of Building B
2e	Construction of Building C
3	Existing Sydney Water culvert to be relocated Construction of temporary access road along Main Lane alignment once culvert works completed.
4a	Construction of Basement Level 1-4 (Southern Wing)
4b	Construction of ground floor Buildings D & E
4c	Construction of Building D

4e	Construction of Building E Construction of Main Lane for dedication to Council
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Table 4: Proposed Development Staging

It is acknowledged that the development has not been submitted as a 'staged development application' as per the provisions of Part 4 Division 4.4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the staging has been proposed purely to facilitate staged Construction Certificate (CC) release.

As part of the application, the Applicant has identified the need for the application of flexible construction hours, noting that, given the size of the development, there may be occasions when out of hours works are required, for example concrete pours and the delivery of materials. In order to facilitate the application of flexible construction hours, a condition of consent has been recommended requiring a written request is to be made to the Executive Manager Development and Building at least 30 days prior to the works occurring. Any such request is to be accompanied by the following documents:

- Details of proposed hours;
- Acoustic advice;
- Construction Traffic Management Plan.

No works are to be undertaken until the written approval of Council has been received and surrounding residents have been provided a minimum seven (7) days written notice.

HISTORY

On 21 December 2016, the Sydney West Central Planning Panel (the Panel) granted deferred commencement consent to DA2016/127 which approved the demolition of existing structures; construction of five (5) mixed use buildings ranging in height between 10 and 17 storeys, over two separate basements, ranging between 2 and 5 levels accommodating a total of 562 residential units; 7,876sqm of commercial floor space; 742 car parking spaces; construction of a new road and Torrens subdivision into 5 lots, across the land the subject of this current application.

This consent is yet to become operational, subject to satisfaction of the Schedule A conditions of consent. These conditions relate to engineering matters, including the provision of splay corners, on-site detention design, basement pump out system and Sydney Water requirements, in relation to the realignment of the existing stormwater channel traversing the site.

In order to enable the Sydney Water works to be undertaken, the site is required to be cleared and remediated. These works were tied into the consent for DA2016/127, which is yet to become operational. In order to facilitate the timely and orderly development of the site, a separate development application was submitted to Council to enable the demolition of structures on the site, prior to the realignment of the stormwater channel and construction of buildings (DA2020/0009).

On 7 February 2020, development consent was granted to DA2020/0009 for the demolition of all structures on the site. These works have commenced and the site has been largely cleared of structures.

It is acknowledged that the remediation work required on site comprises Category 2 work, for which development consent is not required.

APPLICANTS SUPPORTING STATEMENT

The applicant has provided a Statement of Environmental Effects prepared by Think Planners dated 31 March 2020 and was received by Council on 14 April 2020, 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 Engineer

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

Environment and Health

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

Design Excellence Panel

The development application was referred to the Cumberland Design Excellence Panel (DEP) in accordance with the provisions of Clause 6.11 (Design excellence) of the HLEP 2013.

On 6 August 2020, the Cumberland DEP granted a Design Excellence Certificate in accordance with the provisions of Clause 6.11(4)(a) of the HLEP 2013. The Certificate has been granted, subject to the inclusion of conditions of consent relating to amendments to the utility, size and character of the communal open space areas and the use of Eat Street as a primarily pedestrian space.

A copy of the Design Excellence Certificate is attached at **Attachment 7** of this Report for the consideration of the Panel.

Children Youth and Families

The development application was referred to Council's Children Youth and Families Officer for comment who has advised that the development proposal is satisfactory and therefore can be supported subject to recommended conditions of consent. It is noted that a condition of consent has been recommended requiring a separate Development Application to be lodged for the use of the proposed child care centre. As part of this future application, the

concurrence of the regulatory authority (currently the Secretary of Education) would need to be obtained for the simulated outdoor play area.

Waste Management

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

EXTERNAL REFERRALS

Transport for NSW

The development application was referred to TfNSW in accordance with the provisions of Clause 101 and Clause 104 of the ISEPP. TfNSW issued concurrence, subject to conditions. These conditions have been incorporated into the recommended conditions of consent.

Endeavour Energy

The development application was referred to Endeavour Energy for comment who advised that subject to recommendations and comments, Endeavour Energy has no objection to the development application.

NSW Water

Pursuant to Section 4.46 of the *EP&A Act*, the proposal is classified as 'Integrated Development' as it requires a water management work approval from Water NSW, pursuant to the provisions of Part 3 Chapter 3 Section 90 of the *Water Management Act 2000*. The application has been referred to NSW Water and concurrence has been issued. A condition of consent has been recommended accordingly.

Sydney Water

The development application involves works to realign an existing Sydney Water drainage channel on the site. The Applicant and Council are currently in the process of liaising with Sydney Water in accordance with the deferred commencement conditions of approved DA2016/127. As part of this current application, deferred commencement conditions of consent have been recommended to ensure that the Applicant liaises with Sydney Water and Council to obtain the necessary approvals to facilitate the realignment works.

NSW Police

The development application was referred to NSW Police who provided comment on the development. Conditions of consent in respect to lighting of the development and the provision of CCTV cameras have been recommended.

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:

(a) State Environmental Planning Policy (State and Regional Development) 2011 (Regional Development SEPP)

Development of a type that is listed in Schedule 7 of SEPP (State and Regional Development) 2011 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. The proposed development constitutes 'Regional Development' as it has a Capital Investment Value (CIV) of \$293,417,810 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.

(b) State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55)

Clause 7 of SEPP 55 requires Council to be satisfied that the site is suitable or can be made suitable to accommodate the proposed development. The matters listed within Clause 7 have been considered in the assessment of the development application.

Matter for Consideration	Yes/No
Does the application involve re-development of, the site or a change of land use?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
In the development going to be used for a sensitive land use (e.g.: residential, educational, recreational, childcare or hospital)?	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Does information available to you indicate that an activity listed below has ever been approved, or occurred at the site? acid/alkali plant and formulation, agricultural/horticultural activities, airports, asbestos production and disposal, chemicals manufacture and formulation, defence works, drum re-conditioning works, dry cleaning establishments, electrical manufacturing (transformers), electroplating and heat treatment premises, engine works, explosive industry, gas works, iron and steel works, landfill sites, metal treatment, mining and extractive industries, oil production and storage, paint formulation and manufacture, pesticide manufacture and formulation, power stations, railway yards, scrap yards, service stations, sheep and cattle dips, smelting and refining, tanning and associated trades, waste storage and treatment, wood preservation	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the site listed on Council's Contaminated Land database?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Is the site subject to EPA clean-up order or other EPA restrictions?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has the site been the subject of known pollution incidents or illegal dumping?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the site adjoin any contaminated land/previously contaminated land?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

Matter for Consideration	Yes/No
Has the appropriate level of investigation been carried out in respect of contamination matters for Council to be satisfied that the site is suitable to accommodate the proposed development or can be made suitable to accommodate the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>The issue of site contamination was assessed as part of the previous DA2016/127, which was accompanied by a Phase 2 Contamination Assessment. This assessment identified the need for site remediation and a Remediation Action Plan (RAP) was prepared by DLA Environmental Services. The application has been accompanied by correspondence prepared by ieaustralia (dated 23 March 2020) advising:</p> <p><i>El conducted a review of the RAP and confirm the RAP remains relevant in relation to the current proposed development and does not require an update of the remediation strategy,</i></p> <p><i>A Site Validation Report will be prepared once all remedial works and validation have been completed as required under the RAP.</i></p> <p>The remediation work required for the site comprises Category 2 works, for which development consent is not required.</p> <p>Conditions of consent been recommended to ensure that evidence that the site has been suitably remediated, in accordance with the RAP is provided. A standard condition of consent has also been recommended to manage any unexpected finds encountered during the construction works.</p>	

Table 5: SEPP 55 Assessment

(c) Statement Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (SEPP 65)

SEPP 65 applies to the development as the building is 3 storeys or more, and contains more than 4 dwellings. A design statement addressing the design quality principles prescribed by SEPP 65 was prepared by the project architect. Integral to SEPP 65 is the Apartment Design Guide (ADG), which sets benchmarks for the appearance, acceptable impacts and residential amenity of the development.

The proposal is generally compliant with the provisions of SEPP 65 and the ADG, with the exception of communal open space, building separation distances, habitable ceiling heights and deep soil zone. These variations are discussed below:

ADG Requirement	Variation Discussion	Supported?
<p>Objective 3D-1 Communal and Public Open Space</p> <p>Design Criteria Communal open space has a minimum area equal to 25% of the site.</p> <p>Required: 25% x 11,365m² = 2,841.25m²</p>	<p>Whilst the development achieves a compliant total COS provision of 6,011m² or 52.9%, Building B provides a COS area of 352m² or 19.9%. This non-compliance is considered acceptable given that Building B has access to the COS</p>	<p>Yes</p>

<p>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).</p>	<p>Room on Level 2 of Building C, as discussed below.</p> <p>Whilst Buildings A, B, D and E achieve the minimum 50% solar access requirement, Building C achieves a total of 38%.</p> <p>This largely as a result of the COS area of Building C being provided on Level 2 in the form of a COS Room which includes a gym, lounge, communal kitchen and other amenities. This COS Room is also accessible to the occupants of Buildings A and B.</p> <p>There is also ground level COS provided for Building C, in addition to COS area on Level 13 of Building C, for the exclusive use of residents of this building.</p> <p>In this regard, the above COS variations from the ADG are considered acceptable on merit.</p>													
<p>Objective 3E-1 Deep Soil Zones</p> <p>Design Criteria Deep soil zones are to meet the following minimum requirements:</p> <table border="1" data-bbox="193 1444 635 1693"> <thead> <tr> <th>Site area</th><th>Minimum dimensions</th><th>Deep soil zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>less than 650m²</td><td>-</td><td rowspan="4">7%</td></tr> <tr> <td>650m² - 1,500m²</td><td>3m</td></tr> <tr> <td>greater than 1,500m²</td><td>6m</td></tr> <tr> <td>greater than 1,500m² with significant existing tree cover</td><td>6m</td></tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of site area)	less than 650m ²	-	7%	650m ² - 1,500m ²	3m	greater than 1,500m ²	6m	greater than 1,500m ² with significant existing tree cover	6m	<p>No deep soil zones are provided on the site, as a result of the basements and building envelopes.</p> <p>The proposed landscaping and open space areas dispersed throughout the development, in the form of public domain landscaping at the ground level as well as the landscaping of the podium and communal open space areas are considered to adequately offset the absence of deep soil planting.</p> <p>The landscape design incorporates a range of plants, including trees, shrubs and groundcover to enhance the amenity of the development.</p>	<p>Yes</p>
Site area	Minimum dimensions	Deep soil zone (% of site area)												
less than 650m ²	-	7%												
650m ² - 1,500m ²	3m													
greater than 1,500m ²	6m													
greater than 1,500m ² with significant existing tree cover	6m													
<p>Objective 3F-1 Visual Privacy</p>														

Design Criteria

Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:

Building height	Habitable rooms and balconies	Non-habitable rooms
up to 12m (4 storeys)	6m	3m
up to 25m (5-8 storeys)	9m	4.5m
over 25m (9+ storeys)	12m	6m

Note:

Separation distances between buildings on the same site should combine required building separations depending on the type of room.

The development provides compliant building separation distances to the eastern property boundary from Building A, with a minimum of 12m provided across all levels of the development.

Compliant building separation distances are provided from Building E to the eastern property boundary, with the exception of Levels 3 to 7 which provide an 11m building separation to the eastern property boundary.

This non-compliance is considered minimal, given that the non-compliance applies to a small portion of the eastern building façade of Building E, noting that the majority of the façade complies with the 12m separation distance.

The development provides compliant habitable room and balcony building separation distances between the five (5) buildings on site, with the exception of the below variations:

- Levels 9 to 14 – a minimum 18m to 21m separation provided between the southern façade of Building A and the northern façade of Building D.
- Levels 9 to 14 – a minimum 19m separation provided between the southern façade of Building B and the northern façade of Building C.
- Levels 9 to 14 – a minimum 22m & 23m separation provided for a portion of the eastern elevation of Building D and the western elevation of Building E.
- Levels 15 to 24 – a minimum separation of 18m to 21m

Yes

	<p>provided between the southern façade of Building A and the northern façade of Building D.</p> <p>The above variations to the building separation distances, internal to the development, are considered acceptable, on the basis that treatment measures can be applied to the non-compliant balconies and habitable room windows, in the form of privacy screening and the like, to protect visual amenity within the development.</p>													
<p>Objective 4C-1 Ceiling Heights</p> <p>Design Criteria Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table><tr><th colspan="2">Minimum ceiling height for apartment and mixed use buildings</th></tr><tr><td>Habitable rooms</td><td>2.7m</td></tr><tr><td>Non-habitable</td><td>2.4m</td></tr><tr><td>For 2 storey apartments</td><td>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</td></tr><tr><td>Attic spaces</td><td>1.8m at edge of room with a 30 degree minimum ceiling slope</td></tr><tr><td>If located in mixed used areas</td><td>3.3m for ground and first floor to promote future flexibility of use</td></tr></table> <p>These minimums do not preclude higher ceilings if desired.</p>	Minimum ceiling height for apartment and mixed use buildings		Habitable rooms	2.7m	Non-habitable	2.4m	For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area	Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	<p>All residential units maintain a minimum floor to ceiling height of 2.7m, with the exception of some units which will provide a minimum floor to ceiling height of 2.4m.</p> <p>This applies to those units where there is the requirement to allow the integration of hydraulic services for island benches and for the incorporation of air conditioning units.</p> <p>The bulkhead required to facilitate the provision of these services provides a natural division between the living and dining spaces from the kitchen area.</p> <p>Owing to the design of the units and the location of the kitchen areas to the rear of the living areas, the reduced ceiling height above the kitchen has minimal impact on the access of daylight and natural ventilation.</p> <p>Further, the minimum 2.4m ceiling heights maintain compliance with the NCC, noting that the minimum ceiling height for kitchens is 2.1m.</p>	<p>Yes</p>
Minimum ceiling height for apartment and mixed use buildings														
Habitable rooms	2.7m													
Non-habitable	2.4m													
For 2 storey apartments	2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area													
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope													
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use													

Table 6: ADG Non-Compliances

Following a detailed assessment of the proposal against the provisions of SEPP 65 and the ADG, the proposal is generally considered compliant and therefore performs satisfactorily with respect to the provisions of the NCC, landscape amenity and external and internal visual privacy.

A comprehensive assessment against SEPP 65 and the ADG is contained in **Attachment 8**.

(d) State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The provisions of the ISEPP 2007 have been considered in the assessment of the development application.

Clause 45 - Development likely to affect an electricity transmission or distribution network

The subject development occurs within 5 metres of an overhead electricity power line. As such, the Consent Authority is required to give written notice to an electricity supply authority.

In accordance with the provisions of Clause 45, the development application was referred to Endeavour Energy for comment, who advised that, subject to recommendations and comments, Endeavour Energy has no objection to the development application.

Clause 85 – Development adjacent to railway corridors

The application is not subject to clause 85 of the ISEPP, because the subject site is in or adjacent to a railway corridor.

Clause 86 – Excavation in, above, below or adjacent to rail corridors

The application is not subject to clause 86 of the ISEPP as the proposed development does not involve any excavation works on land within, below or above a rail corridor, or within 25m (measured horizontally) of a rail corridor.

Clause 87 – Impact of rail noise or vibration on non-rail development

The application is not subject to clause 87 of the ISEPP as the site is not in or adjacent to a rail corridor, nor is it likely to be adversely affected by rail noise or vibration.

Clause 101 – Frontage to classified road

Merrylands Road is identified as a classified road and the application was referred to Transport for NSW (TfNSW) in accordance with the provisions of Clause 101 of the ISEPP. On 6 July 2020 TfNSW issued concurrence, subject to conditions. These conditions have been incorporated into the recommended conditions of consent.

Clause 102 – Impact of road noise or vibration on non-road development

The application has been accompanied by an Acoustic Report which has been assessed by Council's EHU which have deemed the report satisfactory. Conditions of

consent have been recommended to ensure that the acoustic amenity of the residential and child care centre development is maintained.

Clause 104 – Traffic generation developments

The application is subject to Clause 104 of the ISEPP as the development involves traffic generating development as identified in Schedule 3 of the ISEPP. The development involves a car park with more than 50 spaces and more than 75 residential dwellings on the site which has access to Merrylands Road. The application was referred to TfNSW in accordance with the provisions of Clause 104 of the ISEPP. On 6 July 2020 TfNSW issued concurrence, subject to conditions. These conditions have been incorporated into the recommended conditions of consent.

(e) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX SEPP)

A BASIX Report has been submitted with the application which demonstrates that the development has been designed to achieve the required water, thermal comfort and energy scores.

(f) State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017 (Education SEPP)

The Education SEPP sets out a new reform process for certain types of education and child care facilities to be determined under exempt and complying development that will make it easier for child-care providers, schools, TAFEs and universities to build new facilities and improve existing ones by streamlining the planning process to save time and money and deliver greater consistency across NSW.

The proposed development includes the provision of a child care centre on Level 1 of Building B. Consent is sought as part of this application for the construction of the child care centre, with the use to be subject to a future approval which will regulate the hours of operation and operational matters.

Having regard to the above, the application is identified as a 'centre based child care' and the provisions of Part 3 of the Education SEPP are applicable to this application. In this regard, the relevant provisions of Part 3 are discussed below:

Requirement	Yes/No	Comments
Part 3 Early education and care facilities—specific development controls		
22 Centre-based child care facility—concurrence of Regulatory Authority required for certain development (1) This clause applies to development for the purpose of a centre-based child care facility if: (a) the floor area of the building or place does not comply with regulation 107 (indoor unencumbered space)	N/A	The proposal complies with regulation 107 and 108 of the Education and Care Services National Regulations and therefore does not require concurrence from the Regulatory Authority. Complies. The proposal is consistent with these clauses as follows:

Requirement	Yes/No	Comments												
<p>requirements) of the <u>Education and Care Services National Regulations</u>, or</p> <p>(b) the outdoor space requirements for the building or place do not comply with regulation 108 (outdoor unencumbered space requirements) of those Regulations.</p>		<p>Indoor</p> <table border="1"> <tr> <th>Required per child</th><th>3.25m²</th><th>Proposed</th></tr> <tr> <td>60 x 3.25 = 32.5m²</td><td></td><td>197m² (Across 3 Activity Rooms – 92m², 72m² & 33m²)</td></tr> </table> <p>Outdoor</p> <table border="1"> <tr> <th>Required per child</th><th>7m²</th><th>Proposed</th></tr> <tr> <td>60 x 7 = 420m²</td><td></td><td>429m²</td></tr> </table> <p>Indoor and outdoor space has been calculated in accordance with the requirements, i.e. only unencumbered space has been included towards the area calculations.</p>	Required per child	3.25m ²	Proposed	60 x 3.25 = 32.5m ²		197m ² (Across 3 Activity Rooms – 92m ² , 72m ² & 33m ²)	Required per child	7m ²	Proposed	60 x 7 = 420m ²		429m ²
Required per child	3.25m ²	Proposed												
60 x 3.25 = 32.5m ²		197m ² (Across 3 Activity Rooms – 92m ² , 72m ² & 33m ²)												
Required per child	7m ²	Proposed												
60 x 7 = 420m ²		429m ²												
<p>23 Centre-based child care facility—matters for consideration by consent authorities</p> <p>Before determining a development application for development for the purpose of a centre-based child care facility, the consent authority must take into consideration any applicable provisions of the <u>Child Care Planning Guideline</u>, in relation to the proposed development.</p>	Yes	<p>An assessment of the development against the provisions of the Child Care Planning Guideline is provided at Attachment 9 to this Report.</p>												
<p>24 Centre-based child care facility in Zone IN1 or IN2—additional matters for consideration by consent authorities</p>	N/A	<p>Subject site is not located in these zones.</p>												
<p>25 Centre-based child care facility—non-discretionary development standards</p> <p>(1) The object of this clause is to identify development standards for particular matters relating to a centre-based child care facility that, if complied with, prevent the consent authority from requiring more onerous standards for those matters.</p>	Noted													

Requirement	Yes/No	Comments
<p>(2) The following are non-discretionary development standards for the purposes of section 4.15 (2) and (3) of the Act in relation to the carrying out of development for the purposes of a centre-based child care facility:</p> <p>(a) location—the development may be located at any distance from an existing or proposed early education and care facility,</p> <p>(b) indoor or outdoor space</p> <p>(i) for development to which regulation 107 (indoor unencumbered space requirements) or 108 (outdoor unencumbered space requirements) of the Education and Care Services National Regulations applies—the unencumbered area of indoor space and the unencumbered area of outdoor space for the development complies with the requirements of those regulations, or</p> <p>(ii) for development to which clause 28 (unencumbered indoor space and useable outdoor play space) of the Children (Education and Care Services) Supplementary Provisions Regulation 2012 applies—the development complies with the indoor space requirements or the useable outdoor play space requirements in that clause,</p> <p>(c) site area and site dimensions—the development may be located on a site of any size and have any length of street frontage or any allotment depth,</p> <p>(d) colour of building materials or shade structures—the</p>	<p>Noted</p> <p>Yes</p> <p>N/A</p> <p>Yes</p> <p>Noted</p> <p>Noted</p>	<p>Complies as discussed above.</p> <p>N/A</p> <p>The site is considered to be of a suitable area and width to accommodate the proposed child care centre.</p>

Requirement	Yes/No	Comments
<p>development may be of any colour or colour scheme unless it is a State or local heritage item or in a heritage conservation area.</p> <p>(3) To remove doubt, this clause does not prevent a consent authority from:</p> <p>(a) refusing a development application in relation to a matter not specified in subclause (2), or</p> <p>(b) granting development consent even though any standard specified in subclause (2) is not complied with.</p>		
<p>26 Centre-based child care facility—development control plans</p> <p>(1) A provision of a development control plan that specifies a requirement, standard or control in relation to any of the following matters (including by reference to ages, age ratios, groupings, numbers or the like, of children) does not apply to development for the purpose of a centre-based child care facility:</p> <p>(a) operational or management plans or arrangements (including hours of operation),</p> <p>(b) demonstrated need or demand for child care services,</p> <p>(c) proximity of facility to other early education and care facilities,</p> <p>(d) any matter relating to development for the purpose of a centre-based child care facility contained in:</p> <p>(i) the design principles set out in Part 2 of the Child Care Planning Guideline, or</p> <p>(ii) the matters for consideration set out in Part 3 or the regulatory requirements</p>	Noted	<p>The use of the child care centre will be subject to a future DA which will address operational requirements.</p>

Requirement	Yes/No	Comments
<p>set out in Part 4 of that Guideline (other than those concerning building height, side and rear setbacks or car parking rates).</p> <p>(2) This clause applies regardless of when the development control plan was made.</p>		

Table 7: Education SEPP Assessment

The **Child Care Planning Guidelines** also list matters for consideration for this development application. This development application is considered to satisfactorily address those matters listed. A full assessment table is attached in **Attachment 9** to this Report.

Regional Environmental Plans

The proposed development is affected by the following Regional Environmental Plans:

(a) Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 (SREP 2005)

The subject site is identified as being located within the area affected by the Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005. The proposed development raises no issues as no impact on the catchment is envisaged.

(Note: - the subject site is not identified in the relevant map as 'land within the 'Foreshores and Waterways Area' or 'Wetland Protection zone', is not a 'Strategic Foreshore Site' and does not contain any heritage items. Hence the majority of the SREP is not directly relevant to the proposed development).

Local Environmental Plans

Holroyd Local Environmental Plan 2013 (HLEP 2013)

The provisions of the HLEP 2013 are applicable to the development proposal. It is noted that the development generally achieves compliance with the key statutory requirements of the HLEP 2013 and the objectives of the B4 Mixed Use land use zone.

The development exceeds the maximum permissible building height and floor space ratio (FSR) development standards and the application has been accompanied by a Clause 4.6 Variation Request, as discussed below.

(a) Permissibility:-

The proposed development is defined as a "centre-based child care facility" and "shop top housing", both of which are permissible in the B4 land use zone with consent:

centre-based child care facility means—

- (a) *a building or place used for the education and care of children that provides any one or more of the following—*
 - (i) *long day care,*
 - (ii) *occasional child care,*
 - (iii) *out-of-school-hours care (including vacation care),*
 - (iv) *preschool care, or*
- (b) *an approved family day care venue (within the meaning of the Children (Education and Care Services) National Law (NSW)),*

but does not include—

- (c) *a building or place used for home-based child care or school-based child care, or*
- (d) *an office of a family day care service (within the meanings of the Children (Education and Care Services) National Law (NSW)), or*
- (e) *a babysitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or*
- (f) *a child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium) to care for children while the children's parents are using the facility, or*
- (g) *a service that is concerned primarily with providing lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or providing private tutoring, or*
- (h) *a child-minding service that is provided by or in a health services facility, but only if the service is established, registered or licensed as part of the institution operating in the facility.*

shop top housing means one or more dwellings located above ground floor retail premises or business premises.

The relevant matters to be considered under the HLEP 2013 for the proposed development are detailed below.

DEVELOPMENT STANDARD	COMPLIES	DISCUSSION
4.1 Minimum subdivision lot size Nil	N/A	There is no minimum subdivision lot size applicable to the subject site.
4.3 Height of Buildings Maximum 43m, 55m and 77m	N	The site is subject to split building height controls. As a result of the proposed location of the 'Eat Street' laneway, Building A is subject to a split maximum building height of 77m to the eastern portion of the building and 55m to the western portion of the building. Building B is subject to a maximum building height of 55m, Building C a maximum building height of 43m, Building D a maximum building height of 55m and Building E a maximum building height of 77m.

	<p>In accordance with the provisions of Clause 6.11(5), the development has incorporated a design excellence building height bonus of 10% into the building design, resulting in maximum building heights of 60.5m and 84.7m (noting that the bonus only applies to buildings greater than 55 metres in height).</p> <p>The building height exceedances are discussed below:</p> <p><u>Building A</u> The balustrade and top floor roof slab are 1.5m above the maximum building height, equating to a 1.77% variation from the maximum building height, inclusive of the bonus. A Clause 4.6 Variation Request has been submitted to address this variation from the development standard.</p> <p>It is the Applicant's assertion that the remainder of the building which exceeds the maximum building height (inclusive of the bonus) satisfies the criteria to be considered an architectural roof feature, pursuant to the provisions of Cl. 5.6 of the HLEP 2013.</p> <p><u>Buildings B, C & D</u> It is the Applicant's assertion that the portions of these buildings over the maximum building height comprise an architectural roof feature.</p> <p><u>Building E</u> The balustrade and top floor roof slab are 1m above the maximum building height, equating to a 1.18% variation from the maximum building height, inclusive of the bonus. A Clause 4.6 Variation Request has been submitted to address this variation from the development standard.</p> <p>It is the Applicant's assertion that the remainder of the building which exceeds the maximum building height (inclusive of</p>
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		<p>the bonus) satisfies the criteria to be considered an architectural roof feature.</p> <p>The Applicant has submitted a Clause 4.6 Variation Request.</p>
4.4 Floor Space Ratio (FSR) Maximum 5:1 and 5.5:1	N	<p>The maximum GFA permitted on the site (excluding the SP2 zoned land) is 64,511m².</p> <p>The development proposes a total GFA of 70,402m², which equates to an exceedance of 5,891m² or a 9.13% variation to the maximum FSR applicable to the site.</p> <p>The Applicant has submitted a Clause 4.6 Variation Request.</p>
4.6 Exceptions to development standards	Y	<p>The Applicant has submitted Clause 4.6 Variation Requests for the departures from the building height, FSR and maximum residential FSR development standards. Refer to the discussion in the following section of this Report.</p>
5.1 Relevant acquisition authority Zone SP2 Infrastructure and marked "Local Road" - Council	Y	<p>The SP2 zoned land is to be dedicated to Council as part of the approved development.</p>
5.1A Development on land intended to be acquired for public purposes Development on SP2 zoned land for the purpose of Local Road only	Y	<p>Development on the land zoned SP2 is for the purpose of local road, i.e. Main Lane.</p>
5.6 Architectural roof features	Y	<p>It is the Applicant's assertion that the design of the roof form, rooftop communal open space areas and service elements, over the maximum building height stipulated for Buildings A, B, C, D and E, comprise architectural roof features.</p> <p>The SEPP 65 Design Statement which accompanies the application, has considered that the proposed building height exceedances are considered contextually appropriate, providing:</p>

		<p><i>Architectural roof features that allow for fully integrated plant rooms and lift overruns servicing the roof levels for additional amenity to residents.</i></p> <p><i>Roof Top Communal Facilities are located on Buildings A, B, C, and D. This adds a green layer to the top of the building softening the profile of the building against the sky.</i></p> <p><i>The roof features provide a varying roof form to the development and cause minimal overshadowing to neighbouring developments.</i></p> <p><i>The design achieves solar amenity to the development. The form has been stepped to the east facades of Buildings A, D and E to assist in capturing sunlight from the north.</i></p> <p><i>The underlying design methodology for the elevations are to break each building volume up into smaller masses in order to provide greater articulation, separation and variety. These component masses become a series of taller and slender elements on each building that reduce the apparent horizontal scale of the development.</i></p> <p>Having regard to the matters for consideration at Clause 5.6(3), it is acknowledged that the architectural roof features do not comprise advertising structures and no building identification signage is proposed. The roof features do not include floor space area and are not reasonably capable of being modified to include floor space area.</p> <p>The roof forms proposed are considered to comprise decorative elements to the uppermost portions of the five (5) buildings. The plant rooms and lift overruns have been integrated into the design of the roof form.</p> <p>The roof top communal open space areas provided to Buildings A, B, C and D incorporate the use of greenery which</p>
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		<p>complement the architectural design of the roof features.</p> <p>The proposed roof features cause minimal overshadowing.</p> <p>The design of the roof features is considered to contribute to the overall design of the development, providing a balance to the horizontal and vertical lines of the buildings.</p>
5.10 Heritage conservation	Y	<p>The site is not identified as a heritage item and is not within a heritage conservation area.</p> <p>The site is located opposite the following heritage items of local significance, located on the western side of Treves Street:</p> <ul style="list-style-type: none"> • I68 – Electrical substation at 285 Merrylands Road, Merrylands • I69 - Merrylands School of Arts, community building, circa 1917–1925 at 289 Merrylands Road, Merrylands <p>A Heritage Impact Statement (HIS) has been prepared by NBRS & Partners Pty Ltd in accordance with Clause 5.10(4) of the HLEP 2013, to consider the effect of the proposed development on the heritage significance of the abovementioned heritage items.</p> <p>The HIS relevantly provides the following:</p> <p><i>The proposed Merrylands Coronation development would have negligible heritage impacts on heritage items located in its vicinity for the following reasons:</i></p> <p><i>a) The Merrylands Coronation Development would be wholly contained within the boundary of its site and would not damage or remove building fabric from any heritage item in its vicinity.</i></p> <p><i>b) Views to the Electrical Substation located at 295 Merrylands Road would be unchanged as a result of the</i></p>

		<p><i>Coronation development at 233–249 Merrylands Road, Merrylands.</i></p> <p><i>c) Views to the Merrylands School of Arts would be unchanged as a result of the development at 233–249 Merrylands Road, Merrylands.</i></p> <p><i>d) The principal views along Merrylands Road, Treves Street and McFarlane Street would be maintained.</i></p> <p><i>e) The works are in keeping with the objectives and controls outlined in Holroyd DCP 2013 (Section M – Merrylands Station and McFarlane Street Precinct).</i></p> <p><i>f) The Merrylands Coronation Development would not have an adverse impact on the heritage significance of the Merrylands former School of Arts, the substation or the former Uniting Church in Merrylands.</i></p> <p>The development is considered acceptable having regard to the provisions of Clause 5.10(4).</p>
6.1 Acid Sulfate soils Nil affectation	N/A	The subject site is not affected by acid sulfate soils.
6.2 Earthworks	Y	The development comprises earthworks, including excavation to facilitate the construction of the basement. Conditions of consent have been recommended to address erosion and sediment impacts generated by earthworks as well as a dilapidation condition to address the impact of the earthworks on the adjoining properties.
6.3 Essential services 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 development are available or that adequate arrangements have been made to make them available when required— (a) the supply of water, (b) the supply of electricity,	Y	<p>The development includes the construction and dedication of Main Lane. Access to the proposed basement carparks and the development will be via Main Lane, with the primary point of access to Main Lane off Merrylands Road. Conditions of consent have been recommended to facilitate the construction and dedication of Main Lane to Council. The 'Eat Street' laneway is to remain in private ownership, with a right of way to be created to facilitate access.</p> <p>Standard conditions of consent have been recommended to ensure that the supply of water, electricity, sewage and the management of stormwater drainage</p>

(c) the disposal and management of sewage, (d) stormwater drainage or on-site conservation, (e) suitable road access.		are provided prior to the issue of an Occupation Certificate/s for the development.
6.4 Flood planning	Y	The site is affected by the 1% Annual Exceedance Probability (AEP) flood and is identified as a flood control lot. The habitable floor levels of the development have been designed at a minimum 500mm above the surrounding flood level and the non-habitable floor levels have been designed at a minimum 150mm above the flood level. Conditions of consent have been recommended by Council's Development Engineers to ensure the development complies with the flooding requirements.
6.7 Stormwater management	Y	Council's Development Engineers have reviewed the proposed stormwater design, which includes the provision of on-site detention (OSD) and conditions of consent have been recommended to ensure that stormwater is managed so as not to cause any adverse impacts of stormwater runoff on adjoining properties or the environment.
6.8 Salinity Moderate salinity potential	Y	Standard conditions of consent have been recommended to manage the salinity affectation of the subject site during the construction phase of the development.
6.10 Ground floor development in Zones B2 and B4 Consent not to be granted to development for the purposes of commercial premises or to a mixed use development with a commercial premises component, on land to which this clause applies unless the consent authority is satisfied that the ground floor of the building—	Y	None of the ground floor levels of the buildings proposed are used for the purpose of residential accommodation. All car parking is contained within the basements proposed. The proposed ground floor commercial uses, coupled with the design of the built form at the ground level, encourage the presence and movement of people by fostering an interaction between the inside of the buildings and the external public areas adjoining the building.

<p>(a) will not be used for the purposes of residential accommodation, and</p> <p>(b) will not be used for a car park or to provide ancillary car parking spaces, and</p> <p>(c) 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.</p>		
<p>6.11 Design excellence</p> <p>This clause applies to the proposed buildings on the site with a building height greater than 55 metres.</p> <p>Development consent must not be granted to development to which this clause applies unless the consent authority considers that the development exhibits design excellence.</p> <p>This clause affords design excellence bonuses as follows:</p> <p>Building height – up to 10% FSR – up to 0.5:1</p>	Y	<p>On 6 August 2020, the Cumberland DEP granted a Design Excellence Certificate in accordance with the provisions of Clause 6.11(4)(a) of the HLEP 2013. The Certificate has been granted, subject to the inclusion of conditions of consent relating to amendments to the utility, size and character of the communal open space areas and the use of Eat Street as a primarily pedestrian space.</p> <p>A copy of the Design Excellence Certificate is attached at Attachment 7 of this Report for the consideration of the Panel.</p> <p>The development has been designed incorporating the 10% building height bonus and the 0.5:1 FSR bonus.</p>

Table 8: Holroyd LEP 2013 Compliance Table

(b) Clause 4.6 – Variation to Maximum Building Height

Clause 4.6 allows the consent authority to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. The consent authority may grant the exception as the Secretary's concurrence can be assumed where clause 4.6 is adopted as per the Department of Planning Circular PS 18-003, dated 21 February 2018.

The applicant has submitted a written request to vary the development standards for Building Height. Based on various case laws established by the Land and Environment Court of NSW such as *Four2five P/L v Ashfield Council [2015] NSWLEC 9*, *Randwick City Council v Micaul Holdings P/L [2016] NSW LEC7* and *Zhang and anor v Council*

of the City of Ryde [2016] NSWLEC 1179, a 3 part assessment framework for a variation request proposed under clause 4.6 has been considered and an assessment of the proposed variance, following the 3 part test is discussed in detail below.

The 3 preconditions which must be satisfied before the application can proceed are as follows:

1. Is the proposed development consistent with the objectives of the zone?

Applicant's justification:

The proposal is consistent with the objectives of the zone, providing a mixture of compatible uses and for redevelopment in an accessible location that will further the objective to maximise public transport patronage as well as encouraging walking and cycling.

The proposal provides for a vibrant mixed use development with active retail, commercial and other uses at the ground floor level.

The development proposal encourages the development and expansion of business activities that will strengthen the economic and employment role of the Merrylands Town Centre- noting the quantum of business floor space has been considered in detail by AEC Group as part of the Market Assessment which confirms the suitability of the quantum of floor space provided for commercial uses.

The proposal is consistent with the future desired character of the area as envisaged by the current planning controls. The proposal is consistent with the objectives of Clause 4.6 and the B4 Mixed Use Zone.

Planner's comment:

The development is consistent with the zone objectives, as the proposal incorporates a mix of commercial, retail, child care and residential land uses across the site. The development is centrally located within the Merrylands Town Centre, with access to public transport. The development encourages pedestrian movement with pedestrian links through the site and provides bicycle parking to encourage cycling as a mode of transport. The ground levels of all buildings provide commercial and retail land uses to encourage activation of the street frontages to Merrylands Road, McFarlane Street and Treves Street.

2. Is the proposed development consistent with the objectives of the development standard which is not met?

Applicant's justification:

The current development proposal seeks to depart from the height control for small portions of the upper storey of the building, and the 'shifting' of the height of Building A to align with the laneway location. Despite this, the proposal remaining consistent with the objectives of the clause because:

- *The visual impact of the non-compliance is limited noting the departure is primarily to balustrade elements to most buildings and the realignment of Building A in terms of height- i.e. the height of the building being greater*

on the eastern side of the north/south laneway link- provides a suitable design response;

- The shadow diagrams show the adjoining properties received adequate solar access, noting the elements of non-compliance are limited with the exception of Building A which actually shifts the height further westwards which lessens the impact to adjoining properties to the east;*
- The additional height has no bearing on the privacy of neighbouring properties;*
- The development is designed to follow the landform, whilst acknowledging the impact of overland flow/flooding and a suitable design response;*
- The development provides an appropriate scale and intensity, noting consistency with the intent of the Merrylands Town Centre DCP height massing and noting the FSR, across the entirety of the site (including laneway) is compliance;*
- The non-compliance, other than Building A, is minor in nature with the majority of the building being compliant with the building height control and with the lift overruns recessed, their impact to the streetscape is negligible as it will be visually unnoticeable when viewed from the street level.*

Planner's comment:

The proposed development is consistent with the building height objectives as the built form is considered to respond to the site and its location within the Merrylands Town Centre. The bulk and scale of the development is considered acceptable and the development presents acceptable visual and solar access impacts on the amenity of neighbouring properties.

3. a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? And;

Applicant's justification:

Strict compliance with the prescriptive building height requirement is unreasonable and unnecessary in the context of the proposal and its unique circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The design response aligns with the intent of the control and provides for an appropriate transition to the adjoining properties.

The proposal promotes the economic use and development of the land consistent with its zone and purpose.

Planner's comment:

Strict compliance with the maximum building height requirement is considered unreasonable and unnecessary in the context of the development as the built form is site responsive and the development presents an acceptable bulk and scale.

b) Are there sufficient environmental planning grounds to justify contravening the development standard and therefore is the applicant's written justification well founded?

Applicant's justification:

In relation to environmental planning grounds the variation to the height standard is satisfactory on these grounds for the following reasons:

- *The penetration of the height limit is a direct consequence of the design of the proposed development which incorporates a communal rooftop terrace that necessitates balustrading which protrudes beyond the permitted height plane.*
- *The proposal as designed seeks to maximise amenity for future occupants via the provision of this communal rooftop open space area. Proposed rooftop structures i.e. lift overrun, lobby, seating, bbq facilities are directly correlated to the design, function and intended use of the rooftop communal open space area which forms an integral part of the proposed development. The structures service the rooftop communal open space area which has been provided to benefit the future occupants of the site. The non-compliance relates to features of the property which will significantly improve the amenity of the occupants.*
- *The additional height proposed does not result in detrimental environmental planning outcomes, as it does not give rise to adverse solar access, view loss or visual or acoustic privacy impacts on site, or to neighbouring properties.*
- *The additional floor to floor height allows set down to balconies to maximise amenity for occupants;*
- *The departure to the height standard furthers the objects of the Environmental Planning and Assessment Act 1979 as set out below:*
 - *To promote the orderly and economic use and development of land*
 - *To promote good design and amenity of the built environment through the provision of the rooftop common open space area.*
- *The provision of a logical built form outcome, noting that Building A straddles an area of 2 building heights (77m/55m plus 10% height bonus) owing to the difference in the laneway location between the LEP (straight north/south) and as proposed which is irregular (and agreed with Council relating to culvert works). The intent of the height split was to follow the lane and provide a transition in height - which the proposal aligns and is consistent with and hence the outcome is reflective of the intent in the height split at the laneway interface and transition at the laneway interface. Diagrammatically this is reflected on Drawing DA-100-005.*

Planner's comment:

The variation to the maximum building height development standard is considered acceptable on environmental planning grounds and the Applicant's written justification is well founded.

Conclusion:

Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6 subclause (3). Council is further satisfied that the proposed development will be in the public interest because it is

consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

It is the view of Council Officers that justification provided is satisfactory and having considered the application on its merit, the exception to the maximum building height development standard is considered acceptable in this instance.

(c) Clause 4.6 – Variation to Maximum Floor Space Ratio

Clause 4.6 allows the consent authority to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. The consent authority may grant the exception as the Secretary's concurrence can be assumed where clause 4.6 is adopted as per the Department of Planning Circular PS 18-003, dated 21 February 2018.

The applicant has submitted a written request to vary the development standards for FSR. Based on various case laws established by the Land and Environment Court of NSW such as *Four2five P/L v Ashfield Council [2015] NSWLEC 9*, *Randwick City Council v Micaul Holdings P/L [2016] NSWLEC 7* and *Zhang and anor v Council of the City of Ryde [2016] NSWLEC 1179*, a 3 part assessment framework for a variation request proposed under clause 4.6 has been considered and an assessment of the proposed variance, following the 3 part test is discussed in detail below.

The 3 preconditions which must be satisfied before the application can proceed are as follows:

1. Is the proposed development consistent with the objectives of the zone?

Applicant's justification:

The proposal is consistent with the objectives of the zone, providing a mixture of compatible uses and for redevelopment in an accessible location that will further the objective to maximise public transport patronage as well as encouraging walking and cycling.

The proposal provides for a vibrant mixed use development with active retail, commercial and other uses at the ground floor level and a suitable quantum of nonresidential floor space as set out in the AEC Group Report.

The development proposal encourages the development and expansion of business activities that will strengthen the economic and employment role of the Merrylands Town Centre- noting the quantum of business floor space has been considered in detail by AEC Group as part of the Market Assessment which confirms the suitability of the quantum of floor space provided for commercial uses.

The proposal is consistent with the future desired character of the area as envisaged by the current planning controls. The proposal is consistent with the objectives of Clause 4.6 and the B4 Mixed Use Zone.

Planner's comment:

The development is consistent with the zone objectives, as the proposal incorporates a mix of commercial, retail, child care and residential land uses

across the site. The development is centrally located within the Merrylands Town Centre, with access to public transport. The development encourages pedestrian movement with pedestrian links through the site and provides bicycle parking to encourage cycling as a mode of transport. The ground levels of all buildings provide commercial and retail land uses to encourage activation of the street frontages to Merrylands Road, McFarlane Street and Treves Street.

2. Is the proposed development consistent with the objectives of the development standard which is not met?

Applicant's justification:

The current development proposal is entirely consistent with the above objectives and is considered to be appropriate on environmental planning grounds based on the following:

- *The proposed building exhibits a bulk and scale that is consistent with the desired future character of the locality. Following discussions with Council staff and urban designers it is agreed that the proposal represents a suitable and preferable density, bulk and scale that is consistent with the desired future character of the Merrylands Town Centre.*
- *The extent and quantum of GFA proposed complies across the entirety of the site area to ensure that the proposal supports the viability of the Merrylands Town Centre and associated economic development noting the significant scale of development and significant economic benefits as set out in the AEC Group Economic Impact Assessment. This directly satisfies objective a).*
- *The proposal provides for a variety of housing type with a mix of 1, 2, and 3 bedroom units and provides for a higher number of studio and 1 bedroom units to respond to the identified market demand set out in the AEC Group report. This directly satisfies objective b).*
- *The proposed additional floor space results in a high quality development that is an improved Urban Design outcome with the series of towers across the site and reflects the desired future built form and character of the locality noting the design response aligns with the DCP provisions with regard to the varied tower heights, connection points and through connections. The development proposal, and the GFA proposed, satisfies objective c) again reinforcing on the basis of the entirety of the site area the proposal would be compliant. The proposed development will permit the site to develop to its full zoning potential whilst complementing the future vision envisioned for the site by providing a landmark development that provides high quality address and activation to the street frontage and meeting the intent of the key planning controls applying to the proposal.*
- *The development proposal provides a sympathetic, activated street frontage that addresses the context, streetscape and future character of the Town Centre and adjoining developments. The development provides a mix of dwellings that will contribute towards increasing housing choice, diversity and stock of Holroyd LGA.*
- *The proposal provides for high levels of amenity given the manipulation of the DCP envelopes to ensure a suitable laneway response and through site movements both pedestrian and vehicular and then a series*

of quality spaces for residents with regard to private open space, landscaping and common areas. This satisfies objective d).

Planner's comment:

The proposed development is considered to be consistent with the objectives of the development standard, given that the development is providing residential and commercial floor space in response to the current market demand, contributing to the economic development of the Merrylands Town Centre. The floor to ceiling heights of the commercial tenancies provide flexibility in the future, should the demand for commercial floor space increase. A mix of residential dwelling types have been provided and the development has been designed to incorporate a high level of amenity for the residential units, through the provision of communal open space offering a range of facilities. Pedestrian and vehicular access to the development is provided, through the delivery of Main Lane and pedestrian footpaths. The landscaping proposed enhances the public domain and contributes to the provision of a high level of amenity.

3. a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? And;

Applicant's justification:

Strict compliance with the prescriptive FSR requirement is unreasonable and unnecessary in the context of the proposal and its circumstances.

The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The proposal will not have any adverse effect on the surrounding locality, which will be characterised by mixed use development of comparable height and character. The proposal promotes the economic use and development of the land consistent with its zone and purpose.

Planner's comment:

Strict compliance with the maximum FSR requirement is considered unreasonable and unnecessary in the context of this application, given that the non-compliance is in response to the reduction in site area (as a result of the SP2 zoned land being excluded from the site area), for the purpose of calculating FSR. The non-compliance facilitates the harvest of the floor area benefit of the SP2 zoned land, which was lost when the land was rezoned from B4 Mixed Use to SP2 Local Road.

- b) Are there sufficient environmental planning grounds to justify contravening the development standard and therefore is the applicant's written justification well founded?

Applicant's justification:

In relation to environmental planning grounds the variation to the FSR standard is satisfactory on these grounds for the following reasons:

- The proposal provides a suitable and sustainable quantum of non-residential floor space and complies across the entirety of the site area and enables a suitable development outcome on the site.*

- *The technical departure to the FSR standard furthers the objects of the Environmental Planning and Assessment Act 1979 as set out below:*
 - *To promote the orderly and economic use and development of land whereby strict compliance would hinder achievement of this and would present underdevelopment of the land and below the planned development density for the site;*
 - *To promote the delivery of affordable housing through increased housing supply and a larger proportion of studio and 1 bedroom apartments to align with the market analysis by AEC Group;*
 - *To promote good design and amenity of the built environment.*

Planner's comment:

The variation to the maximum FSR development standard is considered acceptable on environmental planning grounds and the Applicant's written justification is well founded.

Conclusion:

Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6 subclause (3). Council is further satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

It is the view of Council Officers that justification provided is satisfactory and having considered the application on its merit, the exception to the maximum floor space ratio development standard is considered acceptable in this instance.

(d) Clause 4.6 – Variation to Residential Floor Space Ratio Split

Clause 4.6 allows the consent authority to vary development standards in certain circumstances and provides an appropriate degree of flexibility to achieve better design outcomes. The consent authority may grant the exception as the Secretary's concurrence can be assumed where clause 4.6 is adopted as per the Department of Planning Circular PS 18-003, dated 21 February 2018.

The applicant has submitted a written request to vary the development standards for FSR. Based on various case laws established by the Land and Environment Court of NSW such as *Four2five P/L v Ashfield Council [2015] NSWLEC 9*, *Randwick City Council v Micaul Holdings P/L [2016] NSW LEC7* and *Zhang and anor v Council of the City of Ryde [2016] NSWLEC 1179*, a 3 part assessment framework for a variation request proposed under clause 4.6 has been considered and an assessment of the proposed variance, following the 3 part test is discussed in detail below.

The 3 preconditions which must be satisfied before the application can proceed are as follows:

1. Is the proposed development consistent with the objectives of the zone?

Applicant's justification:

The proposal is consistent with the objectives of the zone, providing a mixture of compatible uses and for redevelopment in an accessible location that will further

the objective to maximise public transport patronage as well as encouraging walking and cycling.

The proposal provides for a vibrant mixed use development with active retail, commercial and other uses at the ground floor level.

The development proposal encourages the development and expansion of business activities that will strengthen the economic and employment role of the Merrylands Town Centre- noting the quantum of business floor space has been considered in detail by AEC Group as part of the Market Assessment which confirms the suitability of the quantum of floor space provided for commercial uses.

The proposal is consistent with the future desired character of the area as envisaged by the current planning controls. The proposal is consistent with the objectives of Clause 4.6 and the B4 Mixed Use Zone.

Planner's comment:

The development is consistent with the zone objectives, as the proposal incorporates a mix of commercial, retail, child care and residential land uses across the site. The development is centrally located within the Merrylands Town Centre, with access to public transport. The development encourages pedestrian movement with pedestrian links through the site and provides bicycle parking to encourage cycling as a mode of transport. The ground levels of all buildings provide commercial and retail land uses to encourage activation of the street frontages to Merrylands Road, McFarlane Street and Treves Street. The built form of the development at the lower levels provides a degree of flexibility for the potential future expansion of commercial tenancies, in response to growth of the economic and employment role of the Merrylands Town Centre.

2. Is the proposed development consistent with the objectives of the development standard which is not met?

Applicant's justification:

The current development proposal is entirely consistent with the above objectives and is considered to be appropriate on environmental planning grounds based on the following:

- The proposed building exhibits a bulk and scale that is consistent with the desired future character of the locality. Following discussions with Council staff and urban designers it is agreed that the proposal represents a suitable and preferable density, bulk and scale that is consistent with the desired future character of the Merrylands Town Centre.*
- The variation is a function of the desire to achieve a built form outcome that appropriately arranges floor space across the large site, to achieve superior amenity and urban design outcomes to an alternative compliant floor space allocation. The allocation of floor space across the site has been undertaken in consultation with Council to provide more residential floor space where there is less desire for commercial uses and noting the design scheme provides streetscape activation to the ground floor areas and a full commercial level at the first floor The proposed departure to the*

FSR 'split' control has no additional adverse impact as it simply allocates a different, and more suitable, mix of residential to non-residential.

- The proposed additional floor space results in a high quality development that is an improved Urban Design outcome with the series of towers. The removal of the residential floor space would result in its redistribution to other parts of the site and a poorer urban design outcome.*
- The proposed development will permit the site to develop to its full zoning potential whilst complementing the future vision envisioned for the site by providing a landmark development that provides high quality address and activation to the street frontage and meeting the intent of the key planning controls applying to the proposal.*
- The development proposal provides a sympathetic, activated street frontage that addresses the context, streetscape and future character of the Town Centre and adjoining developments. The development provides a mix of dwellings that will contribute towards increasing housing choice, diversity and stock of Holroyd LGA.*
- The proposal provides for a variety of housing type with a mix of 1, 2, and 3 bedroom units and provides for a higher number of studio and 1 bedroom units to respond to the identified market demand set out in the AEC Group report. This directly satisfies objective b).*
- The proposal provides for high levels of amenity given the manipulation of the DCP envelopes to ensure a suitable laneway response and through site movements.*
- The development proposal provides for a suitable amount of commercial space on the site in those areas which are most amenable to the delivery of this space- i.e. along the most active frontages. Further the AEC Group Economic Impact Assessment report sets out the quantum of residential to non-residential floor space is suitable and the most appropriate mix given Merrylands Town Centre context noting the proposal provides a greater proportion of GFA for commercial and retail space than would typically be associated with a development of this scale and it further notes that retail space is at a slightly oversupply at this time. This directly satisfies objective a).*

Planner's comment:

The proposed development is considered to be consistent with the objectives of the development standard, given that the development is providing residential and commercial floor space in response to the current market demand, contributing to the economic development of the Merrylands Town Centre. The floor to ceiling heights of the commercial tenancies provide flexibility in the future, should the demand for commercial floor space increase. A mix of residential dwelling types have been provided and the development has been designed to incorporate a high level of amenity for the residential units, through the provision of communal open space offering a range of facilities. Pedestrian and vehicular access to the development is provided, through the delivery of Main Lane and pedestrian footpaths. The landscaping proposed enhances the public domain and contributes to the provision of a high level of amenity.

3. a) Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? And;

Applicant's justification:

Strict compliance with the prescriptive FSR 'split' requirement is unreasonable and unnecessary in the context of the proposal and its unique circumstances. The proposed development meets the underlying intent of the control and is a compatible form of development that does not result in unreasonable environmental amenity impacts.

The design response aligns with the intent of the control and provides for an appropriate transition to the adjoining properties.

The proposal promotes the economic use and development of the land consistent with its zone and purpose.

Planner's comment:

Strict compliance with the maximum residential FSR requirement is considered unreasonable and unnecessary in this instance, having regard to the findings of the Economic Impact Assessment (EIA) submitted with the application and the current socio-economic climate, the proposed variation to the maximum residential FSR is supported.

b) Are there sufficient environmental planning grounds to justify contravening the development standard and therefore is the applicant's written justification well founded?

Applicant's justification:

In relation to environmental planning grounds the variation to the FSR standard is satisfactory on these grounds for the following reasons:

- *The proposal provides a suitable and sustainable quantum of non-residential floor space and then replaces the excess non-residential floor space, beyond that which the market can handle, as demonstrated by the Economic Impact Assessment report, with residential floor space;*
- *To require strict compliance with the technical application of the FSR split development standard would lead to a development of a density below that planned by the nominated and mapped FSR standard noting that the proponent would not deliver greater non-residential floor space that currently proposed owing to the lack of demand and viability;*
- *The technical departure to the FSR standard furthers the objects of the Environmental Planning and Assessment Act 1979 as set out below:*
 - *To promote the orderly and economic use and development of land whereby strict compliance would hinder achievement of this and would present and underdevelopment of the land and below the planned and mapped maximum FSR for the land;*
 - *To promote the delivery of affordable housing through increased housing supply and a larger proportion of studio and 1 bedroom apartments to align with the market analysis by AEC Group;*
 - *To promote good design and amenity of the built environment.*

Planner's comment:

The variation to the maximum residential FSR development standard is considered acceptable on environmental planning grounds and the Applicant's written justification is well founded.

Conclusion:

Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6 subclause (3). Council is further satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

It is the view of Council Officers that justification provided is satisfactory and having considered the application on its merit, the exception to the residential floor space ratio split development standard is considered acceptable in this instance.

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

(a) Draft State Environmental Planning Policy (Draft Environment Policy)

The draft SEPP relates to the protection and management of our natural environment with the aim of simplifying the planning rules for a number of water catchments, waterways, urban bushland, and Willandra Lakes World Heritage Property. The changes proposed include consolidating the following seven existing SEPPs:

- State Environmental Planning Policy No. 19 – Bushland in Urban Areas
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011
- State Environmental Planning Policy No. 50 – Canal Estate Development
- Greater Metropolitan Regional Environmental Plan No. 2 – Georges River Catchment
- Sydney Regional Environmental Plan No. 20 – Hawkesbury-Nepean River (No.2-1997)
- Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005
- Willandra Lakes Regional Environmental Plan No. 1 – World Heritage Property.

The draft policy will repeal the above existing SEPPs and certain provisions will be transferred directly to the new SEPP, amended and transferred, or repealed due to overlaps with other areas of the NSW planning system.

Changes are also proposed to the Standard Instrument – Principal Local Environmental Plan. Some provisions of the existing policies will be transferred to new Section 117 Local Planning Directions where appropriate.

(b) Draft Housing Diversity State Environmental Planning Policy (Draft Housing Diversity SEPP)

The proposed Housing Diversity SEPP is a government-led action to address housing diversity and affordability, in line with the proposed NSW Housing Strategy and sets a 20 year vision for housing in NSW. The Draft Housing Diversity SEPP is currently on public exhibition until 6 September 2020.

The Draft Housing Diversity SEPP will consolidate three housing-related SEPPs:

- State Environmental Planning Policy (Affordable Rental Housing) 2009
- State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004

- State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes)

The Draft Housing Diversity SEPP seeks to undertake the following:

- introduce new definitions for build-to-rent housing, student housing and co-living;
- amend some state-level planning provisions, particularly for boarding house and seniors housing development;
- amend some state-level planning provisions to support social housing developments undertaken by the NSW Land and Housing Corporation (LAHC) on government-owned land.

Documentation submitted with the application suggests that the proposed development will provide a component of 'build-to-rent' (BTR) units. The Draft Housing Diversity SEPP is seeking to introduce a new definition to the Standard Instrument – Principal Local Environmental Plan for BTR housing, to refer to a building or place that:

- contains at least 50 self-contained dwellings that are offered for long term private rent;
- is held within a single ownership;
- is operated by a single management entity; and
- includes on-site management.

In recognition of the growing need for secure, long term rental options and support new investment, especially in the recovery phase of COVID-19, the Government is proposing to incentivise the delivery of build-to-rent (BTR) housing through the NSW planning system. BTR housing is purpose-built rental housing, held in single ownership and professionally managed. It is designed to attract institutional investment and provide for a more stable rental sector.

BTR housing is generally:

- high density development;
- situated in well-located areas, close to transport and amenity;
- funded by larger-scale institutional investors; and
- focused on providing a good experience for tenants through the provision of on-site services and facilities, professional management and long-term leases.

BTR housing has the potential to provide long lasting community benefits, with greater housing choice for tenants who would have access to high-quality dwellings, in a stable rental environment. Increased rental security may also have wider social and economic benefits, with tenants better able to establish themselves in a community.

There are currently no impediments in the NSW planning system to the development of new housing for rental purposes. However, given the potential social and economic benefits of expanding the local BTR industry, the NSW Government is seeking to provide more certainty for this type of development with a proposed new definition and specific planning provisions. The Government is encouraging the development of BTR housing as it responds to the need for more rental housing during the recovery from COVID-19 and would generate more construction jobs.

The proposed development would meet the above proposed definition of BTR housing, given the high density of the development, its central location within the Merrylands Town Centre and the proximity of the site to public transport and facilities. The development would have the potential to contribute positively to the issue of housing affordability through the provision of increased rental security, with prospective tenants better able to establish themselves in the community, through the provision of a stable rental market.

(c) Draft Cumberland Local Environmental Plan 2020 (Draft CLEP)

The Draft Cumberland Local Environmental Plan 2020 (Draft CLEP) has been prepared by Cumberland City Council to provide a single planning framework for the future planning of Cumberland City. The changes proposed seek to harmonise and repeal the three existing LEPs currently applicable to the Cumberland local government area, those being:

- Holroyd Local Environmental Plan 2013,
- Parramatta Local Environmental Plan 2011, and
- Auburn Local Environmental Plan 2010.

The Draft CLEP was publicly exhibited on 30 March 2020 for a period of six (6) weeks. A submission was received by Council which requested amendments to the current planning controls for the site the subject of this application, to facilitate the inclusion of the SP2 zoned laneway land for purpose of calculating site area and FSR. A request was also made to amend the maximum residential FSR requirement for the site.

Council has considered this submission and resolved to include amendments to the current planning controls for the site in the Draft CLEP, as follows:

- Apply a site-wide maximum FSR of 5.5:1; and
- Apply a minimum non-residential FSR of 0.9:1.

The Draft CLEP has been endorsed by Council and is currently with the Department for finalisation and gazettal.

The Proposal and the Draft CLEP

Having regard to the maximum FSR amendment, the proposed development maintains a total FSR of 6.19:1. The inclusion of the 0.5:1 FSR bonus afforded by Clause 6.11 of the HLEP generates a maximum allowable FSR of 6:1 for the site. The proposed development presents a GFA exceedance of 2,212m², or a variation of 3.2 percent from the proposed maximum FSR of 6:1 (inclusive of design excellence bonus).

Considering the amendment to the maximum residential FSR required, the proposed development maintains a non-residential GFA of 9,163m², which equates to a non-residential FSR of 0.8:1. Whilst this is below the proposed minimum 0.9:1, this variation is considered acceptable, having regard to the discussion in the Economic Impact Assessment (EIA) prepared by AEC Group Ltd, which acknowledges the proximity of the site to the Stockland Merrylands Shopping Centre, which is situated directly north of the site and has a gross leasable area (GLA) of 59,499m². The centre includes six

major retailers including ALDI, Coles, Woolworths, Big W, Kmart and Target. There are also five mini-majors and over 200 specialty stores including a childcare centre.

In considering the proposed commercial and retail GFAs, the EIA acknowledges:

The proposed retail GFA represents approximately 6.6% of total GFA or 0.38:1 of FSR, we consider a suitable range for a proposal such as the subject (within this location) to be in the order of 2-5% of total GFA, the balance of which could be redirected towards additional residential dwellings (where primary demand is considered to lie).

Overall, given the subjects non-core commercial office location and prevailing market conditions, we would envisage demand for office accommodation within the proposed development to be relatively subdued. Although the proposed commercial GFA represents approximately 5.3% of total GFA or 0.3:1 of FSR, we consider a suitable range for a proposal such as the subject (within this location) to be in the order of 2-5% of total GFA.

The EIA relevantly surmises that overall, given the subjects location directly opposite Stockland Merrylands Shopping Centre our analysis of the surrounding catchment (working off a benchmark of 2.2m² per capita of retail floorspace) would indicate a slight oversupply. Whilst noting the proposed retail tenancies would directly benefit from the proposed residential dwellings above and potential overflow synergies from Stockland Merrylands Shopping Centre, we consider vacancy and downtime would be protracted under prevailing market conditions.

It is further acknowledged that the proposed floor to ceiling heights of the retail and commercial tenancies within the development vary from 3.6 metres to 6.2 metres, which provide a degree of flexibility in the future, for the potential provision of additional floor space, should demand for commercial floor space increase.

Considering the above findings of the EIA and the current socio-economic climate, coupled with the proposed flexibility in built form, the proposed non-residential FSR of 0.8:1 is supported.

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

The Holroyd Development Control Plan (2013) provides guidance for the design and operation of development to achieve the aims and objectives of the HLEP 2013.

A comprehensive HDCP 2013 assessment and compliance table is contained in **Attachment 10**.

The following table highlights non-compliances with the HDCP 2013. The variations sought are considered satisfactory on merit in this instance:

CLAUSE	CONTROL	PROPOSED	SUPPORTED
PART A GENERAL CONTROLS			
3.1 Minimum parking spaces	Commercial (including retail premises, business premises and office premises) – B4 zone -	Total commercial (including retail, excluding child care centre) = 8,411m ² Minimum = 169 spaces	Yes

	<p>1 per 50sqm (minimum) and 1 per 15sqm (maximum)</p>	<p>Maximum = 561 spaces</p> <p>The development provides a total of 93 commercial/retail car parking spaces, a deficit from the minimum requirement of 76 spaces.</p> <p>In this regard, it is noted that the ADG requirement for residential and visitor spaces is 603 spaces and 158 spaces, respectively. The development is proposing a total of 671 residential spaces and 157 visitor spaces.</p> <p>In terms of the required number of spaces in each basement, the following has been calculated:</p> <p><u>Basement 1:</u> 329 residential spaces 86 visitor spaces 15 child care centre 125 commercial spaces</p> <p><u>Basement 2:</u> 275 residential 73 visitor 44 commercial spaces</p> <p>The proposed carparking spaces are allocated as follows:</p> <p><u>Basement 1 (Northern wing)</u> Residential – 343 spaces Visitor – 86 spaces Commercial (incl. retail) – 93 spaces Child care centre – 15 spaces</p> <p><u>Basement 2 (Southern wing)</u> Residential – 328 spaces Visitor – 71 spaces</p> <p>A condition of consent has been recommended to amend the car parking allocation, to</p>	
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		<p>provide the following spaces per basement:</p> <p><u>Basement 1 (Northern wing)</u> Residential – 329 spaces Visitor – 86 spaces Commercial (incl. retail) – 107 spaces Child care centre – 15 spaces</p> <p><u>Basement 2:</u> 275 residential 73 visitor 51 commercial spaces</p> <p>This results in a cumulative deficit of 11 commercial car parking spaces, noting this comprises a deficit of 18 spaces in Basement 1 with a surplus of 7 spaces in Basement 2.</p> <p>The deficit of 11 commercial spaces is supported by Council.</p> <p>It is noted that the residential and visitor parking provided complies with the car parking requirements of the ADG. The child care centre parking provided complies with the HDCP 2013.</p>	
<p>7. Residential Mix for Business Zoned land</p>	<p>C1. Mixed use developments and shop top housing shall provide a variety of residential unit mix and layouts within each residential development.</p> <p>C2. A mix of residential unit accommodation shall be provided, involving no less than 10% of either: studio/one bedroom, two-bedroom, three-bedroom units. Minimum net unit area as follows:</p> <ul style="list-style-type: none"> • Minimum studio size of 40m² 	<p>A total of 790 residential units are proposed, with the following unit mix:</p> <ul style="list-style-type: none"> • 129 x Studios (16.3%) • 264 x 1 Bedroom Unit (33.4%) • 379 x 2 Bedroom Unit (48.0%) • 18 x 3 Bedroom Unit (2.28%) <p>A total of 50% of the units proposed comprise studio/1 bedroom units. This is 30% over the maximum 20%.</p>	<p>Yes</p>

	<ul style="list-style-type: none"> • One bedroom unit size 50m² • Two bedroom unit size 70m² • Three bedroom unit size 95m² <p>C3. Studios and one bedroom units are not to be greater than 20% of the total mix within each development.</p>	<p>Having regard to this variation, the application has been accompanied by an Economic Impact Assessment (EIA) prepared by AEC Group Pty Ltd, which relevantly provides:</p> <p><i>As at the date of the 2016 Census, the median age of residents in Merrylands was 32 years of age, aligning with the broader Cumberland LGA.</i></p> <p><i>Both Merrylands and Cumberland LGA have a younger median age than Greater Sydney (36 years of age) and New South Wales (38 years of age).</i></p> <p><i>Historically, the age structure of Merrylands has closely aligned with the Cumberland LGA, with a large proportion of the population aged between 0 years and 39 years (representing approximately 62.5% of the population as at 2018).</i></p> <p><i>Population forecasts suggest residents (between the ages of 20-29) will still remain one of the dominant age cohorts in Merrylands (representing some 17.8% as at 2018) over the coming decades to 2036. Whilst we note population forecasts are expected to decrease for this age cohort (projected at 17.5% in 2036), the increasing disposition of residents delaying having children or deciding altogether to not have children may also impact the next largest cohort (residents aged between 30-39) in terms of dwelling requirement (potentially leading to a preference for smaller more practical and</i></p>	
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		<p><i>affordable studio and 1 bedroom apartments for example).</i></p> <p><i>Further, anecdotal evidence suggests the primary buyer category for studio and 1-bedroom apartments is typically younger/first home buyers between the ages of 20-29. This would indicate the likely increasing demand for smaller, more affordable dwellings including studio/1-bedroom housing particularly within close proximity to amenities and transportation links.</i></p> <p><i>According to the ABS (Census of Population and Housing 2016), Merrylands comprised some 9,975 households in 2016 (13.8%) of the 72,157 households recorded in the Cumberland LGA. Family households represent the largest proportion in Merrylands at 71.8%, comparatively similar as compared with Cumberland LGA at 73.3% and Parramatta LGA at 71.2%.</i></p> <p><i>However, lone person households in Merrylands represent the second largest proportion of the population at 19.2%, which we note is higher than both Cumberland and Parramatta LGAs (albeit not by a significant margin).</i></p> <p><i>In accordance with the draft Cumberland 2030 Local Strategic Planning Statement, Merrylands is noted as the largest centre within the Cumberland LGA and that Council believes that Merrylands has the potential to be defined as a strategic</i></p>	
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		<p><i>centre in the District hierarchy, based on the range of services and potential to expand to provide additional housing.</i></p> <p><i>Analysis of Department of Planning, Industry and Environment (DPIE) household projections and implied dwelling requirements, it can be observed that Lone Person households are projected to show the largest increase at 2.4% from 2011 to 2036.</i></p> <p>The above is consistent with the findings of the Cumberland City Council Housing Needs Analysis (February 2020), which has informed the preparation of the Cumberland Local Housing Strategy (2020) (LHS).</p> <p>The Housing Needs Analysis states that “there is growing demand in Cumberland for one to two bedroom housing suitable for lone person households. It is expected that there will be an increase in number of lone person households over 20 years especially around the areas convenient to travel, along the train line corridor”.</p> <p>The LHS further expands this point, stating “the Cumberland LGA is projected to experience growth in lone person households in 2036, increasing from 17.1% to 19.5%. Couples without children will comprise a similar proportion of the population as in 2016, representing 19.3% of households in the Cumberland LGA”.</p>	
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		<p>The EIA further states <i>given the proposal by Coronation to substantially increase the amount of studio and 1 bedroom dwellings per their concept plan, it could be considered the project may be supplying a meaningful amount of stock towards the largest projected growing cohort (based on percentage increase) within the LGA.</i></p> <p>Having regard to the Cumberland LHS and the EIA submitted with the application, it is apparent that there is projected demand for one bedroom/studio units and 2 bedroom units in the Cumberland LGA.</p> <p>Merrylands is identified in the LHS as a proposed Strategic Centre. Given the demographic statistics and the proposed status of Merrylands as a Strategic Centre and the proximity of the site to public transport, the proposed proportion of one bedroom/studio units is considered acceptable, in that it is consistent with the Cumberland LHS.</p>	
PART I CHILD CARE CENTRE CONTROLS			
1. Size, Density and Location	C3. If the proposed child care centre is to be located in a building consisting of more than one level, the child care centre component must be located on the ground floor of the buildings with office and storage space permitted on the upper level. Note: Council encourages the use of single storey buildings for child care centres.	The proposed child care centre is located on Level 1 of Building B, as the Ground Level is occupied by commercial and retail tenancies. The child care centre is across a single level and has direct access from the basement, where there are 15 allocated car parking spaces and a dedicated child care drop off area on the first basement level.	Yes

	<p>C8. Child care centres shall not be located having frontage to an arterial or sub-arterial road (see Appendix 1).</p>	<p>Merrylands Road is identified in Appendix 1.</p> <p>The child care centre is located above street level on Level 1 of Building B and gains access directly from the first level of basement parking, with designated child care centre parking and a drop off area with direct access to the child care centre lift lobby. Having regard to child safety, the internal access to the child care centre is considered a positive in ensuring that parents and children access the centre securely. Having regard to acoustic impacts, the application has been accompanied by an Acoustic Report which has considered the acoustic impacts of Merrylands Road on the development. Conditions of consent have been recommended by Council's EHU team.</p> <p>Having regard to the safety of children and traffic and acoustic impacts, the proposed departure from the control is considered acceptable.</p>	Yes								
PART M MERRYLANDS CENTRE CONTROLS											
<p>4.3 Street setbacks, road widening and street frontage heights</p>	<p>C7. Upper level (above street wall) street frontage setbacks for Merrylands Road, McFarlane Street and Pitt Street will be based on storey height, in accordance with the table below and Figure 7:</p> <table><tr><th>Storeys</th><th>Street frontage setback (m)</th></tr><tr><td>4-8</td><td>4</td></tr><tr><td>9-12</td><td>5</td></tr><tr><td>13-20</td><td>6</td></tr></table>	Storeys	Street frontage setback (m)	4-8	4	9-12	5	13-20	6	<p>The proposed building setbacks to Merrylands Road of Buildings C, D and E range from 4.27m to 4.86m from Level 3 and above.</p> <p>This variation is considered acceptable as the development maintains a consistent frontage to Merrylands Road and the development presents a built form which is of a scale that enhances the amenity of the streetscape.</p>	Yes
Storeys	Street frontage setback (m)										
4-8	4										
9-12	5										
13-20	6										

10.3.1 Street Network	C1. Provide new laneways in accordance with Figure 6.	<p>It is acknowledged that the SP2 zoned laneway configuration deviates from the schematic laneway location in the HDCP 2013. The laneway location and layout is however consistent with the alignment of the SP2 zoned land in the HLEP 2013. In this instance, it is considered appropriate for the zoning of the land to take precedent over the DCP alignment.</p> <p>The proposed alignment is consistent with the laneway configuration approved previously under DA2016/127 and has been assessed by Council's Development and Traffic Engineers to be deemed acceptable.</p>	Yes
10.6.5 Street Wall Heights	<p>C1. Street wall heights of buildings (podium) shall be 3 storeys.</p> <p>C2. The 3-storey street wall height applies to a site's primary frontage.</p> <p>C3. Where a site has frontage to a laneway, a maximum two storey street wall height is to be maintained. Refer Figure 13.</p>	<p>Whilst the street wall comprises 2 storeys for the site's primary frontages and 1storey to the laneway, the street wall heights are generally achieved.</p> <p>The 2 storey wall height achieves a minimum 11m and the 1 storey wall height achieves a minimum 7.5m wall height, just under the minimum 8m height required.</p> <p>Despite the variation from this control, the development is considered satisfactory as it maintains the objectives of the control, in that the development presents building heights at the street level that are at a human scale and it provides a degree of prominence to the street level by establishing a clear presence for retail and it increases the visibility, marketability and utility of ground floor space.</p>	Yes

Table 9: HDCP 2013 Non-compliance Table

As indicated in the compliance table above, the proposed development departs from the controls of the HDCP 2013 in relation to the provision of car parking, residential mix, child care centre location, street setbacks to Merrylands Road, and street wall heights and the location of Main Lane.

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 above.

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 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 Regulations 2000 (EP&A Reg).

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

The proposed development is contributing to the revitalisation of the Merrylands Town Centre through the provision of mixed use development, including residential and commercial land uses as well as a child care centre. The development is providing positive economic benefit to the Merrylands local centre as well as the broader Cumberland LGA, through the generation of employment during the construction phase of the development as well as the ongoing use of the development with the provision of commercial and retail tenancies. The proposed development is providing a housing mix which is responsive to the findings of the Cumberland LHS and which contributes to the provision of affordable housing in proximity to public transport and services to meet the social needs of residents in the Cumberland LGA.

Having regard to the above, it is considered that the proposed development does not present any 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 (newspaper) ☒ Mail ☒ Sign ☒ Not Required ☐

In accordance with Council's Notification requirements contained within the, the proposal was publicly notified for a period of 31 days between 6 May 2020 and 5 June 2020. The notification generated two (2) submissions in respect of the proposal with no submissions

disclosing a political donation or gift. The issues raised in the public submissions are summarised and commented on as follows:

Issue	Planner's Comment
<p><i>This proposal is suggesting the provision of parking as minimum 826 and maximum 955. They may contribute to Council for car park but the issue would be there will still be insufficient spaces provided and when will Council deliver the public carparks.</i></p>	<p>It is acknowledged that Section 3.1 of the HDCP 2013 provides an allowance for a minimum rate of 20% and maximum rate of 70% of car parking to be provided on-site for commercial land uses, if a contribution is made in accordance with a Section 94 Plan that makes an allowance for such a contribution.</p> <p>The Contribution Plan currently in force is the Cumberland Local Infrastructure Contribution Plan 2020. The previous allowance made in the now repealed Holroyd Council Section 94 Contributions Plan 2013 is no longer in the current Contribution Plan.</p> <p>On this basis, a condition of consent has been recommended requiring the reallocation of the car parking spaces provided in each of the proposed basements. This reallocation results in the development having a total shortfall of 11 commercial car parking spaces. This shortfall has been considered by Council and is considered satisfactory on merit.</p>
<p><i>The Eat Street intersection at McFarlane Street is too close to the intersection of Treves Street and this will cause traffic safety issues and congestion.</i></p>	<p>Council's Development Engineer has reviewed the proposed location of the Eat Street intersection with McFarlane Street and the location is considered acceptable from a traffic perspective, the Eat Street driveway is located greater than 6 metres from the tangent point of the kerb at the intersection, in compliance with the provisions of the HDCP 2013.</p> <p>It is acknowledged that Eat Street will be a left-out only turn onto McFarlane Street, i.e. one-way. Further, a condition of consent has been recommended to ensure that Eat Street maintains a primarily pedestrian function, with limited access for vehicles.</p>
<p><i>The location of Eat Street results in a staggered intersection with the entrance to the Stockland Mall carpark.</i></p>	<p>Council's Development Engineer has reviewed the proposed location of the Eat Street intersection with the entrance to the Stockland Mall carpark and the location is considered acceptable from a traffic perspective.</p>

<p><i>The proposed Eat Street laneway is not designated in Council's LEP.</i></p>	<p>It is acknowledged that the Eat Street alignment is not zoned SP2 Infrastructure in accordance with the HLEP 2013. Eat Street is proposed across B4 Mixed Use land and is proposed to be maintained in private ownership, with a right of way created over the land to facilitate access.</p>
<p><i>The laneway height profile at the rear of 40 McFarlane Street is unknown – the road may be too high at the rear.</i></p>	<p>The final laneway height profile is in the process of being finalised with Council's Engineering department. This information can be provided once it is available.</p>
<p><i>There are current flooding issues on McFarlane Street and this proposal will only increase the flooding. Before this proposal is considered all new stormwater and laneway construction should be in place.</i></p>	<p>Council's Development Engineers have assessed the proposed stormwater concept design and have recommended conditions of consent to ensure the provision of adequate stormwater and OSD management. Having regard to the re-alignment of the existing Sydney Water channel, deferred commencement conditions of consent have been recommended to ensure that the Applicant liaise with Sydney Water and Council to ensure suitable arrangements are made to facilitate the re-alignment works. Having regard to the construction of Main Lane, a temporary road is proposed for the duration of the construction works, with the final road to be constructed in accordance with Council specifications and dedicated to Council, prior to the issue of an Occupation Certificate for the final building within the development.</p>
<p><i>This proposal will only increase run offs from the proposed impervious areas and increase flooding. The OSD does not entirely compensate the storage detention.</i></p>	<p>Council's Development Engineers have assessed the proposed stormwater concept design and have recommended conditions of consent to ensure the provision of adequate stormwater and OSD management.</p>
<p><i>The child care facility at this location is not permissible under Council's DCP. There are many child care centres with a 5km radius from this site.</i></p>	<p>It is acknowledged that there is a control in the HDCP 2013 at Part I (Child Care Centres) which states that child care centres shall not be located on arterial or sub-arterial roads, including Merrylands Road.</p> <p>The child care centre is located above street level at Level 1 of Building B and gains access directly from the first level of basement parking, with designated child care centre parking and a drop off area with direct access to the child care centre lift lobby. Having regard to child safety, the</p>

	<p>internal access to the child care centre is considered a positive in ensuring that parents and children access the centre securely. Having regard to acoustic impacts, the application has been accompanied by an Acoustic Report which has considered the acoustic impacts of Merrylands Road on the development. Conditions of consent have been recommended by Council's EHU team.</p> <p>Having regard to the safety of children and traffic and acoustic impacts, the proposed departure from the control is considered acceptable and is supported.</p>
<p><i>The bulk and scale of this development is excessive and this proposal is seeking a height bonus (up to 10%) and is not consistent with Council's DCP. This proposal will disadvantage neighbouring properties.</i></p>	<p>On 6 August 2020, the Cumberland DEP granted a Design Excellence Certificate in accordance with the provisions of Clause 6.11(4)(a) of the HLEP 2013. The Certificate has been granted, subject to the inclusion of conditions of consent relating to amendments to the utility, size and character of the communal open space areas and the use of Eat Street as a primarily pedestrian space.</p> <p>A copy of the Design Excellence Certificate is attached at Attachment 7 of this Report for the consideration of the Panel.</p>
<p><i>I fail to see how a BTR project with 60% designated as BTR units will really help housing affordability for renters or buyers in Merrylands.</i></p> <p><i>Does this BTR composition allow more premium rents to be charged, through the provision of all sorts of shared amenities – as quoted by the NAB Head of Real Estate?</i></p> <p><i>I suggest such amenity provision - if it increases rents - is unsuitable for this LGA - remembering that residents in the Cumberland LGA earn well below the average for Greater Sydney.</i></p>	<p>It is acknowledged that documentation submitted with the application suggests that the proposed development will provide a component of 'build-to-rent' (BTR) units.</p> <p>In recognition of the growing need for secure, long term rental options and support new investment, especially in the recovery phase of COVID-19, the NSW Government is proposing to incentivise the delivery of build-to-rent (BTR) housing through the NSW planning system and has prepared the Draft Housing Diversity SEPP.</p> <p>The Draft Housing Diversity SEPP is seeking to introduce a new definition to the Standard Instrument – Principal Local Environmental Plan for BTR housing, to refer to a building or place that:</p>

	<ul style="list-style-type: none"> • <i>contains at least 50 self-contained dwellings that are offered for long term private rent;</i> • <i>is held within a single ownership;</i> • <i>is operated by a single management entity; and</i> • <i>includes on-site management.</i> <p>The NSW Government has also recently announced its intention to introduce a land tax discount for new build-to-rent housing projects until 2040, to provide more housing options, greater surety for renters, boost construction and support jobs during the COVID-19 recovery.</p> <p>The discount will be equivalent to at least a 50 per cent reduction in land tax, dependent on the unimproved land value. To be eligible for the discount, a build-to-rent development in metropolitan areas must be at least 50 units, with a different threshold for regional areas to be considered.</p> <p>In considering the BTR concept and tax cuts, the NSW Government has acknowledged:</p> <p><i>“Renters benefit through greater choice and because the focus is placed on them, rather than just geared towards property owners, it has an added benefit of encouraging better quality rental properties and much longer-term leases.</i></p> <p><i>“This will provide further confidence, boost the housing construction industry, create more options for investors and builders of developments and ultimately more housing options and security for tenants.”</i></p> <p>The proposed development would meet the above proposed definition of BTR housing, given the high density of the development, its central location within the Merrylands Town Centre and the proximity of the site to transport and facilities. The development would have the potential to contribute positively to the issue of housing affordability through the provision of increased rental security, with prospective tenants better able to establish themselves</p>
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	in the community, through the provision of a stable rental market.
<i>No development here should be including communal kitchen and dining facilities, a lounge room etc. These amenities are likely to be untidy, unhealthy, unhygienic and an eyesore. With no disrespect to anyone, this won't be an exclusive property maintained like those for the wealthier residents on the north shore or in the eastern suburbs.</i>	The provision of a range of facilities within the communal open space areas of the development facilitate compliance with the provisions of the ADG, specifically Objective 3D-2 (Communal and Public Open Space), by allowing for a range of activities. The maintenance of these areas is an operational matter for the building manager and conditions of consent have been recommended to ensure that these areas are kept in a tidy and clean state.
<i>And how will an apartment block - now in a world contaminated with covid-19 handle shared facilities? I gather these facilities are supposed to add value - but probably will be a wasted space - or now even a dangerous space.</i>	The maintenance of communal areas is an operational matter for the building manager and conditions of consent have been recommended to ensure that these areas are kept in a tidy and clean state.
<i>50% of units proposed are studio and 1 bedroom apartments - there is a 150% percent non-compliance with Council's controls regarding apartment mix.</i>	Having regard to the Cumberland LHS and the EIA submitted with the application, it is apparent that there is projected demand for one bedroom/studio units and 2 bedroom units in the Cumberland LGA. Merrylands is identified in the LHS as a proposed Strategic Centre. Given the demographic statistics and the proposed status of Merrylands as a Strategic Centre and the proximity of the site to public transport, the proposed proportion of one bedroom/studio units is considered acceptable, in that it is consistent with the Cumberland LHS.
<i>The proposed unit mix doesn't match our demographic – with Council's 'Community Profile' reflecting:</i> <ul style="list-style-type: none"> <i>Only 15.6% live in 1 person households (2016) - projected 17.4% (2036)</i> <i>20% live in households of 5 or more persons</i> <i>40% of Cumberland residents live in households of 4 or more persons</i> <i>The average household size is 3.15 persons (2016), projected to be 3.07 in 2036.</i> 	The proportion of studio/1 bedroom units provided as part of the development is responsive to the findings of the Cumberland LHS. Merrylands is identified in the LHS as a proposed Strategic Centre. Given the demographic statistics and the proposed status of Merrylands as a Strategic Centre and the proximity of the site to public transport, the proposed unit mix is considered acceptable. The Housing Needs Analysis states that "there is growing demand in Cumberland for one to two bedroom housing suitable for lone person households. It is expected that there will be an increase in number of lone

<ul style="list-style-type: none"> <i>We also have a growing young family mix - and single parent families - needing more than 1-bedroom dwellings.</i> 	<p>person households over 20 years especially around the areas convenient to travel, along the train line corridor”.</p>
<p><i>There has been no consideration that all lone households and empty nesters don't want only a studio or one-bedroom unit. Empty nesters may want an extra bedroom for visiting offspring - and grandchildren. Even single people (young or old) want a spare bedroom for visitors - or as a study or workspace. And it seems with covid-19 now in existence, provision for a workspace is even more important and perhaps necessary now.</i></p>	<p>The personal preference of lone households, having regard to the number of bedrooms in a unit is not a factor that is numerically quantifiable and does not form a matter for consideration pursuant to Section 4.15 of the EP&A Act.</p> <p>The proportion of studio/1 bedroom units provided as part of the development is responsive to the findings of the Cumberland LHS. Merrylands is identified in the LHS as a proposed Strategic Centre. Given the demographic statistics and the proposed status of Merrylands as a Strategic Centre and the proximity of the site to public transport, the proposed proportion of one bedroom/studio units is considered acceptable.</p>
<p><i>Don't students and younger people, like the rest of the population, seek 2 bedroom accommodations as more appropriate - as shared accommodation is a means to access more comfortable and spacious living arrangements.</i></p>	<p>The personal preference of students and younger people, having regard to the number of bedrooms in a unit is not a factor that is numerically quantifiable and does not form a matter for consideration pursuant to Section 4.15 of the EP&A Act.</p> <p>The proportion of studio/1 bedroom units provided as part of the development is responsive to the findings of the Cumberland LHS. Merrylands is identified in the LHS as a proposed Strategic Centre. Given the demographic statistics and the proposed status of Merrylands as a Strategic Centre and the proximity of the site to public transport, the proposed proportion of one bedroom/studio units is considered acceptable.</p>
<p><i>The provision of all these shared amenities - particularly swimming pools - will make strata fees phenomenal - and will impact the ongoing costs for buyers - as well as the initial purchase price - remembering the demographic of the Cumberland LGA earns well below the average for Greater Sydney.</i></p>	<p>The shared amenities have been proposed to meet the requirements of the ADG, having regard to provision of communal open space. The calculation and charging of Strata fees is a matter independent of Council regulation and is not a matter for consideration under Section 4.15 of the EP&A Act.</p>

<p><i>I question if the proposed development design exhibits 'design excellence' and if it should be afforded a 10% height bonus and 0.5:1 FSR bonus – the proposal seems to smack of 'design compliance' or 'design mediocrity' – not design excellence.</i></p>	<p>On 6 August 2020, the Cumberland DEP granted a Design Excellence Certificate in accordance with the provisions of Clause 6.11(4)(a) of the HLEP 2013. The Certificate has been granted, subject to the inclusion of conditions of consent relating to amendments to the utility, size and character of the communal open space areas and the use of Eat Street as a primarily pedestrian space.</p> <p>A copy of the Design Excellence Certificate is attached at Attachment 7 of this Report for the consideration of the Panel.</p> <p>The development has been designed incorporating the 10% building height bonus and the 0.5:1 FSR bonus.</p>
<p><i>The applicant's 4.6 request should not be approved.</i></p>	<p>The Clause 4.6 requests for variations to the maximum building height, maximum FSR and maximum residential FSR have been assessed and are considered acceptable on merit. Refer to the Clause 4.6 discussion in this Report.</p>
<p><i>The proposal is non-compliant with its ratio of commercial space - providing extra and increased numbers of residential accommodation on the 1st floor - when controls state it should all be commercial space.</i></p> <p><i>This development has residential units located on the 1st floor in Buildings D and E - with no commercial space at all on the 1st floor in these buildings.</i></p> <p><i>Instead there will be 19 more residential units on the 1st floor - with only 10 commercial units proposed for the 1st floor in the other 3 buildings.</i></p>	<p>The proposed development maintains a non-residential GFA of 9,163m², this reduction in provision of commercial space is considered acceptable, having regard to the discussion in the Economic Impact Assessment (EIA) prepared by AEC Group Ltd, which acknowledges the proximity of the site to the Stockland Merrylands Shopping Centre, which is situated directly north of the site and has a GLA of 59,499m². The centre includes six major retailers including ALDI, Coles, Woolworths, Big W, Kmart and Target. There are also five mini-majors and over 200 specialty stores including a childcare centre.</p> <p>In considering the proposed commercial and retail GFAs, the EIA acknowledges:</p> <p><i>The proposed retail GFA represents approximately 6.6% of total GFA or 0.38:1 of FSR, we consider a suitable range for a proposal such as the subject (within this location) to be in the order of 2-5% of total GFA, the balance of which could be redirected towards additional residential</i></p>

	<p><i> dwellings (where primary demand is considered to lie).</i></p> <p><i> Overall, given the subjects non-core commercial office location and prevailing market conditions, we would envisage demand for office accommodation within the proposed development to be relatively subdued. Although the proposed commercial GFA represents approximately 5.3% of total GFA or 0.3:1 of FSR, we consider a suitable range for a proposal such as the subject (within this location) to be in the order of 2-5% of total GFA.</i></p> <p><i> The EIA relevantly surmises that overall, given the subjects location directly opposite Stockland Merrylands Shopping Centre our analysis of the surrounding catchment (working off a benchmark of 2.2m² per capita of retail floorspace) would indicate a slight oversupply. Whilst noting the proposed retail tenancies would directly benefit from the proposed residential dwellings above and potential overflow synergies from Stockland Merrylands Shopping Centre, we consider vacancy and downtime would be protracted under prevailing market conditions.</i></p> <p><i> It is further acknowledged that the proposed floor to ceiling heights of the retail and commercial tenancies within the development vary from 3.6 metres to 6.2 metres, which provide a degree of flexibility in the future, for the potential provision of additional floor space, should demand for commercial floor space increase.</i></p> <p><i> Considering the above findings of the EIA and the current socio-economic climate, coupled with the proposed flexibility in built form, the proposed non-residential FSR of 0.8:1 is supported.</i></p>
<p><i> Do we need another supermarket?</i></p> <ul style="list-style-type: none"> <i> • We already have three major ones in the CBD, in Stockland Mall, over the road from this site.</i> <i> • And there are multiple international supermarkets in Merrylands Road and Addlestone Road.</i> 	<p><i> A supermarket is not being approved as part of the proposed development. All proposed retail and commercial tenancies will be subject to future separate development approvals.</i></p>

<p><i>And why not provide something other than more retail if Coronation - and Council - claim they want to provide a vibrant and liveable space for people?</i></p> <p><i>Perhaps bring back the movie theatre that was promised - when it was removed years ago?</i></p>	
<p><i>Council is constantly advocating for more employment opportunities in our LGA - close to where residents live. And the state government also wants to provide a '30-minute city'. So why should the applicant be allowed to decrease their 'commercial space' obligations - and limit Merrylands capacity to become a strategic centre - remaining no different to Granville or Lidcombe or Auburn?</i></p> <ul style="list-style-type: none"> <i>In reducing commercial space, the applicant is reducing alternative job opportunities and diversity, close to public transport.</i> <p><i>So any opportunity should be seized, not reduced by giving over part of the 1st floor to more residential units, as this applicant proposes.</i></p>	<p>In considering the proposed amount of commercial floor space proposed, Council has considered the current and projected market demand, as discussed in the EIA lodged with the application, as well as Council's strategic documents.</p> <p>It is further acknowledged that the proposed floor to ceiling heights of the retail and commercial tenancies within the development vary from 3.6 metres to 6.2 metres, which provide a degree of flexibility in the future, for the potential provision of additional floor space, should demand for commercial floor space increase.</p>
<p><i>And the applicant's justification regarding the variation (non-compliance) is again quite objectionable - and almost an insult to one's intelligence. They say there is no real departure from the control if you include the laneway in the GFA calculation They want to include the laneway when calculating the site area, and they argue that the development then complies with the overall maximum FSR control - refer p. 25 of the SEE variation.</i></p> <p><i>And they also claim that when excluding the laneway - which they claim has arisen through the change to the LEP mapping compared to the former mapping associated with the site - there is only a minor departure of 9.13%.</i></p> <p><i>So, sometimes the documents state the overall maximum FSR control is compliant -</i></p>	<p>The Applicant has submitted a Clause 4.6 Variation Request for the additional GFA of 5,891m² which equates to a FSR exceedance of 9.13% of the maximum FSR applicable to the site.</p> <p>The non-compliance is in response to the reduction in site area (as a result of the SP2 zoned land being excluded from the site area), for the purpose of calculating FSR. The non-compliance facilitates the harvest of the floor area benefit of the SP2 zoned land, which was lost when the land was rezoned from B4 Mixed Use to SP2 Local Road.</p> <p>Council has considered the Clause 4.6 Variation Request and the variation to the maximum FSR development standard is considered acceptable on environmental</p>

<p><i>yet other times it has a minor departure of 9.13%. This is quite strange. And I wouldn't necessarily call 9.13% a minor departure. What does Council and the Panel call it?</i></p>	<p>planning grounds and the Applicant's written justification is well founded.</p>
<p><i>There seems to be little concern regarding the overdevelopment and saturation of our small Town Centre. And this new DA for this site (increasing the height of building and unit numbers) - that references pre-DA meetings and Design Excellence Panel meetings - simply makes me believe Council and property owners are just powering on regardless with heights and unit numbers - with the possible overdevelopment (and lack of foresight) for the small Town Centre of Merrylands.</i></p>	<p>Merrylands is currently identified as a 'local centre' and is identified as a proposed 'Strategic Centre' in Council's Local Housing Strategy (2020). The proposed development is responsive to the strategic vision intended for Merrylands, as identified in the LHS –</p> <p><i>The proposed strategic centre for Cumberland, providing higher order services and facilities to meet the needs of the Cumberland area, and complementing the role of Greater Parramatta.</i></p> <p>The proposed variations to building height and FSR have been considered through the submitted Clause 4.6 Variation Request and are considered acceptable on merit.</p>
<p><i>Confusion over car free areas: P. 173 of the SEE is somewhat confusing as it references vehicle access to the basement level is via an extension of Main Lane that run through the site from Reyes Lane to Merrylands Road and the extension of Main Lane - and also references the creation of new pedestrian laneways (Eat Street & Market Lane) that will significantly increase accessibility with the western edges of the Merrylands Town Centre.</i></p> <ul style="list-style-type: none"> <i>But my understanding is that both Eat Street and Market Lane are vehicular laneways, not just pedestrian laneways?</i> 	<p>Main Lane is a designated Local Road within the HLEP 2013 and will function as a two-way road, with access via Merrylands Road.</p> <p>Eat Street is to remain in private ownership, i.e. it will not be dedicated to Council as public road, rather it will be subject to a right of way to facilitate access.</p> <p>Eat Street will be a left-out only onto McFarlane Street, i.e. one-way. Further, a condition of consent has been recommended to ensure that Eat Street maintains a primarily pedestrian function, with limited access for vehicles.</p>
<p><i>The Ason Group doesn't provide any analysis of how the new laneway intersections will affect the traffic flow on Merrylands Road and McFarlane Street - that already have restricted/constricted traffic flow due to traffic lights - and cars having to wait whilst shop patrons park.</i></p>	<p>Council's Traffic Engineers have assessed the proposed development and conditions of consent have been recommended to address traffic management.</p>
<p><i>Basement car park access:</i></p> <ul style="list-style-type: none"> <i>The exits from the 2 basement car parks - and the entrance ways in to Eat Street and Main Lane - refer p.17 and the swept path analysis in</i> 	<p>The proposed basement access points have been assessed by Council's Traffic and Engineering departments who have considered these to be satisfactory.</p>

<p><i>Appendix A of the Ason Group report - look very messy as they cross over?</i></p> <ul style="list-style-type: none"> <i>What will be in place to control traffic movements in the centre of the Precinct, from the basement car park?</i> (I cannot locate any other plans on exhibition to get a better understanding of the proposed traffic flow and vehicular movements). 	
<p><i>Interim access:</i> <i>P.175 of the SEE references a large loading dock on the ground floor that is to service the development - with access from Main Lane (once it has been expanded).</i></p> <ul style="list-style-type: none"> <i>What happens in the interim - as it's likely to be a while before the whole of Main Lane is expanded?</i> <i>And what about access to the child care centre in the interim period?</i> 	<p>A condition of consent has been recommended requiring the construction of a temporary access road as an interim arrangement until Main Lane is constructed to final specifications.</p> <p>Access to the child care centre is via the basement and this will be accessible via the temporary access road.</p>
<p><i>I request that Council, the DEP and RMS - and approving authority - thoroughly assess the parking spaces to be supplied. I believe there is non-compliant parking provision and request that this non-compliance isn't permitted - particularly when the applicant is supposedly seeking endorsement as exhibiting 'design excellence' to gain maximum height and FSR bonuses.</i></p>	<p>The concurrence of the RMS (now TfNSW) has been issued for the development and no objections to the proposal have been raised, subject to conditions, which have been included in the recommended conditions of consent.</p> <p>Council's Traffic department have also reviewed the development and consider it to be satisfactory, subject to conditions of consent.</p>
<p><i>And clearly in this definition there is no distinction between commercial and retail premises - they both fall under the heading of 'commercial' - both have the same rate - and the DCP has no 'supermarket' rate. However, the applicant separates between:</i></p> <ul style="list-style-type: none"> <i>Commercial component: 1 space per 50m2 GFA – DCP</i> <i>Retail: 1 space per 45/1000m2 (RMS Guide)</i> <i>Supermarket: 1 space per 42/1000m2 (RMS Guide)</i> <p><i>I'm not sure why the Applicant uses both the DCP and RMS rates for commercial and retail parking - as the RMS rates seem to require more commercial and retail parking spaces, rather than if the commercial and</i></p>	<p>The car parking required for the development has been calculated in accordance with the HDCP 2013 provision for commercial development, which includes retail.</p> <p>A condition of consent has been recommended to address the allocation of car parking spaces for the various land uses.</p> <p>This has resulted in a total deficit of 11 commercial car parking spaces for the development. This deficit is considered acceptable on merit.</p>

<p><i>retail parking controls listed in Council's DCP were used. (And Coronation chose to completely ignore the DCP residential parking rates - I gather as their proposed residential parking provision falls short of the parking spaces required under the Holroyd DCP 2013).</i></p>	
<p><i>It seems by providing only 15 dedicated child car parking spaces, the proposal is only providing 'design minimums' - not 'design excellence'. And p.163 of the SEE confirms this - it states: the child care component of the development complies with Council's car parking requirement.</i></p>	<p>The proposed child care centre parking has been provided in accordance with the provisions of Part A Section 3.1 of the HDGP 2013. A total of 15 car parking spaces (including 1 disabled space) are provided within Basement 1.</p>
<p><i>So, what bicycle parking is really being provided in this proposal?</i></p> <p><i>What document is correct/ accurate:</i></p> <ul style="list-style-type: none"> <i>• The SEE - that quotes 304 spaces are being provided?</i> <i>• Or the Ason report - that says 525 spaces are being supplied?</i> <p><i>And why does the SEE state 114 visitor spots are being provided, when only 79 are required? Why are surplus spots being provided for visitors - to the detriment of residents?</i></p>	<p>A total of 936 car parking spaces are provided for the development.</p> <p>A condition of consent has been recommended to amend the car parking allocation, to provide the following spaces per basement:</p> <p><u>Basement 1 (Northern wing)</u> Residential – 329 spaces Visitor – 86 spaces Commercial (incl. retail) – 107 spaces Child care centre – 15 spaces</p> <p><u>Basement 2:</u> 275 residential 73 visitor 51 commercial spaces</p> <p>This results in a cumulative deficit of 11 commercial car parking spaces, noting this comprises a deficit of 18 spaces in Basement 1 with a surplus of 7 spaces in Basement 2.</p> <p>The deficit of 11 commercial spaces is supported by Council.</p> <p>It is noted that the residential and visitor parking provided complies with the car parking requirements of the ADG. The child care centre parking provided complies with the HDGP 2013.</p>

<p><i>The ADG requires sufficient motorbike and scooter parking is to be provided in shop top housing - and p. 28 of the Ason report states the proposal will provide 37 motorcycle spaces. Yet the SEE on p.11 says there will be 36 motorcycle parking spaces.</i></p> <ul style="list-style-type: none"> <i>What is the number that is being provided?</i> <i>Is it 'sufficient'?</i> <p>Allocation of parking spaces to renters / buyers</p> <ul style="list-style-type: none"> <i>How does the parking allocation work?</i> <i>How does one purchase or use the parking spots in these buildings?</i> <p><i>I'm concerned a resident (tenant or buyer) has a car and needs a car parking space - but could land up with a motorbike spot or a bike spot??</i></p>	<p>The development is providing 36 motorcycle parking spaces and 304 bicycle parking spaces. These have been assessed and are considered acceptable.</p> <p>The allocation of car parking to residential units is an operational matter for the developer. Residential car parking has been provided in accordance with the requirements of the ADG.</p>
<p>Car wash bays</p> <p><i>I note the basement level has 4 dedicated carwash bays.</i></p> <ul style="list-style-type: none"> <i>Are 4 car wash bays sufficient?</i> <p><i>Does the provision of 4 car wash bays exhibit 'design excellence'?</i></p>	<p>Council has assessed the provision of car wash bays and these are considered satisfactory.</p>
<ul style="list-style-type: none"> <i>Is the area dedicated to COS compliant - and sufficient? (As I gather a lot of the site open space is provided through the shared public domain that includes the site linkages, Eat Street, and the general ground floor landscaping.</i> <i>Is there adequate private COS for the residents of this huge development - as it seems that much of the so-called COS is really public open space - and not private communal open space?</i> <i>2 swimming pools - are these both accessible by all 5 buildings, by both</i> 	<p>COS has been provided in accordance with the provisions of Objective 3D-1 (Communal and Public Open Space) of the ADG. There is a total COS provision of 6,011m² or 52.9% of the site area. The public domain areas including the site linkages and Eat Street are not included in the calculation of COS area.</p> <p>The swimming pool proposed on Level 2 of Building B will be accessible to the tenants of Buildings A, B and C. The swimming pool proposed on Level 1 of Buildings D and E will be accessible to the tenants of both buildings.</p>

<p><i>the 60% BTR renters - and the 40% private purchasers / renters?</i></p> <ul style="list-style-type: none"> <i>• Rooftop communal facilities - I gather these are located in 4 buildings - A, B, C and D. Can building E access these rooftop terraces - or do these residents have to go without?</i> <i>• Provision of communal vegetable gardens - p.101 of the SEE references communal vegetable gardens. Does Council really believe this is appropriate in this BTR development in our LGA?</i> 	<p>Whilst Building E does not have a rooftop terrace, Building E provides compliant COS area in accordance with the ADG at Level 1. It is noted that there is no statutory requirement for the provision of open space to be in the form of a rooftop terrace.</p>
<p><i>I suggest the applicant should be providing a cinema for all residents in our LGA, not just this development - and that some areas proposed - like a resident reading room, music room, kitchen, dining room, lounge and resident cinema - would be better dedicated to alternate public use - and shared space with the wider community - such as a public cinema - making this site a more vibrant space in the CBD - not just a large complex for residents.</i></p>	<p>Whilst an 'entertainment facility' which includes a cinema is permissible with consent in the B4 Mixed Use land use zone, there is no legislative or statutory requirement for a public cinema to be provided on the subject site. The proposed resident reading room, music room, kitchen, dining room, lounge and resident cinema forms part of the communal open space of the residential component of the development.</p>
<p><i>P. 136 & 137 of the SEE references non-compliant separations - and, of course, the applicant claims the variance is acceptable.</i></p> <p><i>But I live in a unit block and fully appreciate the problems associated with acoustic and visual privacy.</i></p> <p><i>I ask Council and the various assessors to consider this non-compliance - particularly as louvres and screenings do not alleviate or address noise issues.</i></p>	<p>Having regard to the proposed building separation distances as stipulated in the ADG, the following is advised.</p> <p>The development provides compliant building separation distances to the eastern property boundary from Building A, with a minimum of 12m provided across all levels of the development.</p> <p>Compliant building separation distances are provided from Building E to the eastern property boundary, with the exception of Levels 3 to 7 which provide an 11m building separation to the eastern property boundary.</p> <p>This non-compliance is considered minimal, given that the non-compliance applies to a small portion of the eastern building façade of Building E, noting that the majority of the façade complies with the 12m separation distance.</p>

	<p>The development provides compliant habitable room and balcony building separation distances between the five (5) buildings on site, with the exception of the below variations:</p> <ul style="list-style-type: none"> • Levels 9 to 14 – a minimum 18m to 21m separation provided between the southern façade of Building A and the northern façade of Building D. • Levels 9 to 14 – a minimum 19m separation provided between the southern façade of Building B and the northern façade of Building C. • Levels 9 to 14 – a minimum 22m & 23m separation provided for a portion of the eastern elevation of Building D and the western elevation of Building E. • Levels 15 to 24 – a minimum separation of 18m to 21m provided between the southern façade of Building A and the northern façade of Building D. <p>The above variations of the building separation distances, internal to the development, are considered acceptable, on the basis that treatment measures can be applied to the non-compliant balconies and habitable room windows, in the form of privacy screening and the like, to protect visual amenity within the development.</p>
<p><i>The solar access compliance with the ADG provisions exhibits ‘design compliance’, not ‘design excellence’.</i></p>	<p>The development maintains compliance with the solar access requirements of the ADG at Section 4A-1 (Solar and Daylight Access).</p>
<p><i>To be commended, I note the buildings will have insulated walls and thermal insulation, but once a building heats up, and there is no natural cross ventilation, nothing cools the building down naturally. (And again I speak from experience, as my unit has limited cross ventilation - as do others in my complex).</i> <i>So Council’s objective on p. 280 of Part C of the DCP - referencing reducing energy consumption by minimising the use of air conditioning - will only be minimally</i></p>	<p>A BASIX Report has been submitted with the application which demonstrates that the development has been designed to achieve the required water, thermal comfort and energy scores. Conditions of consent have been recommended to ensure the development maintains compliance with the BASIX Certificates issued for the development.</p>

<p><i>achieved over and above compliance requirements.</i></p>	
<p><i>P.141 of the SEE states some units may require non-compliant 2.4m floor to ceiling height and, of course, details how the non-compliance is acceptable.</i> <i>And interestingly P.171 of the SEE says the development provides minimum floor to ceiling height in accordance with the ADG - but this obviously isn't correct as per p.141!</i></p>	<p>All residential units maintain a minimum floor to ceiling height of 2.7m, with the exception of some units which will provide a minimum floor to ceiling height of 2.4m.</p> <p>This applies to those units where there is the requirement to allow the integration of hydraulic services for island benches and for the incorporation of air conditioning units.</p> <p>The minimum 2.4m ceiling heights maintain compliance with the NCC.</p>
<p><i>Again, living in a unit I know the importance of storage space - and I am a sole occupant in a 2-bedroom unit! So storage provision - or the space to install /fit wardrobes, cupboards and drawers etc - is an important concern in unit living.</i></p> <p><i>And again, it seems the proposal is only providing 'design minimum' - if that - not 'design excellence'.</i></p>	<p>The development provides storage which is compliant with the minimum requirements in the ADG at Section 4G-1 (Storage).</p>
<p><i>In relation to apartment layout, I ask Council to check regarding unit size for the studio apartments.</i> <i>There is also no reference to exceeding DCP requirements - so again I ask if 'design excellence' is exhibited' or only 'design compliance'?</i></p>	<p>The development provides unit sizes which are compliant with the minimum sizes required by the ADG at Section 4D-1 (Apartment Size and Layout).</p>
<p><i>I would expect buildings that exhibit 'design excellence' would have all primary balconies located adjacent to main living areas.</i> <i>Or am I wrong in thinking this? Are there units in this development where primary balconies aren't located adjacent to main living areas?</i></p>	<p>Section 3.14 (Balconies) at Part A of the HDCP 2013 relevantly provides:</p> <p>C3. Primary balconies are be:</p> <ul style="list-style-type: none"> i) <i>located adjacent to the main living areas, such as living room, dining room, kitchen to extend the dwelling living space.</i> <p>Having regard to this control, it is acknowledged that the balconies of all proposed units are located off a main living area in the form of either a living room or dining room.</p>

<p><i>Will there be fixed screening - with fixed location and drying line - to 'hide' drying clothes from public view?</i></p> <p><i>And I ask this as I'm sure Council doesn't want the main streets of the Merrylands CBD to have drying laundry visible on many balconies - as occurs in many parts of our LGA currently - in units with poor design and limited fixtures provided.</i></p> <p><i>I don't believe having units in Merrylands Rd, MacFarlane Street and Treves Street with their balconies revealing quantities of drying clothes (and mops etc) will exhibit 'design excellence' for this site.</i></p> <p><i>So I suggest:</i></p> <ul style="list-style-type: none"> <i>○ Clothes drying facilities should be provided on each balcony below the balustrade line - by condition of consent</i> <i>○ Mechanical drying appliances in each unit should also be a condition of consent</i> 	<p>Having regard to clothes drying, a condition of consent has been recommended to ensure that, for those balconies with a frontage to Merrylands Road, McFarlane Street and Treves Street, appropriate clothes drying facilities are provided to ensure that the visual amenity is preserved.</p>
<p><i>I trust a better stormwater management system exists for this development, particularly as these 5 buildings also have flat roofs - and with plantings. I would hate sheets of water to collect and then be blown from the roof, onto the public domain and patrons below - and / or the windows and balconies of adjacent residents - either within the site - or adjacent to the site.</i></p>	<p>Council's Development Engineers have reviewed the proposed development and stormwater design and it is considered acceptable. Conditions of consent have been recommended to address stormwater and on-site detention.</p>
<p><i>Regarding flexible construction hours –</i></p> <p><i>I appreciate this is a huge development, but please consider the adjacent residents in the dwellings in Treves Street, Addlestone Road, Merrylands Road and Wayman Place - and beyond. It may take Coronation a little longer to develop this site - but you can't have massive excavation starting early and finishing late - and on Sundays, public holidays etc. All nearby residents will be affected by excavation and construction - but particularly young children and the elderly.</i></p> <p><i>I ask the consent conditions and hours of work to be carefully considered, from the perspective of the local residents who live</i></p>	<p>A condition of consent has been recommended to address the application of flexible construction hours in relation to the pouring of slabs, as, given the scale of the proposed development it is not uncommon for these works to extend beyond the standard hours of construction. Any addition extension to the standard construction hours has been conditioned to be subject to a detailed Construction Management Plan (CMP) which is to be endorsed by Council. As part of this CMP it will be necessary to demonstrate that the proposed extension of hours will not cause any unreasonable adverse acoustic impacts on surrounding development.</p>

close by, who would like to be able to maintain their sanity while this site is developed.

Table 10: Submissions Summary

The public interest (EP&A Act s4.15(1)(e))

The proposed development contributes to the revitalisation of the Merrylands Town Centre through the provision of new residential, retail and commercial development. The proposed development enhances vehicular and pedestrian connectivity through the Merrylands Town Centre through the construction of Main Lane and Eat Street and the enhancement of the public domain. The development contributes to the provision of housing within the local government area and the generation of employment.

In view of the foregoing analysis it is considered that the development as proposed would not be inconsistent with the public interest.

SECTION 7.11 (FORMERLY S94) CONTRIBUTION TOWARDS PROVISION OR IMPROVEMENT OF AMENITIES OR SERVICES

This part of the Act relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. The Cumberland Local Infrastructure Contribution Plan 2020 (the Contribution Plan) is applicable to the development.

In accordance with Section 4.4 of the Contribution Plan, Council can only apply either a Section 7.11 (calculated on dwelling yield) or Section 7.12 (calculated on cost of works) to a mixed development application, not both. The applicable contribution is whichever generates the greater amount.

Council's Contribution Officer has calculated that the applicable contribution is Section 7.11, which is calculated based on the residential dwelling yield:

- 1 bedroom/studio 393 dwellings
- 2 bedroom 379 dwellings
- 3 bedroom 18 dwellings

The Applicant has requested the staged payment of this amount, relative to the proposed development stages. A condition of consent has been recommended requiring payment of the contribution prior to issue of each Construction Certificate (CC) for each relevant stage of the development, as follows:

STAGE	CONTRIBUTION PAYABLE
2C – Building A	\$2,737,514.47
2D – Building B	\$1,582,666.92
2E – Building C	\$1,104,653.10
4C – Building D	\$1,754,589.98
4E – Building E	\$2,793,202.39
Total Contribution	\$9,972,626.86

As at August 2020, the total contribution fee payable is **\$9,972,626.86**. This figure is subject to indexation as per the Contribution Plan.

DISCLOSURE OF POLITICAL DONATIONS AND GIFTS

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

CONCLUSION

The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*, Regional Development SEPP, SEPP 55, SEPP65, ISEPP, BASIX SEPP, Education SEPP, SREP 2005, HLEP 2013, Draft CLEP and HDCP 2013 and is considered to be suitable for deferred commencement approval.

The proposed development is appropriately located within the B4 Mixed Use land use zone pursuant to the HLEP 2013. Variations are sought from the provisions of the ADG as they relate to communal open space, building separation distances, habitable ceiling heights and deep soil zone. Variations are also sought under the HDCP 2013, in relation to the provision of car parking, residential mix, child care centre location, street setbacks to Merrylands Road and the location of Main Lane.

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

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

RECOMMENDATION

- 1. That Development Application No. DA2020/0220 for Construction of mixed use development comprising 5 mixed use buildings, including retail and commercial tenancies, childcare facility and 790 residential apartments, over 4 levels of basement parking, associated stormwater, public domain and landscaping works - Integrated Development (Water Management Act 2000) on land at 233 Merrylands Road, 249-259 Merrylands Road and 52-54 McFarlane Street, MERRYLANDS NSW 2160 be granted deferred commencement approval, for the reasons listed in the attached schedule.**
- 2. 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. Stormwater Concept Plans
5. Clause 4.6 Variation Requests
6. Submissions Received
7. Design Excellence Certificate
8. ADG Assessment
9. Child Care Planning Guideline Assessment
10. HDCP 2013 Assessment