

## COUNCIL ASSESSMENT REPORT

### SYDNEY EASTERN CITY PLANNING PANEL

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| <b>PANEL REFERENCE &amp; DA NUMBER</b> | PPSSEC-282 – DA/2023/0467   |
| <b>PROPOSAL</b>                        | Concept and detailed (Stage 1) Development Application for the retention of character buildings fronting Balmain Road and construction of a mixed-use development comprising of residential flat building and light industry uses.  |
| <b>ADDRESS</b>                         | Lot 2 in DP 1015843 - 469-483 Balmain Road LILYFIELD  |
| <b>APPLICANT</b>                       | Roche Group Pty Ltd C/O Wes Van Der Gardner   |
| <b>OWNER</b>                           | Roche Group Pty Ltd   |
| <b>DA LODGEMENT DATE</b>               | 19 June 2023  |
| <b>APPLICATION TYPE</b>                | Concept and detailed (Stage 1) Development Application  |
| <b>REGIONALLY SIGNIFICANT CRITERIA</b> | Section 2.19(1) and Clause 2, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as general development over \$30 million.   |
| <b>CIV</b>                             | \$82,276,742 (excluding GST)  |
| <b>CLAUSE 4.6 REQUESTS</b>             | <i>Inner West Local Environmental Plan 2022</i> , Section 4.3 Height of Building, within the E4 General Industrial E1 zone.   |
| <b>KEY SEPP/LEP</b>                    | <ul style="list-style-type: none"> <li>• <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i></li> <li>• <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i></li> <li>• <i>State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development</i></li> <li>• <i>State Environmental Planning Policy (Planning Systems) 2021</i></li> <li>• <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i></li> </ul> |

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|   | <ul style="list-style-type: none"> <li>• <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i></li> <li>• <i>Draft State Environmental Planning Policy (Sustainable Buildings) 2022</i></li> <li>• <i>Inner West Local Environmental Plan 2022</i></li> <li>• <i>Leichhardt Development Control Plan 2013.</i></li> </ul> |
| <b>TOTAL &amp; UNIQUE SUBMISSIONS ISSUES SUBMISSIONS KEY IN</b> | <ul style="list-style-type: none"> <li>• First notification – 63 total, 60 unique,</li> <li>• Second notification – 11 total, 8 unique,</li> <li>• Key issue raised was traffic and parking</li> </ul>   |
| <b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>                    | <ul style="list-style-type: none"> <li>• Attachment A: Draft Conditions of consent</li> <li>• Attachment B: Compliance Tables</li> <li>• Attachment C: Architectural Plans</li> <li>• Attachment D: Concept Plans</li> <li>• Attachment E: Clause 4.6 Request</li> <li>• Attachment F: AEDRP meeting minutes</li> </ul>                            |
| <b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>             | Not applicable   |
| <b>RECOMMENDATION</b>   | Deferred Commencement  |
| <b>DRAFT CONDITIONS TO APPLICANT</b>                            | Yes  |
| <b>SCHEDULED MEETING DATE</b>                                   | 23 May 2024  |
| <b>PLAN VERSION</b>   | 3 May 2024 (multiple versions)   |
| <b>PREPARED BY</b>  | Annalise Ifield  |
| <b>DATE OF REPORT</b>   | 14 May 2024  |

## EXECUTIVE SUMMARY

This report is an assessment of the application for a Concept and detailed (Stage 1) Development Application for the retention of character buildings fronting Balmain Road and construction of a mixed-use development comprising of residential flat building and light industry uses at 469-483 Balmain Road, Lilyfield.

The site was subject to a Planning Proposal which enabled residential uses on the industrial site and an increase of the Floor Space Ratio (FSR) to 2.2:1 and Height of Building (HOB) to 23m (equivalent to 6-storeys).

As a result of the Planning Proposal, site specific provisions were inserted into the relevant Local Environmental Plan (the LEP) contained under Section 6.25 which requires the preparation of a site-specific Development Control Plan (DCP) for the subject site. Two draft DCPs were lodged with Council; the first DCP was not supported, and the second DCP was withdrawn. It is noted that a Concept Development Application is a legal alternative to a DCP required by Environmental Planning Instruments (EPIs). However, key requirements of the Concept Development Application are that it is followed by at least one subsequent development application for a separate part of the site.

The additional permitted uses which enable the residential use, has a 'sunset clause' requiring that an application be made for residential flat buildings before 24 February 2024 (being three years from the LEP provision being made). In this regard, residential uses will not be permissible in any future stages.

Given the above, the applicant has chosen to lodge a combined Concept and detailed (Stage 1) Development Application.

The main issues that have arisen during the assessment of the application include:

- Staging of the Concept Development Application
- Insufficient demonstration that the concept proposal satisfies Section 6.25(3)
- Variation to the Height of Building development standard under *Inner West Local Environmental Plan 2022*
- Non-compliance with the building separation, deep soil, communal open space, and natural ventilation requirements of the Apartment Design Guide; and,
- Matters raised in submissions.

The staging of the Concept Development Application and satisfaction of Section 6.25(3) of the LEP has not been resolved. In particular, the works proposed under detailed Stage 1 does not satisfy the following:

- Section 6.25(3)(a)(i) - Only 5,752sqm of GFA for employment uses has been provided (which constitutes a variation of 248sqm or 4.1%).
- Section 6.25(3)(a)(iii) - Stage 1 does not propose the adaptive reuse the single storey portion of the former bakery character building.

Whilst the Concept Development Application makes commitments in future stages to address the above requirements, there is no legal mechanism which requires the works in Stage 2 to be delivered/undertaken, and accordingly, warrants the imposition of a deferred commencement condition to the application to ensure that part of the development is enacted in a timely manner and subsequently meets all of the requirements of Section 6.25 of IWLEP 2022

Notwithstanding the above matter, the proposal generally complies with the aims, objectives, and design parameters contained in the relevant State Environmental Planning Policies, *Inner West Local Environmental Plan 2022*, and Leichhardt Development Control Plan 2013. Concurrence has been granted from TfNSW for the works.

The potential impacts to the surrounding environment have been considered as part of the assessment process. Any potential impacts from the development are considered to be acceptable, given the context of the site and the desired future character. The application is therefore recommended for deferred commencement subject to the recommended conditions of consent.

## **1. THE SITE AND LOCALITY**

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### **1.1 The Site**

The subject site is located on the south-eastern side of Balmain Road, bounded by Cecily Street, Alberto Street, and Fred Street. The site consists of one allotment and is an irregular rectangle shape with a total site area of 6,824sqm and is legally described as Lot 2 in DP1015843.

The site has a primary frontage of 108.5m to Balmain Road (a classified road), secondary frontages of 65.8m to Cecily Street and 67.6m to Alberto Street, and a rear frontage of 61.7m to Fred Street. The site slopes from northwest to southeast (from the frontage at Balmain Road down to the rear at Fred Street), with an approximate level difference of 2.85m. There is a right of way and easement for electricity purposes of varying width located toward Fred Street leased until 2048. A sewer line also runs through the site.

The site is currently occupied by multiple industrial buildings/structures typically ranging from 1 to 2 storeys in height; namely Pilchers Bakery (c. 1907) and the former ABBCO Pty Ltd office building (c. 1917), and a factory that has two residential apartments above. An external at grade carpark area is located at the site's southwestern corner. Historically, the site has been utilised predominately for light industrial and creative purposes, currently including an artist space for approximately 50 artists.

The site has one tree within the carpark and a minimal amount of vegetation, however several mature trees are located immediately adjacent to the site on road reserves/nature strips and within adjoining properties.





*Figure 1: Aerial photo (subject site highlighted in red) Source: SIX maps*



*Figure 2 Site Frontage (from Balmain facing South) Source: Ethos Urban*



*Figure 3 Rear of the Site (from Fred Street facing northwest) Source: Ethos Urban*



*Figure 4 Eastern Site boundary (from Cecily Street facing south-east) Source: Ethos Urban*

*Figure 5 Western Site boundary (from Alberto Street, facing north-east) Source: Ethos Urban*

## 1.2 The Locality

The site is located within the Nanny Goat Hill Distinctive Neighbourhood (in Part C2.2.4.2 of the Leichhardt DCP 2013) which is defined by its topography, the elevation of the land, and the views available from it. It is predominantly residential in character although there are some established industrial and commercial areas, to the east along Balmain Road.

To the south, the dominant built form is single storey detached cottages on similar sized allotments. There is a variety of architectural styles evident, reflecting the various stages of settlement, including Victorian, Federation, inter-war and post-war dwelling forms. In the immediate vicinity of the subject site is the locally listed timber cottage, including interiors, at 8 Fred Street, Lilyfield.

To the north of the site is Callan Park, a historic site that has been made open to the public with the previous use of a mental health facility. 'Callan Park Conservation Area and Buildings,' is listed on the NSW State Heritage Register (item no. 00818), as a heritage item of State significance including special provisions under the *Callan Park (Special Provisions) Act 2002*.

The site is 900m from the Lilyfield Light Rail Station (Dulwich Hill Line) which connects to Central Station and 150-200m from several bus stops on Balmain Road, providing connections to surrounding suburbs.

## 2. THE PROPOSAL AND BACKGROUND

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### 2.1 The Proposal

The proposal seeks consent for a Concept and detailed (Stage 1) Development Application for the retention of character buildings fronting Balmain Road and construction of a mixed-use development comprising of residential flat building and light industry uses.

Specifically, the proposal involves:

- Concept proposal for building envelopes and future land uses:
  - Stage 1: Conceptual design and detailed residential components;
  - Stage 2: The future redevelopment of the single storey portion of the character building with employment GFA of 248sqm and first floor link;
  - Future stages: Indicated for non-residential fit out, signage, etc.
- Stage 1 detailed proposal, comprising of:
  - Partial demolition of existing buildings and structures within the site including partial demolition of the character building known as the former Pilchers Bakery Warehouse;

- Partial retention and restoration of the brick character buildings (with fit-out and use subject to future DAs);
- Site preparation works, including termination or relocation of site services and infrastructure, remediation, removal of 16 trees and the erection of protection fencing;
- Construction and use of six new buildings for 90 residential apartments and allocation of 5,752sqm for industrial uses;
- Excavation/construction of a two-level basement including car parking for 153 vehicles for staff and residents, waste management areas and loading facilities; and
- Public domain, communal open space, landscaping and tree planting works.

**Table 1: Development Data**

| <b>Control</b>              | <b>Proposal</b>   |
|-----------------------------|---|
| Site area                   | 6,824sqm  |
| GFA                         | <p>Total under the concept proposal: 15,013sqm</p> <ul style="list-style-type: none"> <li>• Residential: 9,013sqm</li> <li>• Industrial: 6000sqm of which 1,200sqm is for creative purposes</li> </ul> <p>Total under the detailed stage 1: 2.16:1 (14,765qm)</p> <ul style="list-style-type: none"> <li>• Residential: 9,013sqm</li> <li>• Industrial: 5752sqm of which 1,200sqm is for creative purposes</li> </ul> |
| FSR<br>(retail/residential) | 2.2:1 (15,013sqm)   |
| Clause 4.6<br>Requests      | Yes – Height of Building variation of 11%   |
| No of apartments            | <p>90 apartments</p> <ul style="list-style-type: none"> <li>• 25.6% studio or one bed (23)</li> <li>• 45% two bed (40)</li> <li>• 30% three bed (27)</li> </ul>   |
| Height<br>(max 23m)         | 25.53m  |
| Car Parking<br>spaces       | <p>153 car spaces</p> <ul style="list-style-type: none"> <li>• 97 residential car spaces</li> <li>• 56 employment car spaces;</li> <li>• 2 car-share parking spaces;</li> <li>• 12 motorcycle parking spaces</li> <li>• 114 bicycle spaces</li> </ul> <p>Dedicated loading area and bay</p>   |
| Diverse housing             | <ul style="list-style-type: none"> <li>• 25.6% 1 bed/studios (23)</li> </ul>  |







*Figure 7: Ground floor plan (revised rev 4)*



*Figure 8: Balmain Road Elevations (revised rev 4)*



*Figure 9: Cecily Street Elevations (revised rev 4)*



*Figure 10: Fred Street Elevations (revised rev 4)*



*Figure 11: Alberto Street Elevations (revised rev 4)*

## **2.2 Background**

A pre-lodgement meeting was not held prior to the lodgement of the application.

The development application was lodged on **19 June 2023**. A chronology of the development application since lodgement is outlined in **Table 2**.

**Table 2: Chronology of the DA**

| Date                     | Event   |
|--------------------------|---|
| <b>7 July 2023</b>       | DA referred to external agencies  |
| <b>19 July 2023</b>      | Exhibition of the application   |
| <b>8 August 2023</b>     | Community information session held for the public   |
| <b>9 August 2023</b>     | Site visit with Applicant and team  |
| <b>18 August 2023</b>    | End of exhibition period  |
| <b>22 August 2023</b>    | Architectural Excellence Design and Review Panel (AEDRP) held   |
| <b>4 September 2023</b>  | <p>Preliminary Request for Information from Council to applicant to address the following matters:</p> <ul style="list-style-type: none"> <li>• Legal advice detailing that a <b>combined</b> concept and detailed development application can be made in lieu of the creation of a DCP (as required by the LEP) as outlined in Section 4.23(2) of the <i>EP&amp;A Act 1979</i> in order to satisfy the requirement of Section 6.25 of the LEP.</li> <li>• Legal advice detailing that the proposed future stage/s (fitout and use of the non-residential components) can reasonably be considered a 'stage' in a staged development.</li> <li>• Details to demonstrate that the concept proposal satisfies Section 6.25 of the LEP.</li> </ul> |
| <b>28 September 2023</b> | Panel briefing  |
| <b>12 October 2023</b>   | <p>Request for further information issued from Council to applicant to address the following matters:</p> <ul style="list-style-type: none"> <li>• Documentation responding to the requirements of Section 6.25(4) of the LEP</li> <li>• Height of building variation</li> <li>• Design excellence</li> <li>• Apartment design guideline non-compliances: <ul style="list-style-type: none"> <li>○ Building separation and visual privacy</li> </ul> </li> </ul>  |

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|                         | <ul style="list-style-type: none"> <li>○ Communal open space</li> <li>○ Deep soil zone</li> <li>○ Pedestrian access and entries</li> <li>○ Bicycle and car parking</li> <li>○ Solar and sunlight access and natural ventilation</li> <li>○ Apartment size and layout</li> <li>○ Storage</li> <li>○ Acoustic privacy</li> <li>○ Ground floor apartments</li> <li>○ Facades</li> <li>● Equity of access and mobility</li> <li>● Public domain and tree planting</li> <li>● Overshadowing</li> <li>● Green roofs and walls</li> <li>● General documentation matters</li> </ul>   |
| <b>18 October 2023</b>  | In person meeting with Applicant and team   |
| <b>15 November 2023</b> | In person meeting with Applicant and team   |
| <b>28 November 2023</b> | Amended plans received  |
| <b>5 December 2023</b>  | Amended plans exhibited   |
| <b>8 February 2024</b>  | End of exhibition period  |
| <b>1 February 2024</b>  | Amended information package submitted in full. A number of outstanding concerns have been resolved.   |
| <b>13 February 2024</b> | Second AEDRP held.  |
| <b>23 February 2024</b> | <p>Request for further information issued from Council to applicant to address the following matters:</p> <ul style="list-style-type: none"> <li>● Sequencing of the Concept Development</li> <li>● Delivery employment uses under detailed (Stage 1)</li> <li>● Delivery of adaptive reuse buildings under detailed (Stage 1)</li> <li>● Non-compliance with affordable housing requirements</li> <li>● Design excellence and ADG matters relating to safety, aesthetics, deep soil, public domain (Alberto Lane)</li> <li>● Traffic impact assessment revisions</li> <li>● General documentation matters</li> </ul> |
| <b>26 February 2024</b> | Meeting with Applicant and team   |

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| <b>29 February 2024</b> | Second panel briefing  |
| <b>15 March 2024</b>    | Amended plans received including legal advice amending the concept proposal staging.   |
| <b>11 April 2024</b>    | Request for further information issued from Council to applicant to address the following matters: <ul style="list-style-type: none"> <li>• Opportunities for further deep soil</li> <li>• Materials and finishes schedules for all elevations</li> <li>• Public domain (Alberto Lane) improvements</li> <li>• Additional shadow diagrams</li> </ul> |
| <b>30 April 2024</b>    | Meeting with Applicant and team to discuss deferred commencement conditions  |
| <b>3 May 2024</b>       | Final submission including further legal advice on the deferred commencement condition.  |

### 2.3 Site History

- On 16 December 2016, Roche Group (the proponent) submitted a Planning Proposal (PP) in relation to 469-483 Balmain Road, Lilyfield (the subject site) to Inner West Council. On 2 November 2018, DPE issued a Gateway Determination for the proposal to proceed to exhibition.
- On 1 December 2020, the Sydney Eastern City Planning Panel resolved to support the PP and recommended to the Minister for Planning and Public Spaces that it should proceed to finalisation, subject to refinements to the scheme and addressal of specific matters under a site-specific Development Control Plan (SSDCP).
- On 26 February 2021, the former *Leichhardt Local Environmental Plan (LEP) 2013 Amendment 18* (now *Inner West LEP 2022*) was gazetted to enable residential uses on the industrial site at 469-483 Balmain Road, Lilyfield and increase the Floor Space Ratio (FSR) to 2.2:1 and Height of Building (HOB) to 23m equivalent to 6-storeys.
- Clause 6.25 (3) and (4) of the LEP stipulates that development consent for a mixed-use building with residential uses can only be provided if a Development Control Plan (DCP) specifying certain matters has been prepared and adopted for the land.
- A draft site-specific DCP was exhibited by Council from 21 June to 30 July 2021.
- Following the exhibition period, the draft site-specific DCP was reported to the Inner West Architectural Excellence and Design Review Panel (AEDRP). On 7 June 2022, the AEDRP advised Council that it does not support the draft site-specific DCP as *'it is not convinced about a number of issues, including but not limited to:*
  - a. setting and testing of primary controls (floor space ratio, height and setbacks),*
  - b. building configuration due to the proposed 'H' form plan of the main building ,*  
*and*
  - c. excessive building envelope depths (24-29m in some instances).*

*The Panel considers resultant residential amenity achieved within the Draft DCP envelopes will not be optimum and there will be spatial planning, outlook, overlooking and acoustic privacy issues particularly at the re-entrant corners of the floor plan.'*

- On 6 December 2022, the Council resolved (**C1222(1) Item 8**) to not support the draft site-specific DCP and sought that the proponent submit a revised site-specific DCP with a supporting urban design scheme which addresses AEDRP's and community's concerns.
- On 7 February 2023, the proponent submitted a new site-specific DCP to Council. However, inadequate supporting information relating to the revised urban design scheme was submitted with the draft DCP application for Council's assessment. Council officers met with the proponent in March 2023 and requested that a supporting urban design scheme be submitted to commence the assessment of the DCP. Without this supporting information, the AEDRP's concerns from June 2022 cannot be addressed and the DCP would be potentially refused by Council.
- On 23 June 2023, the site-specific DCP application was withdrawn by the proponent.

### 3. STATUTORY CONSIDERATIONS

#### 3.1 Concept Development

The application is a 'Concept Development Application' as per the definition in Section 4.22 of the *EP&A Act*. Relevant consideration under Division 4.4 Concept Development Applications of the *EP&A Act*, is outlined in **Table 3**.

**Table 3: Assessment against Division 4.4 Concept Development Applications of the EP&A Act**

| Section  | Comment  |
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| <b>4.22 Concept development applications</b>   |  |
| <i>(1) For the purposes of this Act, a <b>concept development application</b> is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.</i> | <ul style="list-style-type: none"> <li>• The subject application constitutes a Concept Development Application as the proposal sets out concept proposals for the development of the site.</li> <li>• The subject application also includes details for the first stage of development (stage 1) which relates to the majority of the works to the site with the exception of the single storey character building fronting Balmain Road.</li> <li>• The application is to be followed by stage 2 which will relate to works on a separate part of the site being the adaptive reuse of the single storey character building.</li> </ul> |
| <i>(2) In the case of a staged development, the application may set out detailed proposals for the first stage of development.</i>   | <ul style="list-style-type: none"> <li>• The proposal is a staged development, and the first stage is included in the subject application.</li> </ul>  |
| <i>(3) A development application is not to be treated as a concept development application unless the applicant requests it to be treated</i>  | <ul style="list-style-type: none"> <li>• The applicant has nominated the application on the DA application form as a Concept Development Application.</li> </ul>   |



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| <p><i>as a concept development application.</i></p>  |  |
| <p><i>(4) If consent is granted on the determination of a concept development application, the consent does not authorise the carrying out of development on any part of the site concerned unless—</i></p> <p><i>(a) consent is subsequently granted to carry out development on that part of the site following a further development application in respect of that part of the site, or</i></p> <p><i>(b) the concept development application also provided the requisite details of the development on that part of the site and consent is granted for that first stage of development without the need for further consent.</i></p> <p><i>The terms of a consent granted on the determination of a concept development application are to reflect the operation of this subsection.</i></p> | <ul style="list-style-type: none"> <li>• The subject application contains both the Concept and detailed Stage 1 Development Application as such the consent is granted for that first stage of development without the need for further consent for that part of the site.</li> <li>• The draft consent has been worded to reflect this subsection.</li> </ul> |
| <p><i>(5) The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.</i></p>  | <ul style="list-style-type: none"> <li>• Noted.</li> </ul>   |
| <p><b>4.23 Concept development applications as alternative to DCP required by environmental planning instruments</b></p>   |  |
| <p><i>(1) An environmental planning instrument cannot require the making of a concept development application before development is carried out.</i></p> <p><i>(2) However, if an environmental planning instrument requires the preparation of a development control plan before any particular or kind of development is carried out on any land, that obligation may be satisfied by the making and approval of a concept development application in respect of that land.</i></p> <p><i>(3) Any such concept development application is to contain the information required to be included in the development</i></p>  | <ul style="list-style-type: none"> <li>• The requirement to prepare a DCP, as mandated by Section 6.25(3)(b) of the LEP, may be lawfully satisfied by the making and approval of a Concept Development Application. See further discussion under LEP table below.</li> </ul>   |

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| <i>control plan by the environmental planning instrument or the regulations.</i> |  |
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When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
  - (i) *any environmental planning instrument, and*
  - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
  - (iii) *any development control plan, and*
  - (iiia) *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, and*
  - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below. It is noted that the proposal is considered to require concurrence (s4.13) which is discussed further in this report.

### **3.2 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations**

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

#### **(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments**

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

- *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Inner West Local Environmental Plan 2022*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 4** and considered in more detail below.

**Table 4: Summary of Applicable Environmental Planning Instruments**

| EPI   | Matters for Consideration   | Comply |
|---|---|--------|
| State Environmental Planning Policy (Biodiversity & Conservation) 2021  | <ul style="list-style-type: none"> <li>• Chapter 2: Vegetation in non-rural areas</li> </ul>  | Yes    |
| BASIX SEPP  | <ul style="list-style-type: none"> <li>• No compliance issues identified subject to imposition of conditions on any consent granted.</li> </ul>   | Yes    |
| SEPP 65   | <ul style="list-style-type: none"> <li>• Clause 28(2) - The proposal is contrary to some of the apartment design guide requirements, refer to SEPP discussion.</li> </ul>                               | No     |
| State Environmental Planning Policy (Planning Systems) 2021             | <ul style="list-style-type: none"> <li>• Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6.</li> </ul>  | Yes    |
| SEPP (Resilience & Hazards)   | <ul style="list-style-type: none"> <li>• Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions.</li> </ul> | Yes    |
| State Environmental Planning Policy (Transport and Infrastructure) 2021 | <ul style="list-style-type: none"> <li>• Section 2.119(2) - Development with frontage to classified road</li> </ul>   | Yes    |
|   | <ul style="list-style-type: none"> <li>• Section 2.120(2) - Impact of road noise or vibration on non-road development</li> </ul>  | Yes    |
|   | <ul style="list-style-type: none"> <li>• Section 2.121 - Excavation in or immediately adjacent to corridors</li> </ul>  | Yes    |
|   | <ul style="list-style-type: none"> <li>• Section 2.122(4) - Traffic-generating development</li> </ul>   | Yes    |
| <i>Inner West Local Environmental Plan 2022</i>                         | Refer to separate table below   | Yes    |

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| Leichhardt<br>Development Control<br>Plan 2013 | Refer to summary table in attachment B. | Yes |
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Consideration of the relevant SEPPs is outlined below:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*

## Chapter 2 Vegetation in non-rural areas

The protection/removal of vegetation identified under the SEPP and gives effect to the local tree preservation provisions of C1.14 *Tree Management* of the DCP.

An Arboricultural Impact Assessment has been prepared for the proposal which undertook assessment of 20 trees located within or on land adjacent to the subject site that will or may be impacted by the proposed works. The proposal seeks the following:

- 4x trees on adjoining property at 22 Fred Street are proposed for retention
- 16x trees within the nature strips and on-site carpark are proposed for removal

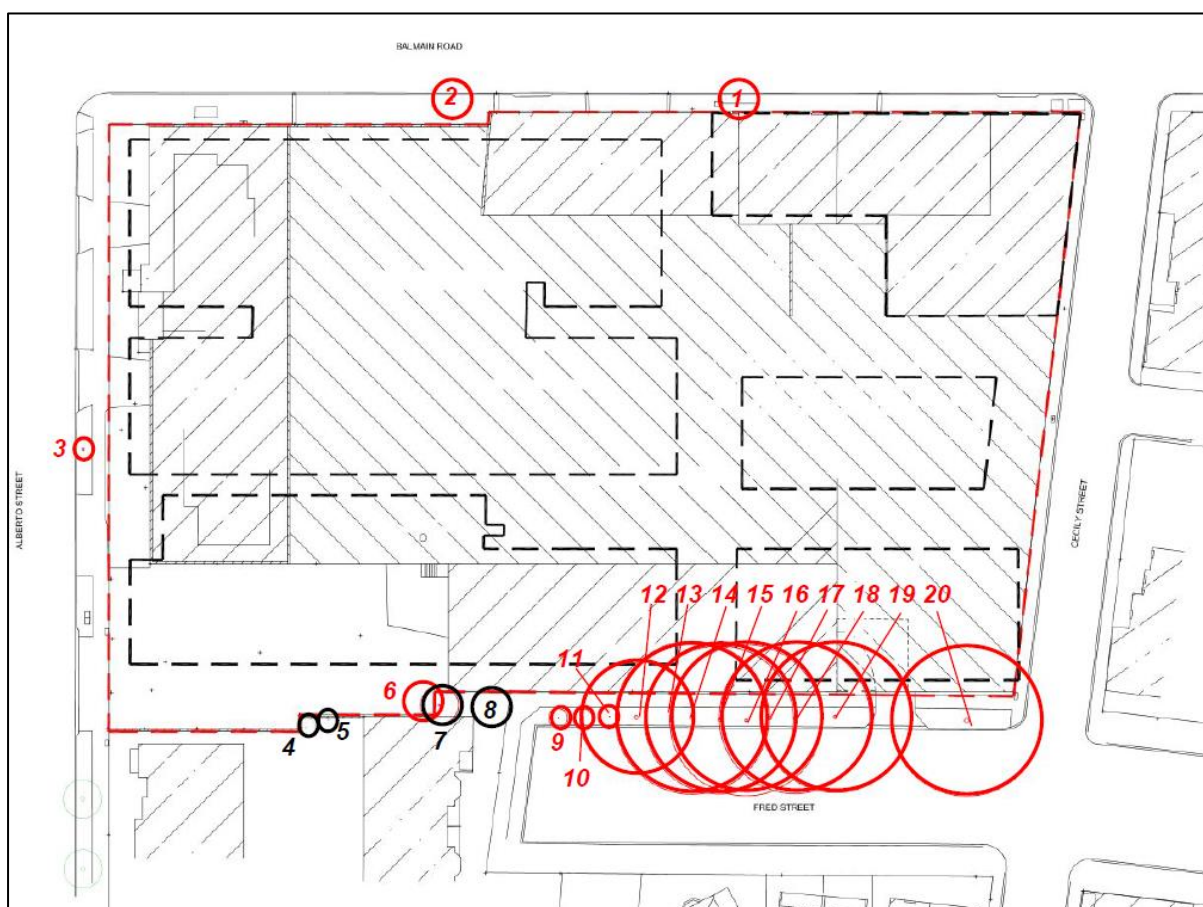


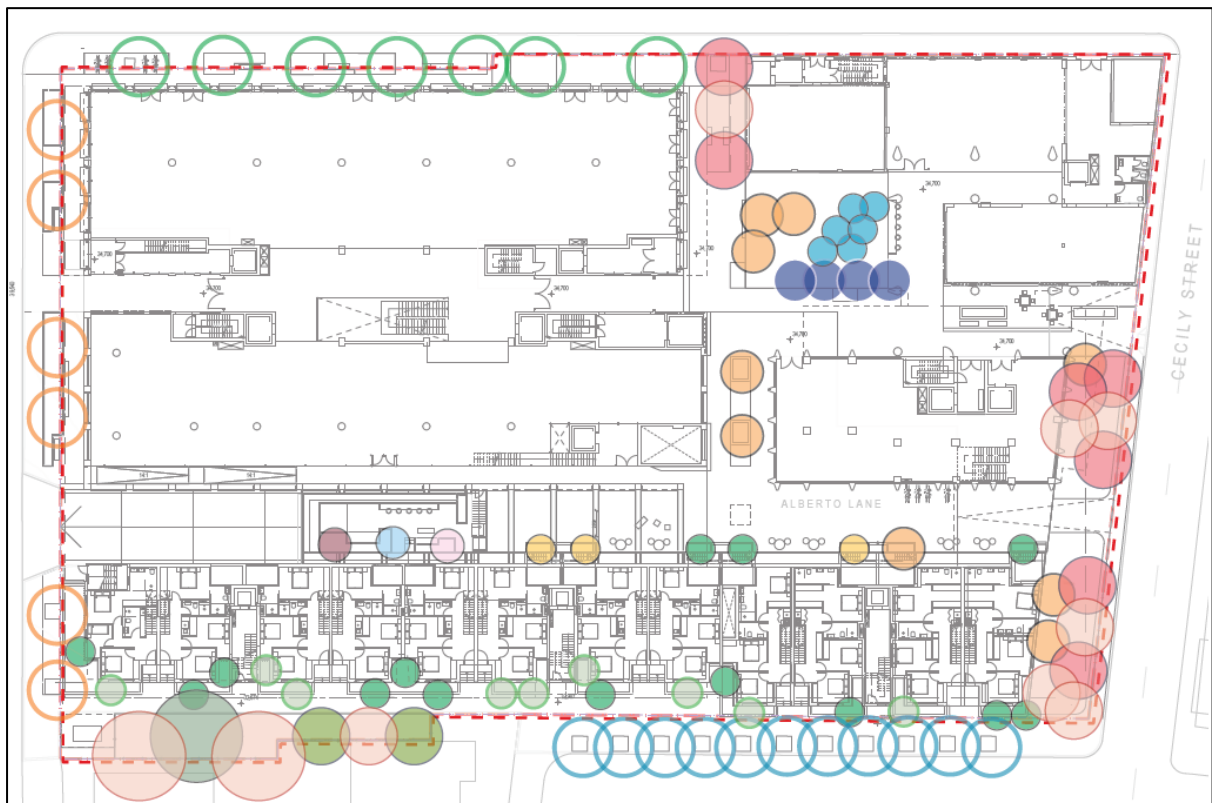
Figure 12: Existing tree plan (trees for removal identified in red)





*Figure 13: Photo of the proposed trees for removal along Fred Street*

The existing street trees on Fred Street are London Plane Trees and have been subject to severe pruning due to the location of above ground powerlines. Their removal will allow for the powerlines to be relocated underground and for a more suitable species (Yellow Bloodwood) to grow uninhibited in accordance with the Tree Strategy Plan (figure 14). As such the proposed removal of the street trees is supported subject to supplementary planting.



*Figure 14: Tree planting strategy plan*



In relation to the retained trees, a condition is included in the recommendation requiring that tree protection measures are implemented in accordance with the Tree Protection Plan.

Overall, the proposal is considered acceptable with regard to the SEPP and DCP subject to the imposition of conditions protecting the surrounding trees, and compensatory plantings to be planted under the supervision of a Project Arborist.

- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

State Environmental Planning Policy – Building Sustainability Index BASIX– 2004 (BASIX SEPP) applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by BASIX Certificate No. 1376956M\_02 dated 01 February 2024 committing to environmentally sustainable measures. The Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

- *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development*

The development is subject to the requirements of *State Environmental Planning Policy No. 65– Design Quality of Residential Apartment Development* (SEPP 65) as it was lodged before 14 December 2023. *SEPP 65* prescribes nine design quality principles to guide the design of residential apartment development and to assist in assessing such developments. The principles relate to key design issues including context and neighbourhood character, built form and scale, density, sustainability, landscape, amenity, safety, housing diversity and social interaction and aesthetics.

A statement from a qualified Architect was submitted with the application verifying that they designed, or directed the design of, the development. The statement also provides an explanation that verifies how the design quality principles are achieved within the development and demonstrates, in terms of the Apartment Design Guide (ADG), how the objectives in Parts 3 and 4 of the guide have been achieved.

Further, in considering if the proposal achieves the design quality principles, the application was referred to Council's Architectural Excellence and Design Review Panel (AEDRP) for comment. The recommendations from the AEDRP have been largely resolved through revisions to the design.

The development is acceptable having regard to the nine design quality principles.

#### *Apartment Design Guide*

The ADG contains objectives, design criteria and design guidelines for residential apartment development. In accordance with Section 6A of the SEPP certain requirements contained within DCP do not apply. In this regard the objectives, design criteria and design guidelines set out in Parts 3 and 4 of the ADG prevail. Attachment B contains an assessment against the ADG, with discussion of the relevant matters as follows:

## 1. Privacy/Building Setbacks

The ADG prescribes the following minimum required separation distances from buildings within the same site up to four storeys/12 metres:

| Room Types   | Minimum Separation |
|--|--------------------|
| Habitable Rooms/Balconies to Habitable Rooms/Balconies | 12 metres          |
| Habitable Rooms to Non-Habitable Rooms                 | 9 metres           |
| Non-Habitable Rooms to Non-Habitable Rooms             | 6 metres           |

### *Podium Level*

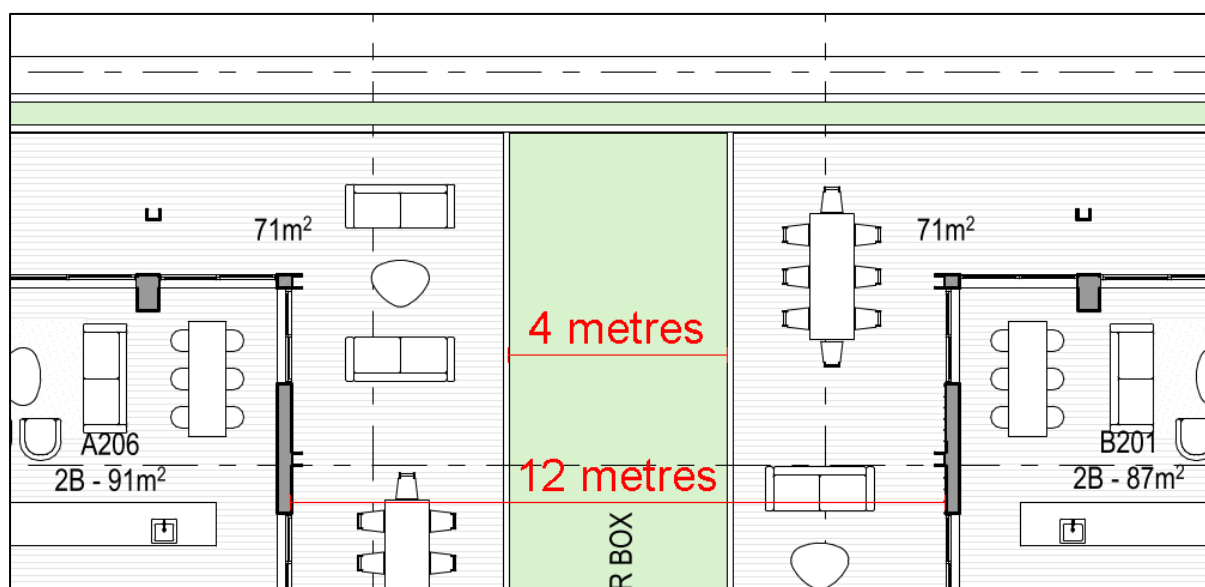
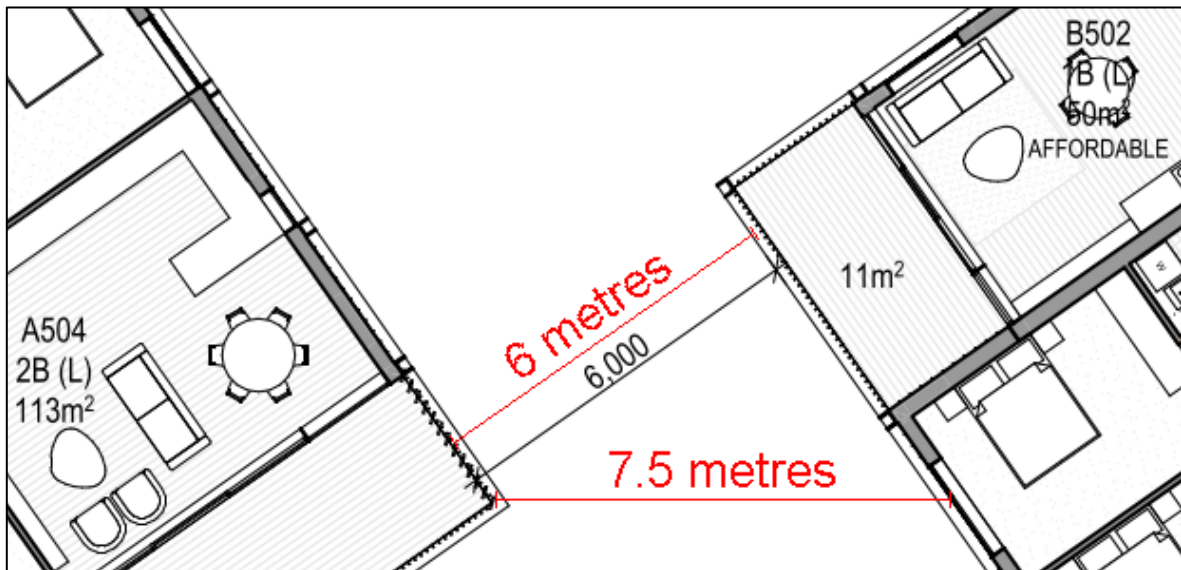


Figure 15: Balcony separation on podium level

As illustrated in figure 15, A206 and B201 provide a non-compliant balcony to balcony separation of 4m. The setback is considered acceptable in this instance as the amenity provided from the oversized 71sqm balconies which have dual aspects to the west and north, and are considered an overall better outcome for the apartments. The balconies are separated by a raised planter box with substantial vegetation including trees which affords a supplementary source of privacy. It is considered that visual and acoustic privacy can be reasonably managed by the occupants without additional mitigation measures.

A further non-compliant balcony separation is located on the podium level between A205 and B202 with a separation distance of 5.2m. B202 includes a privacy screen to a height of 1.6m which resolve visual privacy impacts, and as such the setback is considered acceptable in this instance.

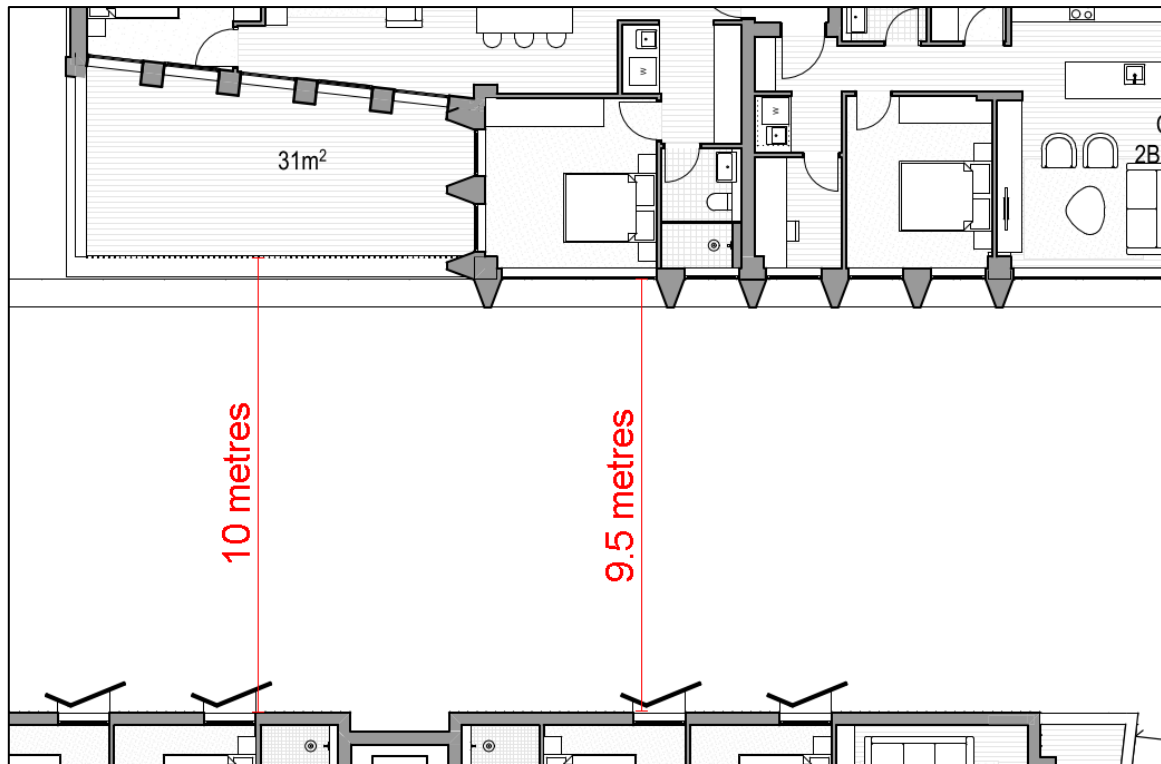
### *Pinch point*



*Figure 16: Pinch point buildings A and B*

As illustrated in figure 16, A504 and B502 and B503 provide a non-compliant balcony to balcony/habitable room separation of 6m and 7.5m respectively. The angular building form results in a 'pinch point' between the two buildings, however on balance this building form is considered a suitable response to reduce the perceived density and was supported by the AEDRP. The 'pinch point' has been mitigated on levels 2-4 by reconfigured apartment layouts with fixed glazing to manage acoustic impacts and as such the setback is considered acceptable in this instance. Level 5 apartment 504 (figure 16), provides a full height louvre to minimise direct overlooking into unit B502.

*Alberto Lane*



*Figure 17: Alberto Lane Level 2*

As illustrated in figure 17, building F (apartments F201 and F202) and building C (apartments C202 and C203) have non-compliant habitable room/balcony to habitable room/balcony setbacks of 10m and 9.5m respectively. The setback is considered acceptable in this instance as building F has employed privacy screens to prevent direct overlooking and building C glazing is fixed to mitigate acoustic impacts, with the exception of the balcony. Further, the balcony is located on a corner allowing sound to disperse. Given the future ground floor uses and site zoning, this outcome is considered reasonable.

## **2. Communal Open Space**

The design guidelines nominate a minimum of 25% of the site area (being 1,706sqm) to be provided as communal open space. The proposal provides a non-compliant 1,263sqm (19%) which is a variation of 443sqm or 26%.

Notwithstanding, given the site is located within an E4 General Industrial zone with an existing compact urban form, the development is considered acceptable with respect to the objectives of this Part of the ADG as follows:

- The proposal achieves a minimum of 50% direct sunlight to the principal usable part of the communal open spaces for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter);
- Communal open space is generally located on rooftops which receive high amenity with regard to outlook and safety;
- All areas of communal open space allow for universal access, including accessible toilets.
- The communal open spaces offer a range of amenities such as seating, canopy shelters and BBQ facilities;

- All apartments are provided private open space areas (POS) that are compliant with and in excess of the minimum requirements under the ADG.
- The subject site is well located to nearby areas of public open space, including Callan Park; and
- The proposal is also supplemented with over 2,000sqm of publicly accessible open space on ground level. Although this space has varying levels of functionality and quality, 'Bakers Square' and the Cecily Street setback provide deep soil areas which will enhance the residential amenity.

### **3. Deep Soil**

The design criteria nominate a minimum of 7% of the site area (being 477.68sqm), and for larger sites design guidance recommends 15% of the site area (being 1,023.6sqm) to be provided as deep soil zones. The proposal provides a non-compliant 349sqm (5.11%) which is a variation of 128.68sqm or 26.9% from the minimum 7% requirement.

Notwithstanding, given the site is located within an E4 General Industrial zone with an existing compact urban form, the development is considered acceptable with respect to the objectives of this Part of the ADG as follows:

- The basement has been consolidated within the new building footprint;
- The basement is offset from the Balmain Road, Cecily Street, and Fred Street boundaries to co-locate deep soil areas with street verges to create larger contiguous areas of deep soil which allows for the development of healthy root systems and stability for new street tree plantings;
- The proposal maximises non-residential uses, active frontages, and public through site links at ground floor level which reduces available space for deep soil planting;
- Alternative forms of planting have been provided such as green roofs and narrower dimensioned deep soil areas at ground level; and
- Acceptable stormwater management has been achieved as detailed elsewhere in the report.

Notwithstanding the above, a condition has been included in the recommendation requiring that the landscape plan be revised to include the deep soil areas as shown on the ground floor plan (drawing no. A-DA103 rev 4) to address inconsistencies within the architectural set.

### **4. Light and natural ventilation to bedrooms**

The design guidelines outline that light wells are not to be used as the primary air source for habitable rooms.

The proposal provides 10 bedrooms (on the ground floor in building D,E,F) which rely on sunken lightwells under double height voids as the only source of light and ventilation to a bedroom (figure 18).



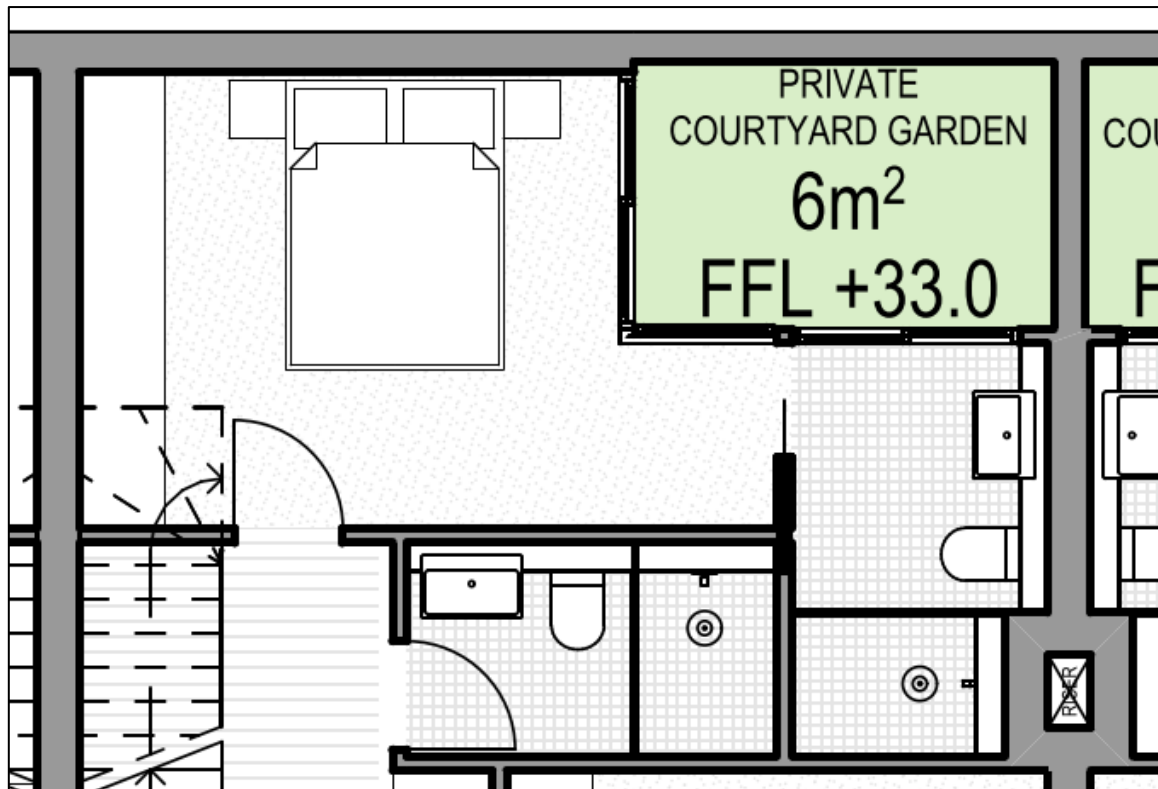


Figure 18: except of apartment D004

Notwithstanding, the development is considered acceptable with respect to the objectives of this Part of the ADG as follows:

- The lightwells are of sufficient size and range from a minimum 6sqm to maximum 10sqm.
- Large expanses of glass and openings service the light wells to maximise natural ventilation and light and to improve the sense of space.
- Windows are provided to two elevations within the lightwell to allow occupants flexible configuration.
- The lightwells only service bedrooms, not any living areas.

## 5. Storage

The ADG prescribes the following storage requirements in addition to storage in kitchen, bathrooms and bedrooms:

| Apartment Type        | Minimum Internal Area |
|-----------------------|-----------------------|
| 1 Bedroom apartments  | 6m <sup>3</sup>       |
| 2 Bedroom apartments  | 8m <sup>3</sup>       |
| 3+ Bedroom apartments | 10m <sup>3</sup>      |

Note: At least 50% of the required storage is to be located within the apartment.

The development complies the design criteria requirement for at least 50% of the required storage to be located within the apartment. However, the proposal has not demonstrated compliance with the overall storage volume. In this regard, the basement storage layout does not show storage allocation to apartments, and as such compliance could not be confirmed. A condition has been included in the recommendation to provide a revised storage schedule to ensure compliance is achieved.

- *State Environmental Planning Policy (Planning Systems) 2021*

## Chapter 2: State and Regional Development

The proposal is *regionally significant development* pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2 of Schedule 6 of the State Environmental Planning Policy (Planning Systems) 2021 (Planning Systems SEPP) as the proposal is development over \$30 million. Accordingly, the Sydney Eastern City Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

- *State Environmental Planning Policy (Resilience and Hazards) 2021*

## Chapter 4: Remediation of Land

The provisions of Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

In consideration of this, a Remediation Action Plan (RAP) has been prepared for the site. The site investigation has identified evidence of contamination, including five underground storage tanks (USTs) and contaminated fill or soil from past activities.

The RAP provides details of the work that will be required to remediate and concludes that the site can be made suitable for the proposed residential development.

On the basis of this RAP, the consent authority can be satisfied that the land will be suitable for the proposed use and that the land can be remediated, subject to the implementation of the RAP which has been included as a recommended condition of consent.

- *State Environmental Planning Policy (Transport and Infrastructure) 2021*

## Chapter 2: Infrastructure

### Development likely to affect an electricity transmission or distribution network

The proposed development meets the criteria for referral to the electricity supply authority within Section 2.48 of the Transport and Infrastructure SEPP.

Ausgrid provided comments with regard to underground and overhead powerlines in the vicinity of the development which have been included as conditions in the recommendation.

In addition, the site has an easement for an existing Ausgrid chamber substation known as S1425. The applicant has provided confirmation from the electrical authority that the substation can be relocated/upgraded as part of the development.

Overall, subject to conditions in the recommendation and compliance with relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice the proposal satisfies the relevant controls and objectives contained within the Transport and Infrastructure SEPP.

#### Development with frontage to classified road

The proposal fronts Balmain Road which is a classified road. In considering Section 2.119(2) of the Transport and Infrastructure SEPP. Vehicular access to the land is provided from Alberto Street which is not a classified road and has been designed to be practical and safe. The proposal has demonstrated that the access arrangements will not adversely impact the safety, efficiency, and ongoing operation of the classified road.

#### Traffic-generating development

The proposed development is traffic generating development under Section 2.122 and Schedule 3 of the Transport and Infrastructure SEPP.

The proposal will allow for the efficient movement of people and freight to and from the site and the extent of multi-purpose trips, minimise the need for travel by car and not pose any significant traffic safety, road congestion or parking implications.

Transport for NSW (TfNSW) has reviewed the application and provides concurrence under section 138 of the *Roads Act 1993*, for the proposed works within the Balmain Road corridor subject to the conditions included in the recommendation.

#### Inner West Local Environmental Plan 2022

The relevant local environmental plan applying to the site is the *Inner West Local Environmental Plan 2022* (the LEP). The aims of the LEP include;

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to encourage development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles,*
- (b) to conserve and maintain the natural, built and cultural heritage of Inner West,*
- (c) to reduce community risk from and improve resilience to urban and natural hazards,*
- (d) to encourage walking, cycling and use of public transport through appropriate intensification of development densities surrounding transport nodes,*
- (e) to facilitate economic growth and employment opportunities within Inner West,*

- (f) to encourage diversity in housing to meet the needs of, and enhance amenity for, Inner West residents,*
- (g) to create a high quality urban place through the application of design excellence in all elements of the built environment and public domain,*
- (h) to prevent adverse social, economic and environmental impacts on the local character of Inner West,*
- (i) to prevent adverse social, economic and environmental impacts, including cumulative impacts.*

The proposal is consistent with these aims as the proposal:

- Promotes the use and development of land for arts and cultural activity given the dedication of 1,200sqm of employment uses will be used for creative purposes,
- Demonstrates efficient and sustainable use of energy and resources given the proposed 5-star green star building rating,
- Will have acceptable impacts on the natural, built and cultural heritage of the Inner West,
- Reduces community risk from urban and natural hazards through suitable stormwater management and water sensitive urban design,
- Increases density around surrounding transport nodes and encourages walking and cycling through the provision of through site links and bicycle parking and end of trip facilities,
- Contributes to economic growth and provides employment opportunities within the Inner West through the retention and redevelopment of 6,000sqm of industrial land,
- Provides housing to the community in a range of apartments sizes and layouts, including seven units as affordable housing,
- Enhances amenity for Inner West residents through well designed apartments
- Provides a high-quality urban place through the application of design excellence and provision of additional public space and increased tree canopy cover, and
- Will not result in adverse social, economic and, subject to recommended conditions, environmental impacts on Inner West.

#### *Zoning and Permissibility (Part 2)*

The site is located within the E4 General Industrial (formally IN2) Zone pursuant to Section 2.2 of the LEP (Figure 19).



Figure 19: Zoning Map (subject site E4 highlighted in red)

The proposed development is for mixed use development comprising of **light industrial** and **residential flat building** uses.

Consent under this application is only sought for 'cold-shell' approval for **light industrial** uses, with separate applications being pursued in the future for specific uses and fit-outs.

According to the definitions (contained in the Dictionary), the proposal satisfies the LEP dictionary definition of the above definitions, with **light industrial** being a permissible use and **residential flat building** being prohibited in the Land Use Table in Section 2.3.

Additional provisions contained under, Section 2.5 Additional permitted uses for particular land, Section 6.25 Development of land at 469–483 Balmain Road, Lilyfield and Schedule 1(18) of the LEP permits development for the purposes of **residential flat buildings**. Schedule 1(18)(3) includes a sunset clause for **residential flat buildings** for an application to be made before 26 February 2024. In this regard, the provision requires that a development application be lodged for all development for the purpose of a residential flat building on the site prior to 26 February 2024 and does not allow for any future or further development applications to be lodged for that purpose.

The zone objectives include the following (pursuant to the Land Use Table in Section 2.3):

- *To provide a range of industrial, warehouse, logistics and related land uses.*
- *To ensure the efficient and viable use of land for industrial uses.*
- *To minimise any adverse effect of industry on other land uses.*
- *To encourage employment opportunities.*
- *To enable limited non-industrial land uses that provide facilities and services to meet the needs of businesses and workers.*



- To protect industrial land in proximity to Sydney Airport and Port Botany and the Eastern Economic Corridor.
- To retain existing and encourage new industrial uses to meet the needs of the community.

*General Controls and Development Standards (Part 2, 4, 5 and 6)*

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 5** below.

**Table 5: Consideration of the LEP Controls**

| Control                                 | Requirement  | Proposal  | Comply |
|---|--|---|--------|
| Demolition<br>(Section 2.7)             | The proposal satisfies the section as follows: <ul style="list-style-type: none"> <li>• Demolition works are proposed, which are permissible with consent; and</li> <li>• Standard conditions are recommended to manage impacts which may arise during demolition.</li> </ul>  |   | Yes    |
| Height of buildings<br>(Section 4.3(2)) | 23m  | 25.53m  | No     |
| FSR<br>(Section 4.4(2))                 | 2.2:1 (15,013sqm)  | 2.2:1 (15013sqm)<br>(Concept proposal)<br>2.16:1 (14,765qm)<br>(Detailed Stage 1) | Yes    |
| Heritage Conservation<br>(Section 5.10) | The site is in the vicinity of the State listed Callan Park at Glover Street, Lilyfield, and the locally listed timber cottage, including interiors, at 8 Fred Street, Lilyfield.<br><br>The proposal provides sufficient separation from Callan Park to ensure the visual and spatial qualities of the area remain significantly unaffected by the proposal. The existing 'character buildings' to the corner of Balmain Road and Cecily Street will be retained and restored which are of an appropriate form and scale for a positive outcome from a streetscape perspective and will not detract from the heritage significance of Callan Park. The materials palette provided is also generally acceptable as it will be sympathetic to the colours and materials in the vicinity and to Callan Park. |   | Yes    |
| Acid sulphate soils<br>(Section 6.1)    | <ul style="list-style-type: none"> <li>• The site is identified as containing Class 5 acid sulfate soils.</li> <li>• The proposal seeks to excavate to a depth of approximately 23.3RL. The Geotechnical Report</li> </ul>   |   | Yes    |

|  |   |     |
|--|---|-----|
|  | <p>submitted with the proposal concludes that the Site is not within or close to an area where acid sulfate soils are expected to occur.</p> <ul style="list-style-type: none"> <li>The proposal is considered to adequately satisfy this section as the application does not propose any works that would result in any significant adverse impacts to the watertable.</li> </ul>  |     |
| Earthworks (Section 6.2)                                     | <ul style="list-style-type: none"> <li>The proposal seeks to excavate between 6.4-8.9m. The supplied Geotechnical Report demonstrates that the proposed earthworks are unlikely to have a detrimental impact on environmental functions and processes, existing drainage patterns, or soil stability. Conditions have been included in the recommendation to ensure that the proposal will meet the relevant requirements.</li> </ul>   | Yes |
| Stormwater Management (Section 6.4)                          | <ul style="list-style-type: none"> <li>The development maximises the use of permeable surfaces, includes on site retention as an alternative supply and subject to standard conditions would not result in any significant runoff to adjoining properties or the environment.</li> </ul>  | Yes |
| Development in areas subject to aircraft noise (Section 6.8) | <ul style="list-style-type: none"> <li>The site is located within the ANEF 20-25 contour, and as such a Noise Impact Assessment Report was submitted with the application concluding that the proposal is capable of satisfying this section. Conditions have been included in the recommendation to ensure that the proposal will meet the relevant requirements of Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021:2015, thereby ensuring the proposal's compliance with the relevant provisions of Section 6.8 of the LEP.</li> </ul>  | Yes |
| Design Excellence (Section 6.9)                              | <p>The proposed development is for the construction of a new building that exceeds 14 metres in height. The development is therefore required to demonstrate design excellence. In considering if the proposal exhibits design excellence, the application was referred to Council's AEDRP for comment. The recommendations from the AEDRP have been largely resolved. The proposal satisfies this section as follows:</p> <ul style="list-style-type: none"> <li>A high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved.</li> <li>The form and external appearance of the development will improve the quality and amenity</li> </ul> | Yes |

|  |   |  |   |
|--|---|--|---|
|  | <p>of the public domain, with the material and finishes being of a quality and aesthetic that will ensure the development has longevity.</p> <ul style="list-style-type: none"> <li>• The proposal has provided 1:50 sections and details of primary facade type to clearly show materials, balustrade types and fixings, balcony edges, junctions, integration of rainwater drainage including any downpipes and similar details within the proposal.</li> <li>• The development does not detrimentally impact on view corridors and landmarks, or on solar access to adjoining properties.</li> <li>• It is noted that AEDRP does not support the deletion of the through-site link which connected Balmain Road to Fred Street, however on balance, it is considered that the massing is acceptable given, the building along Fred Street is 3-storeys in height, and partially hidden toward Alberto Street end of Fred Street. The additional deep soil zone on the corner of Fred Street and Cecily also provides visual relief and an area for landscaping.</li> <li>• Whilst the land is subject to a requirement for a site specific DCP, the <i>EP&amp;A Act 1979</i> permits a Concept Development Application to be made and approved in lieu of a DCP. As detailed further in this report, the Concept and detailed (stage 1) Development Application has adequately responded to the site specific DCP requirements.</li> </ul> |  |   |
| Diverse housing (Section 6.15)   | <ul style="list-style-type: none"> <li>• At least 25% of the dwellings will be studio dwellings, or dwellings containing only 1 bedroom, and</li> <li>• No more than 30% of the dwellings will be dwellings containing at least 3 bedrooms.</li> </ul>  | <ul style="list-style-type: none"> <li>• 25.6% being 23 apartments are studio or 1-bedroom dwellings</li> <li>• 30% being 27 apartments are 3-bedroom dwellings</li> </ul>   | Yes   |
| Development of land at 469–483 Balmain Road, Lilyfield (Section 6.25(3)) | <ul style="list-style-type: none"> <li>• At least 6,000sqm of the total gross floor area will be set aside for employment use</li> </ul>  | <ul style="list-style-type: none"> <li>• The concept proposal provides for 6,000sqm with 5,752sqm being provided in stage 1, and 248sqm to be provided in stage 2.</li> <li>• Refer to discussion below</li> </ul> | Satisfied by way of imposition of deferred commencement condition<br>See comments below |

|  |  |  |     |
|--|--|--|-----|
|  | <ul style="list-style-type: none"> <li>At least 1,200sqm of the 6,000sqm set aside for employment uses will be used for creative purposes</li> </ul>                                       | <ul style="list-style-type: none"> <li>The concept proposal provides for 6,000sqm of which 1,200sqm can be conditioned to be used for creative purposes</li> <li>The LEP defines creative industry as a building or place the principal purpose of which is to produce or demonstrate arts, crafts, design or other creative products, and includes artists' studios, recording studios, and set design and production facilities.</li> <li>Refer to discussion below</li> </ul> | Yes |
|  | <ul style="list-style-type: none"> <li>The development provides for the adaptive reuse of existing buildings on the land, as far as is practicable</li> </ul>                              | <ul style="list-style-type: none"> <li>The concept proposal provides for the adaptive reuse of the existing character buildings within the site, with the two storey components being restored and adaptively reused in Stage 1, and the single storey component restored and adaptively reused in Stage 2.</li> </ul>   | Yes |
|  | <ul style="list-style-type: none"> <li>At least 5% of the gross floor area that is to be used for the purposes of residential accommodation will be used for affordable housing</li> </ul> | <ul style="list-style-type: none"> <li>5.15% of the residential GFA being 464sqm is provided as affordable housing.</li> </ul>   | Yes |
|  | <ul style="list-style-type: none"> <li>A development control plan that provides for the matters specified</li> </ul>   | <ul style="list-style-type: none"> <li>A Concept Development Application has been</li> </ul>   | Yes |

|  |   |   |     |
|--|---|---|-----|
|  | in subclause (4) has been prepared for or applies to the land.  | <p>lodged. Section 4.23 of the EP and A Act 1979 permits a concept development application to be made and approved in lieu of a DCP.</p> <ul style="list-style-type: none"> <li>An assessment on the concept proposal against the DCP requirements is discussed below.</li> </ul> |     |
| Development of land at 469–483 Balmain Road, Lilyfield (Section 6.25(6)) | <p>The proposal has annotated on the plans the affordable housing apartments achieving a total a 464sqm being 5.15% of the total residential GFA.</p> <p>A condition is recommended in the consent to confirm the terms of the affordable housing for a period of 30 years in accordance with the LEP requirements.</p> |   | Yes |

The proposal does not comply with the Section 4.3 Height of building development standard of the LEP and accordingly, a Section 4.6 request has been provided with the application for the exceedance of the development standard.

Notwithstanding this, the proposal is considered to be generally consistent with the LEP subject to the recommended conditions. Further discussion of the relevant matters are discussed as follows:

### 1. Section 4.6 Request

#### *The Development Standard to be varied and extent of the variation*

The applicant seeks a variation to the Height of Building development standard under Section 4.3 of LEP by 2.53mm or 11%. The extent of the building elements and proposed variation is illustrated in Figure 20 and outlined in **Table 6** below.

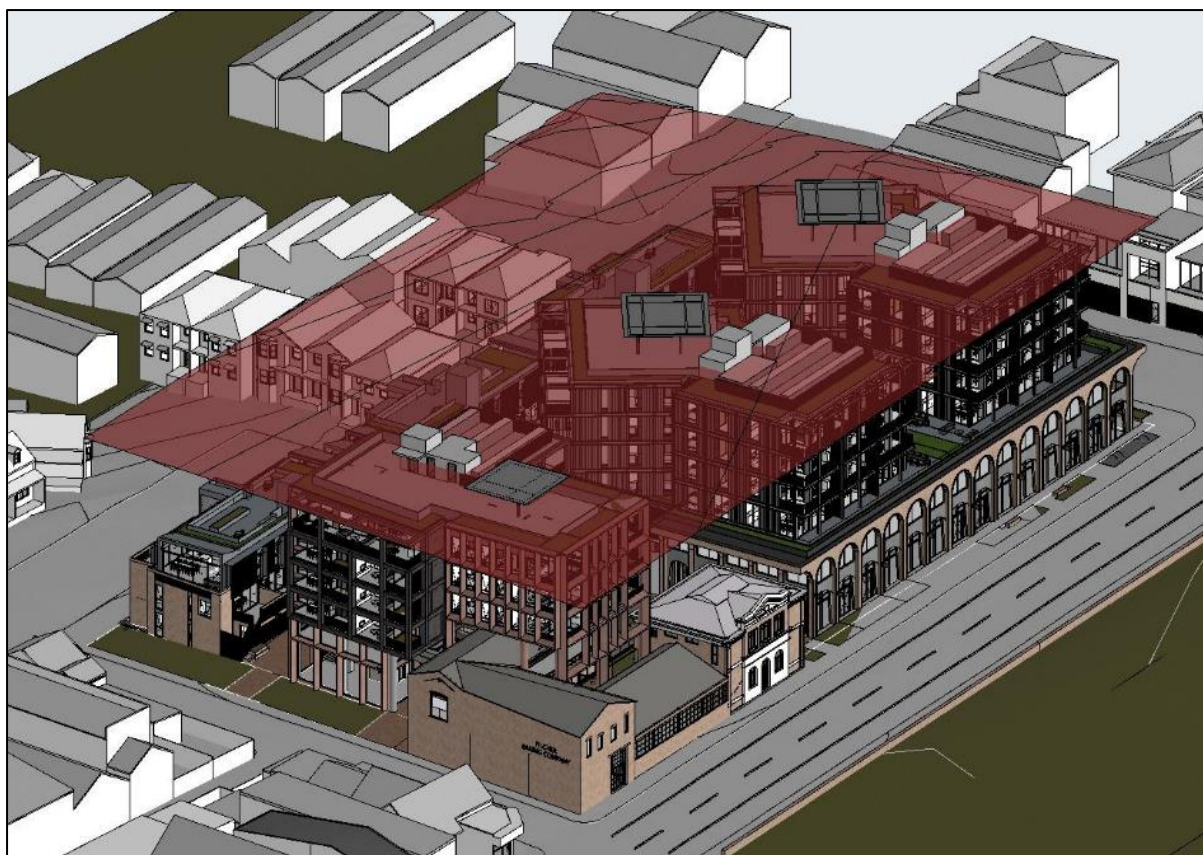


Figure 20: Height plane diagram.

Table 6: Extent of the building elements variation

| Component         | Proposed height   | Proposed variation |
|-------------------|-------------------|--------------------|
| <b>Building A</b> |                   |                    |
| Lift overrun      | RL 59.95 (25.37m) | 2.37m / 10.3%      |
| Stair overrun     | RL 58.55 (23.96m) | 0.96m / 4.2%       |
| Canopy overrun    | RL 59.2 (24.77m)  | 1.77m / 7.7%       |
| Toilet block      | RL 58.3 (23.87m)  | 0.87 / 3.8%        |
| <b>Building B</b> |                   |                    |
| Lift overrun      | RL 59.95 (25.5m)  | 2.5m / 10.9%       |
| Stair overrun     | RL 58.55 (24.08m) | 1.08m / 4.7%       |
| Canopy overrun    | RL 59.2 (24.87m)  | 1.87m / 8.1%       |
| Toilet block      | RL 58.3 (23.87m)  | 0.87 / 3.8%        |
| <b>Building C</b> |                   |                    |
| Lift overrun      | RL 59.75 (25.53m) | 2.53 / 11%         |
| Stair overrun     | RL 58.35 (24.05m) | 1.05m / 4.6%       |
| Canopy overrun    | RL 59.20 (24.68m) | 1.68m / 7.3%       |
| Toilet block      | RL 58.35 (24.05m) | 1.05m / 4.6%       |

#### *Preconditions to be satisfied*

Section 4.6(4) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for a proposal that contravenes a development standard. Section 4.6(2) provides permissive power to grant development



consent for a proposal that contravenes the development standard is subject to two pre-conditions.

The two preconditions include:

1. Tests to be satisfied pursuant to Section 4.6(4)(a) – this includes matters under Section 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard and whether the proposal is in the public interest; and
2. Tests to be satisfied pursuant to Section 4.6(4)(b) – concurrence of the Planning Secretary – this includes matters under Section 4.6(5) in relation to whether contravention of the development standard raises any matter of significance for state or regional environmental planning, public benefit of maintaining the development standard, and any other matters.

These matters are considered below for the proposed development having regard to the applicant's Section 4.6 request:

- The proposed height exceedance will be compatible with the character of the locality, including the desired future character of the locality.
- The lift overruns, stair overruns, toilet and canopy structures are centrally positioned on the rooftop of Building A, B and C. This ensures that the height exceedance would not result in any further amenity impacts on surrounding residential developments when compared to a compliant scheme.
- The varying building elements are not perceptible in immediate local views.
- The proposed minor height exceedances are consistent with a desirable transition in height and scale from the taller/denser forms of development proposed to lower scaled residential development to the south of the site.
- The proposed development will facilitate improved and amenity outcomes by providing high-quality rooftop, communal spaces for residents with equitable access between buildings. These spaces enable residents to obtain desirable views and outlook, whilst encouraging passive recreation and social interaction.
- Communal open space at the rooftop level, will allow the ground plane to be used more effectively to deliver publicly accessible open space and reduce any public/private land use conflict.
- The proposed development does not result in any significant environmental impacts, with regard to overshadowing, privacy, or visual impact, when compared to a compliant scheme.
- The proposed height variation does not preclude compliance with the floor space ratio development standard under the LEP.

The applicant's written rationale adequately demonstrates compliance with the development standard is unreasonable and unnecessary in the circumstances of the case, and that there are sufficient environmental planning grounds to justify contravening the development standard.

It is considered the development is in the public interest because it is consistent with the relevant objectives of the zone and the objectives of the development standard, in accordance with Section 4.6(4)(a)(ii) of LEP for the following reasons:

#### Development Standard Objectives

- The application proposes an overall building height that achieves the desired future character of the local area and displays good design.
- The proposal minimises adverse impacts on the local amenity by managing the overall bulk, scale and height of the building so that it is compatible with the desired future character of the precinct. No significant additional adverse impacts to neighboring properties will be incurred in relation to privacy, overshadowing, solar access or visual fit.
- The proposal disguises the additional height centrally within the site thereby maintaining an appropriate transition between buildings of different heights within the site whilst respecting the scale and character of the surrounding streetscape.

#### Zone Objectives

- The development provides a supply of 'cold shell' spaces which can be fitted out under future applications to provide for a range of industrial, warehouse, logistics and related land uses.
- The development ensures efficient use of the land and the viable use of industrial uses given the activation of the site through creation of public spaces and through site links. Further, the floor to ceiling heights to employment levels facilitate flexible spaces that can accommodate and appeal to a wide range of light industrial uses.
- The development has been designed to minimise any adverse effect of industry on other land uses as employment uses are distributed and orientated away from the lower scale residential area to the east and south. The proposal also includes a loading dock in the basement and Balmain Road remains the primary road frontage.
- The development encourages employment opportunities given the general retention of industrial floor space and provides for a supply of residential dwellings in close proximity to employment land.
- The development maintains industrial land in proximity to Sydney Airport and Port Botany and the Eastern Economic Corridor.
- The proposal allows for redevelopment of the industrial site, to deliver modern industrial tenancies which will appeal to new industrial uses.

The contravention of the development standard does not raise any matter of significance for State and Regional Environmental Planning. The proposal thereby accords with the objective of section 4.6(1)(b) and requirements of section 4.6(3)(b) of the LEP. For the reasons outlined above, there are sufficient planning grounds to justify the departure from the height of buildings development standard and it is recommended the section 4.6 exception be granted.

## **2. Site specific requirements - Section 6.25(3) of LEP**

The proposed concept development application is required to satisfy the following requirements Section 6.25(3)(a) of the LEP:

*(3) Development consent must not be granted to mixed use development on land to which this clause applies that includes a residential flat building unless—*

*(a) the consent authority is satisfied of the following—*

- (i) at least 6,000m<sup>2</sup> of the total gross floor area will be set aside for employment uses, and*
- (ii) at least 1,200m<sup>2</sup> of the 6,000m<sup>2</sup> set aside for employment uses will be used for creative purposes, and*
- (iii) the development provides for the adaptive reuse of existing buildings on the land, as far as is practicable, and*
- (iv) at least 5% of the gross floor area that is to be used for the purposes of residential accommodation will be used for affordable housing, and*

The stage 1 detailed design does not satisfy the following:

- Section 6.25(3)(a)(i) - Only 5,752sqm of GFA for employment uses has been provided (which constitutes a variation of 248sqm or 4.1%).
- Section 6.25(3)(a)(iii) - Stage 1 does not propose the adaptive reuse the single storey portion of the former bakery character building.

It is the applicant's intention to achieve compliance with the above provisions in meeting the requisite employment uses in stage 2. However, whilst the concept development application makes commitments in future stages to address the above requirements, there is no certainty in the current proposal that the works in stage 2 will be delivered/undertaken.

The delivery of the employment uses and adaptive reuse of the character buildings are integral to the zone objectives and intent of the site-specific provisions associated with the development of this site. As such, additional assurances are considered necessary to guarantee the minimum employment uses GFA and adaptive reuse of all the character buildings are delivered. The following conditions are included in the recommendation to tie stage 1 and stage 2 applications together and ensure the delivery of these requirements.

Deferred commencement condition on the stage 1 DA notice of determination and prior to Occupation Certificate conditions

*Concept DA - Stage 2 design principles*

*A development application for any building works within the area identified as 'Stage 2' must be lodged which demonstrates the following key design principles:*

- *Provides 248sqm of gross floor area for employment uses*
- *Retention and adaptive reuse the existing single storey character building. At a minimum the northern elevation and roof plane must be retained and the timber roof trusses incorporated into the design.*

Occupation Certificate condition on the DA notice of determination:

### *Concept DA – Stage 2 completion*

*Prior to the issue of any Occupation Certificate, the Principal Certifier must be provided with a final occupation certificate related to the stage 2 Development Application to ensure that works described under 'stage 2' have been completed.*

Without the imposition of the above conditions, Council contends that the consent authority cannot be satisfied that the provisions of Clause 6(3)(ii) have been met.

### **3. Site specific DCP - Section 6.25(4) of LEP**

Section 6.25(3)(b) requires that a Development Control Plan provides for the matters specified in subclause (4) has been prepared for and applies to the land. However, Section 4.23 of the *EP&A Act 1979* permits a Concept Development Application to be made and approved in lieu of a DCP. As such an assessment on the concept proposal against 6.25(4) of the LEP is discussed below:

***6.25(4) The development control plan must provide for the following—  
(a) design principles drawn from an analysis of the site and its context,***

An urban design report has been submitted with the application which demonstrates an analysis of the site and its context. In response to this analysis, the following design principles are provided for the site and are considered acceptable:

- Historic consideration.
- Enhance Land Use.
- Local Amenity.
- Optimize building envelope.
- Carefully consider parking/ access.
- Consider traffic generation.
- Improved site permeability.
- Improved public access.
- Ecologically sustainable development.

***(b) buildings to be retained in, and incorporated into, future mixed use development,***

The Pilchers Bakery and the former ABBCO Pty Ltd office buildings, located in the northeast corner of the site, are proposed to be retained and restored under the concept proposal. The proposal will retain the overall form and character, including their exterior facades, fenestration, and roof forms of the character buildings, as they present to Balmain Road and Cecily Street. The retention of these buildings is important to maintain a sense of industrial history and contributes to the architectural form and character of the site.

Stage 1 includes the restoration of the exterior facades to the two storey portions of the buildings. As per the HIS, this will include repainting painted surfaces where paint is peeling,

repointing brickwork and repairing timber window joinery, subject to the condition of the fabric. The proposal also includes the reinstatement of the painted signage reading the 'Pilcher Baking Company' on the Cecily Street façade. The applicant is encouraged to retain and incorporate key industrial features within the character buildings. A condition is included in the recommendation to retain and incorporate the timber door within the opening to first floor level of the Cecily Street elevation (figure 21).



*Figure 21: First floor opening on the of the Cecily Street façade*

The north elevation shows that part of the detail to the southern portion of the parapet of the most western two storey building that has been removed (figure 22), and shown to be reinstated under Stage 1, which is consistent with the detail evident in the historical photo of the building submitted in the HIS and is a positive outcome. A condition has been included in the recommendation to ensure the works are detailed to match the treatment of the eastern façade parapet.



*Figure 22: Location of reinstated parapet circled in red.*

Stage 1 includes the partial and temporary demolition of the rear plane of the single storey character storey building between the two two-storey character buildings to enable the construction of the cantilevered portion of building C above and is proposed to be reinstated after completion. Supporting columns from building C will sit behind the ridgeline of the gable roof form to the single storey component of the character Building. The cantilever form of building C is generally acceptable because of its setback from the front boundary with Balmain Road, and the ability to retain and maintain interpretation of the character buildings. The Structural Engineering Report provides a method statement to confirm the proposed works can be carried out without compromising the structure of the original buildings proposed to be retained on site.

It is noted Stage 2 is to deliver the detailed design of the single storey character building, however a vision study was submitted which outlined 3 potential options; 1) make good (figure 23), 2) reinstate original façade (figure 24) and 3) contemporary infill building (figure 25). Options 1 or 2 can be considered for the site, however Option 2 to reinstate original façade will require further information to demonstrate the proposal is based on historical research and will be subject to a further assessment. Option 3 of a contemporary infill building will unlikely be supported due to the loss of character and form of the existing building resulting in the loss of visual cohesion and connection with the adjoining retained character buildings.





*Figure 23: 'Option 1 make good' submitted by the applicant*



*Figure 24: 'Option 2 reinstate original facade' submitted by the applicant*



*Figure 25: 'Option 3 contemporary infill building' submitted by the applicant*

***(c) distribution of land uses, including the function and landscaping of open space,***

The proposal seeks to develop an existing industrial site, by providing a similar amount of floor space for light industrial uses, whilst also providing an appropriate mix of residential accommodation.

The employment uses have been located as much as possible on ground level, with publicly accessible through-site links maximising opportunities for activation and access to future tenancies. Notwithstanding, Balmain Road remains the primary street frontage and is further activated by this proposal. The retained character buildings on Balmain Road will continue to be used for employment uses. The employment floor space throughout the development contains floor to ceiling heights which facilitate flexible spaces that can accommodate and appeal to a wide range of light industrial uses and creative industries. This also ensures sufficient space is provided for further acoustic attenuation depending on future uses.

Stage 1 detailed design has demonstrated appropriate distribution of land uses, including the extent of publicly accessible open space, landscaping and communal open space. Approximately 30% (being 2,092sqm) of the ground floor plane will be publicly accessible, with the majority of communal open spaces provided on roof tops. This distribution minimises any land use conflict between the publicly accessible spaces with spaces to be used exclusively for residents. The publicly accessible open space primarily functions as through-site links to connect the surrounding pedestrian network particularly between Fred Street and Alberto Street, with the exception of 'Bakers Square' being a central courtyard which contains landscaping and deep soil and is exposed to the restored external fabric of the existing buildings, enabling an appreciation of the site's industrial past.

***(d) building envelopes and built form controls, including the following—***  
***(i) bulk, massing and modulation of buildings,***  
***(ii) setbacks to the ground floor and upper storeys,***

***(iii) specified building storeys,***

The sites setbacks are summarised as follows:

- *Balmain Road boundary (north-western front setback)*
  - The street setback to Balmain Road ranges from a nil setback to the retained character buildings, and 1.7-3.1m to building A and B to the first two storeys. Levels 3 and above, provide setbacks of 4.7m -6.1m to building A and B, and 9m to building C.
- *Cecily Street boundary (north-eastern side setback)*
  - The street setback to Cecily Street ranges from a nil setback to the retained character buildings, and 6m to the building C ground floor and the entire building F. Levels 2 and above, on Building C provide a 3m setback in a cantilever configuration.
  - The proposal provides a building separation distance of at least 17.8m from 1 Fred Street possible habitable window. This is consistent with the ADG building separation requirements of 15m (being 12m for habitable rooms + 3m for change in zones).
- *Alberto Street boundary (south-western side setback)*
  - The street setback to Alberto Street is 2.3m to the building A and D. Levels 2 and above, on building A provide a setback of 6m, with the exception of AX02 and AX03, being angled with a minimum setback of 3.1m their balconies.
  - The proposal provides a building separation distance of at least 22m from any adjoining properties habitable windows. This is consistent with the ADG building separation requirements of 15m.
- *Fred Street boundary (south-eastern rear setback)*
  - The street setback to Fred Street ranges from 7.4-5.5m to building D; 3.1m to Building E, and 1.2m to building F. Across buildings D,E,F level 3 (with the exclusions of their balconies) are further setback which ranges from 10.2-6.6m to building D; 4.3-5.8m to Building E, and 3.8m to building F.
  - The proposal provides a building separation distance of at least 5.5m from the rear building on the adjoining property at 14-22 Alberto Street. This dwelling has a nil setback to the boundary and presents as a blank wall. Whilst not consistent with the ADG building separation requirements of 9m, this outcome is considered acceptable, given the impact is to a blank wall and the scale of building D is consistent within this portion of the street.
  - The proposal provides a building separation distance of at least 23m from adjacent properties on Fred Street. This is consistent with the ADG building separation requirements of 15m.

As summarised above and illustrated within the architectural plans, the development responds to each frontage and varies the scale and form to complement the predominant character and scale of that streetscape. The building massing has generally been concentrated towards the central portion of the site and closer to the Balmain Road frontage, where Buildings A, B and C reach a maximum of six storeys. Six storeys is consistent with what was envisioned under the planning proposal and is generally acceptable being located towards the centre of the site to reduce visibility and ensure solar access to neighbouring properties is maximised.

The massing towards the rear of the site reaches a maximum of 3 storeys (Buildings D, E and F), with the upper-level setback, which provides a transitional and is compatible with the lower-scale residential neighbourhood beyond the southern and south-eastern boundaries of the site.

The scale of the new development to the north elevation to Balmain Road is considered to be a complementary height to the character buildings, which is a positive outcome from a streetscape perspective. The proposed arches are of a width and scale which break up the façade and relates to the established character of the buildings in the subject streetscapes, particularly Balmain Road. The arches also divide the north elevation to Balmain Road into distinct vertical bays. Floor levels are divided into horizontal levels which is a positive outcome. The retention and incorporation of the corner character buildings reinforce the visual prominence of the corner of the site to the intersection at Balmain Road and Cecily Street.

***(e) housing mixes, including affordable and adaptable housing,***

The proposed development will comprise of 90 apartments including:

- Studio/1-bed apartments: 23 (26%)
- 2-bed apartments: 40 (44%)
- 3-bed apartments: 27 (30%)

The mix provided allows for the development to be occupied by a range of different occupants, including families, couples and single persons. Further, a good variety of apartment types of differing layouts and sizes has been provided to cater for the changing needs and demands of these occupants over time.

The proposal has annotated on the plans the affordable housing apartments achieving a total a 464sqm being 5.15% of the total residential GFA in the following configuration:

- 5 x 1-bedroom apartments, equating to a total of 272sqm (apartments B202, B302, B402, B502, C201);
- 1 x 2-bedroom apartments, equating to a total of 75sqm (apartments B203); and
- 1 x 3-bedroom apartments, equating to a total of 117 (apartments D003).

The affordable housing apartments have been integrated with the privately owned apartments and include a range of sizes to cater to different households. The development also provides a suitable amount of liveable and adaptable apartments, as required by the ADG.

***(f) vehicle access arrangements,***

The proposal identifies vehicle access will be from Alberto Street and will service the entire site. It will provide ramped access to the two basement levels which is inclusive of a number of facilities including car parking facilities, end of trip facilities, as well as loading and servicing areas located on Basement Level 1. See further discussion on parking and access under DCP below.

***(g) encouraging sustainable transport, including increased use of public transport, walking and cycling, and appropriate car parking,***

The use of active transport will be encouraged through the provision of ample bicycle parking, end of trip facilities and creation of through site linkages to provide a permeable ground plane that encourages active transport for future residents, workers, visitors and the wider community. The site is also accessible by multiple bus stops on Balmain Road which are within a 5-minute walk of the site, the light rail network which is within a 15-minute walk of the site and the future Bays Metro station which is within a 20-minute walk of the site.

The proposal also includes two EV charging car spaces within the residential basement level to encourage the use of sustainable transport in the form of electric vehicles.

***(h) improvements to the public domain and opportunities for its passive surveillance,***

The proposal has resulted in a number of improvements to the public domain such as:

- Overhead power cables along Balmain Road, Alberto Street and Fred Street are relocated underground and replaced with appropriate street lighting and space for viable street tree planting.
- Widened footpaths to Balmain Road, Alberto Street and Fred Street are provided for safer pedestrian zones.
- The proposal has identified areas for future artworks and installations
- The character buildings are retained and restored.
- At-grade bicycle parking facilities are provided.
- Landscaping within the Cecily Street setback.
- The through-site links are of sufficient width.

In addition, the provision of public spaces within the site creates opportunities for passive surveillance to occur. As well, the employment spaces/tenancies provided throughout the development have been designed to address the majority of the site's frontages to further enhance opportunities for passive surveillance. Further, the level 2 apartments within buildings D, E and F which back onto 'Alberto Lane' are provided with direct access which will improve the activation within the site and safety of the internal laneways.

***(i) the application of the principles of ecologically sustainable development,***

The proposed development has incorporated the following measures which align with the principles of ecologically sustainable development:

- The proposal is registered under the Green Star Buildings rating tool with a target rating of 5 stars.
- The proposal adaptively reuses and restores the character buildings within the site.
- The proposal increases the amount of landscaping and deep soil within the site increasing habitat for local flora and fauna, and will facilitate long term improved tree canopy coverage.

- The proposal includes the provision of green roofs and PV panels on the roof tops.
- The proposal eliminates the use of gas for residential uses.
- The proposal provides green roofs and a vegetated public realm to mitigate the urban heat.
- The proposal provides pedestrian routes to support active transport, including cycling.

***(j) environmental impacts, including overshadowing and solar access and visual and acoustic privacy,***

The proposal results in acceptable environmental impacts to the surrounding natural and built environments and seeks to maintain the amenity of the area. Further assessment of overshadowing and solar access and visual and acoustic privacy are discussed elsewhere in this report.

***(k) measures to mitigate land use conflict between the residential and employment uses of the mixed use development, and***

Within the proposed mixed used development the following mitigation measures are proposed and considered acceptable:

- Employment and residential uses are separated on different levels. The two uses have separate lift access and basement levels to minimise opportunities for conflict.
- The employment uses generally uses fixed glazing internally along 'Alberto Lane' with the first floor of the 'super shed' containing highlight windows to minimise direct overlooking.
- Apartments where possible are generally orientated towards street boundaries
- As the employment uses are subject to future applications a condition is included in the recommendation to ensure future uses are appropriate, notwithstanding the zone permissibility.
- The proposal provides the majority of communal open space above the ground plane This minimises any land use conflict between the publicly accessible spaces (including spaces associated with employment uses and through-site connections) with spaces to be used exclusively for residents.
- The floor to ceiling heights of employment uses contain sufficient space to provide for further acoustic attenuation depending on future uses.

***(l) measures to mitigate land use conflict between residential uses of future development and the employment uses surrounding the site, including light industrial uses.***

Employment uses are distributed and orientated away from the lower-scale residential area to the east and south. Balmain Road remains the primary street frontage, which is adjacent to the state listed Callan Park which is protected for its open space and heritage values, as such unlikely to undergo any substantial future redevelopment.

The site sufficiently caters to the employment land with compliant vehicle parking and access arrangements. The development has been designed spatially in a manner to mitigate conflict



between industrial and residential uses within the site and to adjoining neighbouring development.

**(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments**

There are several proposed instruments which have been the subject of public consultation under the *EP&A Act 1979*. In particular:

- *Draft State Environmental Planning Policy (Sustainable Buildings) 2022*

The development is considered acceptable having regard to the provisions of the draft Sustainable Buildings SEPP.

**(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan**

The application was assessed against the following relevant parts of the Leichhardt Development Control Plan 2013 (DCP). A compliance table is included as an attachment with the key issues discussed below:

**1. Parking**

The following **table 7** summarises the car, bicycle, and motorcycle parking requirements for the development:

**Table 3: Parking requirements under DCP**

| Component                                  | Control  | Required  | Proposed  | Complies |
|--|--|---|---|----------|
| <b>Car Parking</b>                         |  |   |   |          |
| Resident Car Parking – non adaptable units | <i>0.5 car parking spaces per 1 bedroom unit (max)</i> | 17 x 1 bed units (exclusive of adaptable units) = 9 spaces  |   |          |
|  | <i>1.0 car parking spaces per 2 bedroom unit (max)</i> | 37 x 2 bed units (exclusive of adaptable units) = 37 spaces |   |          |
|  | <i>1.2 car parking spaces per 3 bedroom unit (max)</i> | 27 x 3 bed unit = 32 spaces                                 |   |          |
| Visitor parking                            | <i>0.125 spaces per dwelling (max)</i>                 | 90 x 0.125 = 11 spaces                                      |   |          |
|  | TOTAL  | 89 spaces   | 89 spaces (exclusive of parking for adaptable units – see discussion below) | Yes      |

|                                  |   |   |                       |     |
|----------------------------------|---|---|-----------------------|-----|
| Industrial Car Parking           | <i>1 space per 150 sqm (max)</i>  | 6000sqm = 40 spaces                         | 56 spaces             | Yes |
| <b><i>Bicycle Parking</i></b>    |   |   |                       |     |
| Apartment - Resident             | <i>1 bicycle parking space per 2 units</i>  | 90 units = 45 spaces                        | 45 spaces             |     |
| Apartment - Visitor              | <i>1 bicycle parking space per 10 units</i>   | 90 units = 9 spaces                         | 9 spaces (8 at grade) |     |
|                                  | TOTAL   | 54 spaces                                   | 54 spaces             | Yes |
| Industry - staff                 | <i>1 space per 10 staff</i>   | NA  |                       |     |
| Industry - Customer              | <i>Nil</i>  | NA  |                       |     |
|                                  | TOTAL   | NA  | NA                    | NA  |
| <b><i>Motorcycle Parking</i></b> |   |   |                       |     |
| Motorcycle Parking               | <i>5% of the total car parking requirement</i>  | 96 car parking spaces required = 4.8 spaces | 12 spaces             | Yes |
| Car share                        | <i>Residential - a minimum of one car share is to be provided for any residential development containing more than 50 residential units</i><br><br><i>Non-residential - office, business or retail premises – a minimum of one car share space per 50 car spaces provided</i> | = 2 spaces                                  | 2 spaces              | Yes |

### *Car Parking Requirements*

As noted above, the application provides a compliant scheme in terms of the total number of residential and non-residential parking spaces. It is noted 16 non-residential spaces are in excess of the maximum general 'industrial' rate. However, it is noted that the subject proposal does not specify specific tenancies/uses which typically have higher car parking rates. Specific uses and fit outs will be subject to future applications. The Traffic Impact Assessment (TIA) submitted with this proposal has demonstrated a likely rate of 56 spaces based on a mix of industrial, artisan food and drink, and creative offices which is accepted as a maximum. As such, it is considered that the provision of 56 car spaces will be sufficient to meet the anticipated future uses and requirements of Council.

### *Accessible parking*

Chapter 3.14 of the DCP requires 10% of the total number of dwellings to be adaptable units. The BCA requires each adaptable unit to have one accessible carparking space. The application provides a compliant scheme through the provision of 9 accessible residential car parking spaces.

For the non-residential component, Chapter 1.11 of the DCP requires accessible car parking space rates to be determined by the associated building class. Building Class 5 being offices and Class 7 being industrial require one accessible carparking space for every 100 carparking spaces or part thereof. The proposal provides two accessible car parking spaces to comply with the minimum requirement for accessible car parking for the employment uses. Given the uncertainty of future uses and maximum non-residential car parking rates, two non-residential accessible car parking spaces is considered appropriate.

### *Bicycle parking*

As noted in the table above, the application provides a compliant scheme in terms of the total number of residential bicycle parking spaces. It is noted non-residential bicycle spaces could not be calculated as the subject proposal does not specify tenancies/uses to confirm staffing numbers. The TIA submitted with this proposal has demonstrated a likely rate based on a mix of industrial, artisan food and drink, and creative offices which is equivalent to approximately 485 employees. As such, it is considered that the provision of 74 bicycle parking spaces for the non-residential uses is sufficient to meet the likely future requirements of the site.

Further, end of trip facilities including lockers and showers are provided for the non-residential uses to encourage active transport to the site.

### *Servicing*

Loading facilities are provided on basement level 1 with access from Alberto Street. The proposed loading dock is considered acceptable as follows:

- The loading dock and associated access is of sufficient size to provide for on-site waste collection by Councils vehicles;
- The loading dock configuration allows for all vehicles to enter and leave the property in a forward direction;
- The loading dock provides sufficient separation of service vehicles and car movements;
- The loading dock is designed to minimise noise with a secondary roller shutter within the basement; and
- To ensure the above is satisfactorily managed, a condition of consent is recommended for a loading dock management plan to be implemented for the proposed development.

### *Access*

The design of the car park access has been integrated into the overall design of the site, and consolidates multiple vehicle points that currently service the site into a single vehicle access point from Alberto Street. The car park ramp is covered to reduce noise impacts from vehicles entering and exiting the site. The TIA submitted with this proposal has demonstrated that alternative access arrangements such as utilising Cecily Street and Fred Street were investigated; however, the narrowness of Cecily Street did not support certain vehicle types, and Fred Street is a quiet residential street which does not lend itself toward additional traffic generation and is also only accessed via Cecily Street which as discussed is prohibitively narrow for the subject proposal.

Compared to Fred Street and Cecily Street, Alberto Street is a wide street which allows access to be provided relatively close to Balmain Road minimising impacts to the surrounding residential properties and supporting access for larger service vehicles. The TIA has analysed the operation of the intersection of Balmain Road/Alberto Street and concluded the impact from the proposal is considered acceptable.

It should also be noted that during the assessment of the application, Council's Local Traffic Committee has recently approved proposed future change to the intersection of Alberto Street and Balmain Road. The changes will narrow the intersection to address pedestrian safety concerns. The applicant submitted a TIA addendum which confirmed that the flow of traffic through the intersection would not be adversely impacted as a result of this future change.

### *Parking facilities*

The design of the car parking areas is within the basement, with separation through levels being provided between employment and residential parking areas. The excavation of the basement has been supported by a Structural and Geotechnical report which demonstrates that the basement has been appropriately designed subject to the conditions included in the recommendation.

Standard conditions are included in the recommendation to ensure the parking facilities comply with relevant requirements of Australian Standard AS 2890.1 Parking facilities – off-street car parking. A condition to prepare a travel plan in accordance with the DCP has also been included in the recommendation to reduce private car dependency for a development by encouraging use of more sustainable transport modes.

Considering the above, subject to conditions, the proposal will comply within the minimum requirements under Chapter 1.11 of the DCP.

## **2. Solar Access**

Shadow diagrams illustrating the shadow cast by the existing structures and the proposed development for the winter solstice were submitted with the application.

The submitted shadow diagrams demonstrate that additional overshadowing will occur to the rear yards of Nos. 1, 3, 5, 7 Maida Street; units 1-11 at 14-22 Alberto Street (which adjoin both the Alberto & Fred Street frontages), and; 10, and 12 Fred Street.

Given the above properties are generally on allotments where the side boundary is 45 degrees from true north, the DCP requires glazing serving main living room is to retain a minimum of two hours of solar access between 9am and 3pm at the winter solstice. Further, the properties areas of private open space also do not face due north, as such the DCP requires solar access is to be retained for two hours between 9am and 3pm to 50% of the total area during the winter solstice.

Notwithstanding, where surrounding dwellings currently receive less than the required amount of solar access to their private open space or main living room between 9am and 3pm during the winter solstice, no further reduction of solar access is permitted.

A summary of the solar impacts are as follows:

- 1 Maida Street currently receives less than the required amount of solar access to its private open space and main living room between 9am and 3pm during the winter solstice, and both are further reduced at 11am.
- 3 Maida Street currently receives less than the required amount of solar access to its private open space and main living room between 9am and 3pm during the winter solstice, and both are further reduced at 9am and 10am.
- 5 and 7 Maida Street currently receive less than the required amount of solar access to their private open spaces and main living rooms between 9am and 3pm during the winter solstice, and both are further reduced at 9am.
- 7-11/14-22 Alberto Street (fronting Alberto Steet) currently receives less than the required amount of solar access to their private open spaces between 9am and 3pm during the winter solstice, and are being further reduced starting at 1pm. The living room windows will retain a minimum of two hours of solar access between 9am and 3pm at the winter solstice.
- 1-5/14-22 Alberto Street (fronting Fred Steet) currently receives less than the required amount of solar access to its private open space between 9am and 3pm during the winter solstice, and is being further reduced starting at 1pm. The living room windows will retain a minimum of two hours of solar access between 9am and 3pm at the winter solstice.
- 6/14-22 Alberto Street (standalone unit fronting Fred Steet) will retain a minimum of two hours of solar access between 9am and 3pm at the winter solstice to its private open space and living room windows.
- 8, 10 and 12 Fred Street will retain a minimum of two hours of solar access between 9am and 3pm at the winter solstice to their private open spaces, and their living room windows.

Given the above analysis, the proposed development does not comply with the controls, consideration of the relevant objectives are as follows: The planning principle regarding access to sunlight as developed in the case law *Benevolent Society v Waverley Council* [2010] NSWLEC 1082 is also used as a tool to interpret the following control.

*Reasonableness:*

The subject site zoned E4 – General Industrial and has a prescribed maximum height of building (HOB) of 23 metres under the LEP. It is noted that these are different planning controls which apply to the subject site and the surrounding lower scale residential dwellings.

Whilst the development proposes a variation of 11% to the HOB development standard, the breach to the HOB development standard stems from the lift overrun and covering for the rooftop communal open space areas, in which the breach caused by these elements do not exacerbate overshadowing for the surrounding properties.

The internal floor-to-ceiling heights and slab depths at the ground and first floors for buildings A, B, and C are considered essential for future flexibility of the industrial spaces.

The development has concentrated the height and massing of the development away from the peripheries of the site, with the 6-storey buildings sited towards the centre of the site to address the heritage significance of Callan Park and the surrounding residential dwellings. The development also transitions into a 3-storey built form away from Balmain Road.

#### *Site orientation:*

The adjoining properties at 1-5 Maida Street have a north-west to south-east orientation with northern facing private open space areas. The property at 14-22 Alberto Street has a north-east to south-west orientation, where units 1-6 have south-west facing private open space areas whilst units 7-11 have north-east facing private open space areas. Given the site's orientation in context of the surrounding properties, the surrounding properties are vulnerable to overshadowing from any development on the site in accordance with the prescribed height controls.

#### *Relative levels:*

The development proposes three 6-storey elements towards the site's northern Balmain Road frontage (buildings A, B & C), whilst a 3-storey building is proposed along the site's southern Alberto Street and Fred Street frontages.

The subject site is essentially located on the crest of a hill, with all residential dwellings located down slope thereby being naturally vulnerable to overshadowing impacts.

#### *Designed to minimise impact:*

Given the sites topography and context, the neighbouring properties, particularly those to the south, are subject to overshadowing impacts from the subject site. As discussed, the proposed development generally complies with the height of building and floor space ratio development standard within the LEP, and therefore represents a form that is generally consistent with that which was envisaged for the site.

The proposal has been designed to centralise the massing of the development to conserve the environmental heritage significance of Callan Park and the locally listed heritage item at 8 Fred Street, and lower scale residential streetscape. The internal floor-to-ceiling heights of the industrial development and residential accommodation are considered reasonable and are



consistent with the objectives of the ADG to maintain acceptable amenity for future occupants of these dwellings and tenancies.

Given the above, the proposed development has been appropriately articulated and designed to mitigate overshadowing impacts to the adjoining properties as far as practical.

*Reasonably available alternative design solutions:*

As previously noted, the proposal has been designed to centralise the massing of the development to conserve the environmental heritage significance of Callan Park and the locally listed heritage item at 8 Fred Street, and lower scale residential streetscape. The internal floor-to-ceiling heights of the industrial development and residential accommodation are considered reasonable and are consistent with the objectives of the ADG to maintain acceptable amenity for future occupants of these dwellings and tenancies.

It is considered that current design has sensitively responded to the site context. For example, by shifting the massing towards the Balmain Road frontage to minimise solar access impacts to surrounding residential properties along Alberto Street, this would likely increase the overshadowing experienced by the residential properties along Maida Street, whilst also altering the setting and views of Callan Park. If the massing was concentrated to the south or evenly spread across the site, this would also increase the overshadowing experienced by the residential properties along Alberto Street and Fred Street, whilst potentially altering the setting and views of the heritage item at 8 Fred Street.

On the basis of the above, the proposal is considered to be reasonable and ultimately satisfactory with respect to its solar access impacts on the adjoining properties.

### **3. Local Infrastructure Contributions Plan**

The following contributions plans are relevant pursuant to Section 7.18 of the EP and A Act 1979 and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Inner West Local Infrastructure Contributions Plan 2023*

Section 7.11 contributions are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$1,800,000.00 would be required for the development under the Inner West Local Infrastructure Contributions Plan 2023.

A condition requiring that contribution to be paid is included in the recommendation.

#### **(d) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act**

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

### **(e) Section 4.15(1)(a)(iv) - Provisions of Regulations**

The EP&A Regulation 2021 contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- Section 61: The proposal includes demolition of a building. As such, the consent authority must consider the Australian Standard AS 2601—2001: The Demolition of Structures.
- Section 64: The proposal includes the rebuilding/alterations of existing buildings where the measures contained in the building are inadequate. As such, the consent authority must consider whether it is appropriate to require the existing building to be brought into total or partial conformity with the Building Code of Australia.

In considering the above, the applicant has provided a report demonstrating the works can conform with the Building Code of Australia. These provisions of the EP and A Regulation 2021 are addressed in the recommended conditions.

### **3.3 Section 4.15(1)(b) - Likely Impacts of Development**

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above. The assessment of the application demonstrates that, subject to the recommended conditions, the proposal will have minimal impact in the locality.

### **3.4 Section 4.15(1)(c) - Suitability of the site**

Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

### **3.5 Section 4.15(1)(d) - Public Submissions**

These submissions are considered in Section 5 of this report.

### **3.6 Section 4.15(1)(e) - Public interest**

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

The proposal is not contrary to the public interest.

## **4. REFERRALS AND SUBMISSIONS**

#### 4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment and concurrence as required by the *EP&A Act 1979* and outlined below in **Table 8**.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

**Table 8: Concurrence and Referrals to agencies**

| Agency  | Concurrence/<br>referral trigger   | Comments<br>(Issue, resolution,<br>conditions) | Resolved |
|---|--|--|----------|
| <b>Concurrence Requirements (s4.13 of EP&amp;A Act)</b>                         |  |  |          |
| Transport for NSW   | SEPP (Transport and Infrastructure) 2021, s2.118 (Development on proposed classified road) | Support with conditions                        | Yes      |
| <b>Referral/Consultation Agencies</b>   |  |  |          |
| Ausgrid   | SEPP (Transport and Infrastructure) 2021, s2.48  | Support with conditions                        | Yes      |
| Transport for NSW   | SEPP (Transport and Infrastructure) 2021, s2.122 (Traffic-generating development)          | Support with conditions                        | Yes      |
| <b>Integrated Development (S 4.46 of the EP&amp;A Act)</b>                      |  |  |          |
| The applicant has opted not to lodge the application as integrated development. |  |  |          |

#### 4.2 Council Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 9**.

**Table 9: Consideration of Council Referrals**

| Officer     | Comments                                | Resolved |
|-------------|---|----------|
| Engineering | Support provided subject to conditions. | Yes      |
| Traffic     | Support provided.                       | Yes      |
| Building    | Support provided subject to conditions. | Yes      |
| Health      | Support provided subject to conditions. | Yes      |
| Waste       | Support provided subject to conditions. | Yes      |

|                    |   |     |
|--------------------|---|-----|
| Public Domain      | Support provided subject to conditions. | Yes |
| Heritage           | Support provided subject to conditions  | Yes |
| Urban Forest       | Support provided subject to conditions. | Yes |
| Strategic Planning | Support provided.                       | Yes |
| Social Planning    | Support provided.                       | Yes |

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

### 4.3 Community Consultation

The proposal was notified in accordance with the Council's Community Engagement Framework from 19 July 2023 until 18 August 2023. The application was renotified from 5 December 2023 until the 8 February 2024. The notification included the following:

- A sign placed on the site;
- Notification letters sent to adjoining and adjacent properties (approximately 171 letters sent);
- Notification on the Council's website.

The Council received a total of 63 unique submissions, comprising 19 objections and 44 submissions in favour of the proposal in response to the initial notification. In response to the second notification 8 unique submissions were received, comprising 7 objections and 1 submission in favour of the proposal. The issues raised in these submissions are considered in **Table 10**.

**Table 10: Community Submissions**

| Issue   | No of submissions | Concern and Council Comments in response   |
|---------|-------------------|--|
| Traffic | 16                | <ul style="list-style-type: none"> <li>• Intensifies traffic flow through one vehicle access point. <ul style="list-style-type: none"> <li>○ No separation between small vehicles and service vehicles.</li> <li>○ Light spillage from headlights exiting onto Maida Street.</li> <li>○ Increased risk of collision at intersection between Alberto Street and Balmain Road due to blind spot.</li> <li>○ Traffic lights should be installed.</li> <li>○ Visibility needs to be improved at vehicle access point.</li> <li>○ Should be relocated to Fred Street where Cecily Street traffic lights can be used.</li> </ul> </li> </ul> |

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|  |    | <ul style="list-style-type: none"> <li>Increased traffic on Alberto, Fred, Maida and Cecily Streets resulting in queuing.</li> <li>Reduced road safety.</li> <li>Inadequate traffic report.</li> </ul> <p><b>Comment:</b> Council's Development Engineer has reviewed the proposal and raises no objections to the proposed traffic impacts and concurs with the recommendations within the submitted Traffic Impact Assessment. This issue has been satisfactorily addressed as discussed within the body of the report and subject to the conditions included in the recommendation.</p>  |
| <b>Parking</b>                             | 11 | <ul style="list-style-type: none"> <li>Overstress existing provision of on-street parking on Balmain Road, Alberto Street, Maida Street and Callan Park.</li> <li>Proposal does not provide enough off-street parking.</li> </ul> <p><b>Comment:</b> This issue has been satisfactorily addressed as discussed within the report and subject to the conditions included in the recommendation. The proposal complies with the prescribed parking requirements and was accompanied by a Traffic Impact Assessment which demonstrates that the site and surrounding streets can accommodate the subject development without adverse impact to the local road network or the provision of on-street parking. An additional condition is included in the recommendation specifying that occupants are not entitled to access the Residential Parking Scheme thereby limiting opportunities for street parking by occupants of the development.</p>                        |
| <b>Streetscape, pattern of development</b> | 8  | <ul style="list-style-type: none"> <li>Height, density, bulk, scale, is not compatible with existing single and double storey development.</li> <li>Precedent for future development.</li> <li>Inappropriate building type for the surrounding area.</li> </ul> <p><b>Comment:</b> The site was subject to a Planning Proposal which increased the Floor Space Ratio (FSR) to 2.2:1 and Height of Building (HOB) to 23m (equivalent to 6-storeys). The proposal is consistent with the height, density, and bulk and scale envisioned for the site in the approval of Planning Proposal. As such, the height, density, bulk and scale is appropriate for the site and the surrounding area. As discussed in the report, the variation to the height of building development standard does not result in additional amenity impacts. Given the planning controls applicable to the surrounding properties, this is unlikely to result in an undesirable precedent.</p> |
| <b>Solar access and overshadowing</b>      | 7  | <ul style="list-style-type: none"> <li>Overshadowing on Fred Street, Alberto Street east and Maida Street west into private open spaces.</li> <li>Proposed public open spaces and some units will have inadequate solar access.</li> </ul>  |

|                                    |   |  |
|------------------------------------|---|--|
|                                    |   | <p><b>Comment:</b> As discussed earlier within this report, the proposal is considered reasonable with respect to the solar access impacts that have been considered against the solar access controls under Part C3.9 of the DCP.</p>   |
| Noise & Vibration                  | 6 | <ul style="list-style-type: none"> <li>Inadequate noise assessment of impact on Maida Street and Balmain Road.</li> <li>Noise generating activities from transition in land use zones, public open spaces, site facilities, and service vehicles.</li> </ul> <p><b>Comment:</b> A Noise Impact Assessment was submitted to confirm the impacts of noise generating activities upon the proposed residential accommodation, which has been considered acceptable upon assessment. This issue has been satisfactorily addressed as discussed within the report and subject to the conditions included in the recommendation.</p>   |
| Public infrastructure and services | 6 | <ul style="list-style-type: none"> <li>Existing public transport and schools are over capacity.</li> </ul> <p><b>Comment:</b> Not a matter for consideration under Section 4.15 of the <i>EP&amp;A Act 1979</i>.</p>   |
| Privacy                            | 4 | <ul style="list-style-type: none"> <li>Multi-storey residential development will have overlooking opportunities into lower density adjoining properties.</li> <li>Overlooking into Callan Park and neighbouring private open spaces resulting in loss of privacy.</li> </ul> <p><b>Comment:</b> As discussed earlier in this report, the proposal is considered reasonable with respect to the visual privacy impacts that have been considered against the visual privacy and building separation controls under the ADG and site specific DCP. This issue has been satisfactorily addressed as discussed within the report and subject to the conditions included in the recommendation. It is considered that overlooking into Callan Park is not a concern and provides surveillance of a public space which is of benefit to the community.</p> |
| View/outlook loss                  | 3 | <ul style="list-style-type: none"> <li>Loss of city and skyline views.</li> <li>Loss of outlook from within Callan Park.</li> </ul> <p><b>Comment:</b> The development is not considered to detrimentally impact any existing views from surrounding, existing properties. Given the site is located on the crest of the hill, downhill residential properties do not obtain water views. The new 6-storey buildings have been positioned diagonally to provide view sharing or the Sydney City skyline.</p> <p>The HIS has provided viewpoints from within Callan Park which demonstrate the development will be visible from within. The combination of the separation by Balmain Road, retention of the northern character buildings, and the proposed setbacks from the northern boundary ensure that the new buildings are</p>                  |



|                           |   |   |
|---------------------------|---|---|
|                           |   | <p>an acceptable distance from the Callan Park and that outlook from Callan will not be significantly affected.</p> <p>In summary, the proposal does not result in any view loss impacts to any significant views such as Sydney Harbour, the Parramatta River and the City skyline from the adjoining residential properties.</p>  |
| <b>Affordable housing</b> | 3 | <ul style="list-style-type: none"> <li>5% provision is inadequate.</li> </ul> <p><b>Comment:</b> The proposal provides at least 5% of the gross floor area used for the purposes of residential accommodation for affordable housing, which satisfies the requirements of Section 6.25(3)(a)(iv) of the LEP.</p>  |
| <b>Trees</b>              | 2 | <ul style="list-style-type: none"> <li>Loss of mature trees and green space.</li> </ul> <p><b>Comment:</b> The provision of replacement tree plantings is considered to be satisfactory. Plantings of <i>Eucalyptus punctata</i> in Fred Street, <i>Lophostemon confertus</i> (Brush Box) in Balmain Road and <i>Corymbia eximia</i> (Yellow Bloodwood) in Alberto Street as replacement plantings for street trees that are proposed for removal. This issue has been satisfactorily addressed as discussed within the report and subject to the conditions included in the recommendation.</p>  |
| <b>Heritage</b>           | 1 | <ul style="list-style-type: none"> <li>Does not respect heritage values of Callan Park and Kirkbride.</li> </ul> <p><b>Comment:</b> Subject to conditions of consent which require the single storey component of Building 2 on Balmain Road to be retained, the proposal is acceptable from a heritage perspective as it will not detract from the heritage significance of Callan Park. This issue has been satisfactorily addressed as discussed within the report and subject to the conditions included in the recommendation.</p>   |
| <b>Flooding</b>           | 1 | <ul style="list-style-type: none"> <li>The Flood Risk Management Report confirms that shelter will be necessary at the first-floor level in the case of potential flood events.</li> </ul> <p><b>Comment:</b> Council's Development Engineer has reviewed the proposal and raises no objections to the proposed flood management arrangements.</p>  |
| <b>Deep Soil Areas</b>    | 1 | <ul style="list-style-type: none"> <li>Lack of green space/deep soil, potential maintenance challenges are likely to arise in relation to the green walls and roof while the common areas rely on hard surfaces with synthetic turf proposed for green areas.</li> </ul> <p><b>Comment:</b> Whilst the proposal does not comply with the 7% deep soil planting requirements under the ADG, the non-compliance is considered acceptable when viewed against the site constraints, the provision of Communal Open Space on each building, public open space, and the provision green roofs/walls and sufficient replacement street tree plantings along the Alberto Street, Balmain Road and Fred Street frontages of the site. This issue has been</p> |

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|                                      |   | satisfactorily addressed as discussed within the report and subject to the conditions included in the recommendation.  |
| <b>Through site link</b>             | 1 | <ul style="list-style-type: none"> <li>Pedestrian throughways should not be located near adjoining residences due to possibility of trespassing.</li> </ul> <p><b>Comment:</b> When considering the existing site, existing constraints and the proposed development, the through site link is considered to be reasonably located and consistent with the principles of Crime Prevention Through Environmental Design (CPTED).</p>  |
| <b>Public and private open space</b> | 1 | <ul style="list-style-type: none"> <li>Inadequate public open space on site.</li> </ul> <p><b>Comment:</b> The proposal provides 30% of the ground floor plan as public open space, and communal open space (COS) at the rooftop level of each building. The provision of COS is considered to be satisfactory, as it will allow the ground plane to be used more effectively to deliver high-quality, publicly accessible open space and reduce any public/private land use conflict. This issue has been satisfactorily addressed as discussed within the report and subject to the conditions included in the recommendation.</p> |
| <b>Miscellaneous</b>                 | 1 | <ul style="list-style-type: none"> <li>Not consistent with Zone E4 objectives.</li> </ul> <p><b>Comment:</b> As discussed earlier within this report, the proposal is consistent with the objectives of the E4 zone given that employment opportunities are encouraged by the retention of industrial related land uses.</p>   |
|                                      | 1 | <ul style="list-style-type: none"> <li>Contamination.</li> </ul> <p><b>Comment:</b> As discussed earlier in this report, contamination and remediation has been considered in the Contamination Report and the proposal satisfies SEPP (Resilience and Hazards) 2021 subject to conditions included in the recommendation.</p>   |
|                                      | 1 | <ul style="list-style-type: none"> <li>Does not specify employment uses.</li> </ul> <p><b>Comment:</b> Consent is not sought under this application for the use of the premises, but rather the provision of gross floor area to accommodate future employment uses. A condition of consent has been imposed requiring that the future uses of the site will form part of a separate application.</p>  |
|                                      | 1 | <ul style="list-style-type: none"> <li>Inadequate Access Report.</li> </ul> <p><b>Comment:</b> An Access Report was submitted with the application. Whilst the report identified non-compliances with the National Construction Code, Council's Building Surveyor has indicated that compliance is capable through Deemed-to-Satisfy or performance solutions prior to the issue of a construction certificate.</p>  |
|                                      | 2 | <ul style="list-style-type: none"> <li>Inadequate Social Impact Assessment.</li> </ul> <p><b>Comment:</b> A Social Impact Assessment was submitted with the application, in which following assessment the social impacts of the proposal are considered to be satisfactory.</p>   |

|  |   |  |
|--|---|--|
|  | 1 | <ul style="list-style-type: none"> <li>Adverse impact on WestConnex power substation.</li> </ul> <p><b>Comment:</b> The application was referred to TfNSW, who have provided concurrence under section 138 of the <i>Roads Act 1993</i>. TfNSW have advised that a condition of consent is to imposed which requires the applicant to submit a statement from a suitably qualified geotechnical engineer to TfNSW confirming that the proposed development will not impact the stability of the WestConnex M4 and M8 Extensions Tunnel infrastructure. The proposed development was also referred to Ausgrid for comment as the electricity supply authority (Ausgrid) within Section 2.48 of SEPP (Transport and Infrastructure) 2021, who provided comments and did not raise objections to the proposal</p> |
|  | 1 | <ul style="list-style-type: none"> <li>Use of s4.22 and s4.23 of the EP&amp;A Act circumvents local controls.</li> </ul> <p><b>Comment:</b> The applicant has requested for the proposal to be treated as a concept development application, which is permitted under Section 4.22(3) of the EP&amp;A Act. Whilst no Development Control Plan has been endorsed for the assessment of the application, the proposal has still been assessed against the DCP criteria set out 6.25(4) of the LEP.</p>   |
|  | 2 | <ul style="list-style-type: none"> <li>Construction impacts.</li> </ul> <p><b>Comment:</b> Standard conditions regarding construction hours and noise levels, are recommended in the development consent to mitigate impacts.</p>  |
|  | 1 | <ul style="list-style-type: none"> <li>Public interest/benefit.</li> </ul> <p><b>Comment:</b> For the reasons discussed throughout this report, the proposal is suitable for the subject site and is appropriate to recommend for a Deferred Commencement Consent subject to conditions. As such, the proposal as conditioned is considered to be within the public interest.</p>  |
|  | 2 | <ul style="list-style-type: none"> <li>Undesirable precedent.</li> </ul> <p><b>Comment:</b> For the reasons discussed throughout this report, the proposal is considered suitable for the subject site. Therefore, the proposal is not considered to result in an undesirable precedent as a result of recommending determination via a Deferred Commencement Consent.</p>   |
|  | 1 | <ul style="list-style-type: none"> <li>Cross ventilation for 60% of the apartments.</li> </ul> <p><b>Comment:</b> The development complies with the requirements of Part 4B of the ADG, with 71% (64 of 90) of the apartments achieving compliant natural ventilation.</p>   |
|  | 1 | <ul style="list-style-type: none"> <li>No BASIX annotations on plans.</li> </ul> <p><b>Comment:</b> As discussed earlier within this report, A BASIX Certificate has been submitted with the application which satisfies the requirements of SEPP (Building Sustainability Index: BASIX) 2004.</p>   |

|  |   |  |
|--|---|--|
|  | 1 | <ul style="list-style-type: none"> <li>Cleanliness of surrounding streets.</li> </ul> <p><b>Comment:</b> A litter management plan for the sites open space including the provision of bins within the public domain will be prepared for the site, subject to conditions included in the recommendation.</p> |
|--|---|--|

## 5. CONCLUSION

This development application has been considered in accordance with the requirements of the *EP&A Act 1979* and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported in principle.

However, the staging of the Concept Development Application and satisfaction of Section 6.25(3) has not been satisfactorily resolved. In particular, the works proposed under detailed Stage 1 does not satisfy the following:

- Section 6.25(3)(a)(i) - Only 5,752sqm of GFA for employment uses has been provided (which constitutes a variation of 248sqm or 4.1%).
- Section 6.25(3)(a)(iii) - Stage 1 does not propose the adaptive reuse the single storey portion of the former bakery character building.

Subject to a deferred commencement condition requiring the provision of Stage 2 plans and details to be lodged prior to the Stage 1 consent becoming operative, the development is considered to meet the objectives of the site specific LEP requirements. The residential flat building would allow for increased residential dwellings, within a building that is considered to have a high level of design in the public domain. The development will contribute to the connectivity of the neighbourhood through the provision of a publicly accessible open space. Overall, the development will not result in any significant impacts on the amenity of the adjoining properties and the streetscape and is considered to be in the public interest.

It is considered that the key issues have been resolved satisfactorily through amendments to the proposal and/or in the recommended conditions at **Attachment A**.

## 6. RECOMMENDATION

That the Development Application DA/2023/0467 for Concept and detailed (Stage 1) Development Application for the retention of character buildings fronting Balmain Road and construction of a mixed-use development comprising of residential flat building and light industry uses at 469-483 Balmain Road Lilyfield be granted by way of DEFERRED COMMENCEMENT approval pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Compliance Tables

- Attachment C: Architectural Plans
- Attachment D: Concept Plans
- Attachment E: Clause 4.6 Request
- Attachment F: AEDRP meeting minutes