

**COUNCIL ASSESSMENT REPORT**  
SYDNEY WESTERN CITY PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSSWC-413 – DA-171/2024
<b>PROPOSAL</b>	Amendment to DA-1320/2021 to increase Building A to 4 storeys, Building B to 6 and 8 storeys and Building C to 8 storeys; resulting in a total GFA increase of 30% and an additional 41 apartments including 27 affordable housing apartments.
<b>ADDRESS</b>	Lot 101 DP 1267563 Soldiers Parade, Edmondson Park NSW 2174
<b>APPLICANT</b>	Croatia 88 Development PTY LTD
<b>OWNER</b>	Croatia 88 Pty Ltd
<b>DA LODGEMENT DATE</b>	16 April 2024
<b>APPLICATION TYPE</b>	Integrated (Rural Fires Act 1997 & Water Management Act 2000)
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clause 2, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : General development over \$30 million.
<b>CIV</b>	\$50,727,598.50 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	Clause 4.3 Height of buildings & Clause 4.4 Floor space ratio of the Liverpool Local Environmental Plan 2008
<b>KEY SEPP/LEP</b>	Housing SEPP, LEP
<b>TOTAL &amp; UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS</b>	Total submissions: 63 Unique submissions: 56 Key issues: overlooking and privacy impacts; traffic, parking and pedestrian safety; noise and air pollution; impact on / lack of infrastructure; environmental impacts; impact on character of area; safety; and waste management
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	<ul style="list-style-type: none"> <li>Attachment A: Draft Conditions of Consent</li> <li>Attachment B: Draft SWCPP Assessment Report (Compliance Tables, SEPP (Housing) 2021, ADG and LDCP) Assessment Tables</li> <li>Attachment C: Architectural Plans (Initial Set) – 294405.2024</li> <li>Attachment D: - Architectural Plans Amendments in Response to RFI (DEP &amp; UD Comments) - 392584.2024</li> </ul>

	<ul style="list-style-type: none"> <li>• Attachment D1: Revised Building Entry Designs (To address DEP &amp; UD matters) - 392566.2024</li> <li>• Attachment E: Landscape Plan - 294403.2024</li> <li>• Attachment F: Clause 4.6 Request: FSR - 327786.2024</li> <li>• Attachment G: Clause 4.6 Request: HOB - 327787.2024</li> <li>• Attachment H: DEP Minutes from Meeting 13/06/2024 - 219656.2024</li> <li>• Attachment I: Design Verification Statement - 294406.2024</li> <li>• Attachment J: Letter to the SWCPP - 337609.2024</li> <li>• Attachment K: Statement of Environmental Effects -</li> <li>• Attachment L: Traffic Impact Assessment - 294414.2024</li> <li>• Attachment L1: Traffic &amp; Transport response - 343652.2024</li> <li>• Attachment M: Stormwater Drainage Plans - 294413.2024</li> <li>• Attachment N: BASIX Certificate - 294391.2024</li> <li>• Attachment O: Bushfire Report - 294392.2024</li> <li>• Attachment P: Acoustic Report - 122568.2024</li> <li>• Attachment Q: Access Report - 122567.2024</li> <li>• Attachment R: Preliminary Geotechnical Report - 122580.2024</li> <li>• Attachment R1: Detailed Geotechnical Report - 122581.2024</li> <li>• Attachment R2: Review of Geotechnical Report - 294395.2024</li> <li>• Attachment S: Social Impact Statement - 122591.2024</li> <li>• Attachment T: Waste Management Plan - 294402.2024</li> <li>• Attachment U: Heritage Impact Statement - 294396.2024</li> </ul>
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.23)</b>	Applies
<b>RECOMMENDATION</b>	Approval, subject to conditions
<b>DRAFT CONDITIONS TO APPLICANT</b>	Yes
<b>SCHEDULED MEETING DATE</b>	2 December 2024
<b>PLAN VERSION</b>	Select Date Version No
<b>PREPARED BY</b>	Nabil Alaeddine
<b>DATE OF REPORT</b>	25 November 2024

## 1. EXECUTIVE SUMMARY

### 1.1 The proposal

The Application seeks contents to retain the approved (DA-132/0/2021) and amend the development for three (3) approved residential flat buildings to accommodate an additional 41 apartments including 27 affordable housing apartments by applying the incentives in the Housing SEPP 2021 at Lot 101 Soldiers Parade, Edmondson Park, legally known as Lot 101 DP 1267563

Amendments include to increase the gross floor area (GFA) by 30%. The proposal includes the following:

- Increase Building A to 4 Storeys,
- Increase Building B to 6 and 8 Storeys, and
- Increase Building C to 8 Storeys

The proposal results in the following:

- 50 x 1-bed apartments (+12 units) –(28.5%)
- 114 x 2-bed apartments (+27 units) – (64.2%)
- 14 x 3-bed apartments (+2 units) – (7.3%)

Total: 178 Apartments and 237 parking spaces.

### 1.3 The site

The subject site is identified as Lots 100 and 101 DP 1267563 (previously known as Lot 3 DP 12599121 Somme Ave & Lot 8 DP 1200987 Croatia Ave, Edmondson Park), being Soldiers Parade, Edmondson Park. The site is zoned as R1 – General Residential Zone and RE1 – Public Recreation (land reservation for acquisition), pursuant to the Liverpool Local Environmental Plan (LLEP) 2008.

The subject DA proposes the development of irregular “Z” shaped lots as shown in the **Figure 1** below outlined in red and highlighted. The site area outlined in red below has an overall site area of 10,110m<sup>2</sup> (including future roads to be dedicated; the total site area includes roads that are not yet dedicated and are yet to be constructed).

### 1.4 The issues

The main key issues are identified as follows:

- **Non-compliance with the Liverpool Local Environmental Plan (LLEP) 2008 - Clause 4.3 Height of Buildings**; - Supported subject to 4.6 review in the report .
- **Non-compliance with the Liverpool Local Environmental Plan (LLEP) 2008 - Clause 4.4 Floor Space Ratio (FSR)** - Supported subject to 4.6 review in the report.
- **Contamination Matters** - To be addressed by Conditions imposed for an amended PSI and DSI to be provided to Council for Environmental Health Officer review.
- **Solar and Daylight Access** – The minor variation of 1% is acceptable (70 required, 69% provided)
- **Setbacks** – Reduced Street setbacks proposed, however they are Consistent with the approved DA-1320/2021.

- **Urban Design – Consists with the DEP matters requested to be addressed by condition by the DEP.**
  - Clarity of openings in the Building A and B building separation
  - Updated architectural and landscape plans reflecting Building C entry changes and DEP comment.
  - EV Chargers and Façade Details at 1:20 as requested by DEP
- **Bicycle –** Not-indicated in the development. To be addressed by condition
- **Built Form**
  - **Storage In Apartments and Basement -** Not indicated in the development. To be addressed by condition.
  - **Building Separation –** 6.845m from GL to Level 4 with balconies overlooking each other. Consistent with the original DA. Only proportionate to a minor area to the development between buildings A & B. Addressed by privacy screens.
- **Private Open Space (PoS) –** Concentrated on a few units with balconies on the ground floor with less than 15m<sup>2</sup> of PoS.

## 1.5 Exhibition of the proposal

The application was placed on exhibition from 15 May 2024 to 12 June 2024 in accordance with the Liverpool Community Participation Plan. 63 submissions were received comprising of 56 unique submission objecting to the proposed development. The concerns raised in the submissions and the response to the concerns raised are detailed in Section 6.8 of the report.

### 1.1 Reasons for the report

The Capital Investment Value (CIV) of this application as outlined in a detailed cost report by a registered Quantity Surveyor is \$50,727,598.50 (excluding GST).

The Sydney Western City Planning Panel is the determining body as the CIV of the development is over \$30 million, pursuant to Schedule 6 of the *State Environmental Planning Policy - SEPP (Planning Systems) 2021*.

### 1.6 Conclusion

The application has been assessed pursuant to the provisions of the Environmental Planning and Assessment Act 1979. Based on the assessment of the application and the consideration of the written request to vary the height of buildings and FSR development standard pursuant to Clause 4.6 of the LLEP 2008, it is recommended that the application be approved, subject to conditions

## 1. THE SITE AND LOCALITY

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### 1.1 The Site

The subject site is known as Lot 101 DP 1267563, Soldiers Parade, Edmondson Park. The site is irregular in shape and has an approximate site area of 1.027ha (10,274m<sup>2</sup>). The site

has a frontage to Somme Avenue of 42.43m, a frontage to Passendale Road of 76.81m, and a frontage to Bernera Road/Soldiers Parade of 59.6m. The site falls from north-west to south-east from an RL of 55.85 to an RL of 49.85, an overall fall of 6m, however, the majority of the slope occurs to the western portion of the site (west of Passendale Road). The site directly adjoins existing residential flat buildings (RFBs) at 361-363 Bernera Road and 120 Passendale Road.



**Figure 1:** Aerial photograph of the site

## 1.2 The Locality

The proposed development is located within the suburb of Edmondson Park, approximately 7.5km south-west of the Liverpool CBD and approximately 600m north of Edmondson Park Town Centre and Edmondson Park train station. The locality is predominantly characterised by low-density residential development to the west and north-west, medium-density residential development to the north, and existing semi-rural residential development to the north-east, east, south and south-west which has not yet undergone transition to a residential area. There are existing residential flat buildings directly beside the subject site, as well as within the town centre to the south.





**Figure 2:** Site locality

## **2. THE PROPOSAL AND BACKGROUND**

### **2.1 The Proposal**

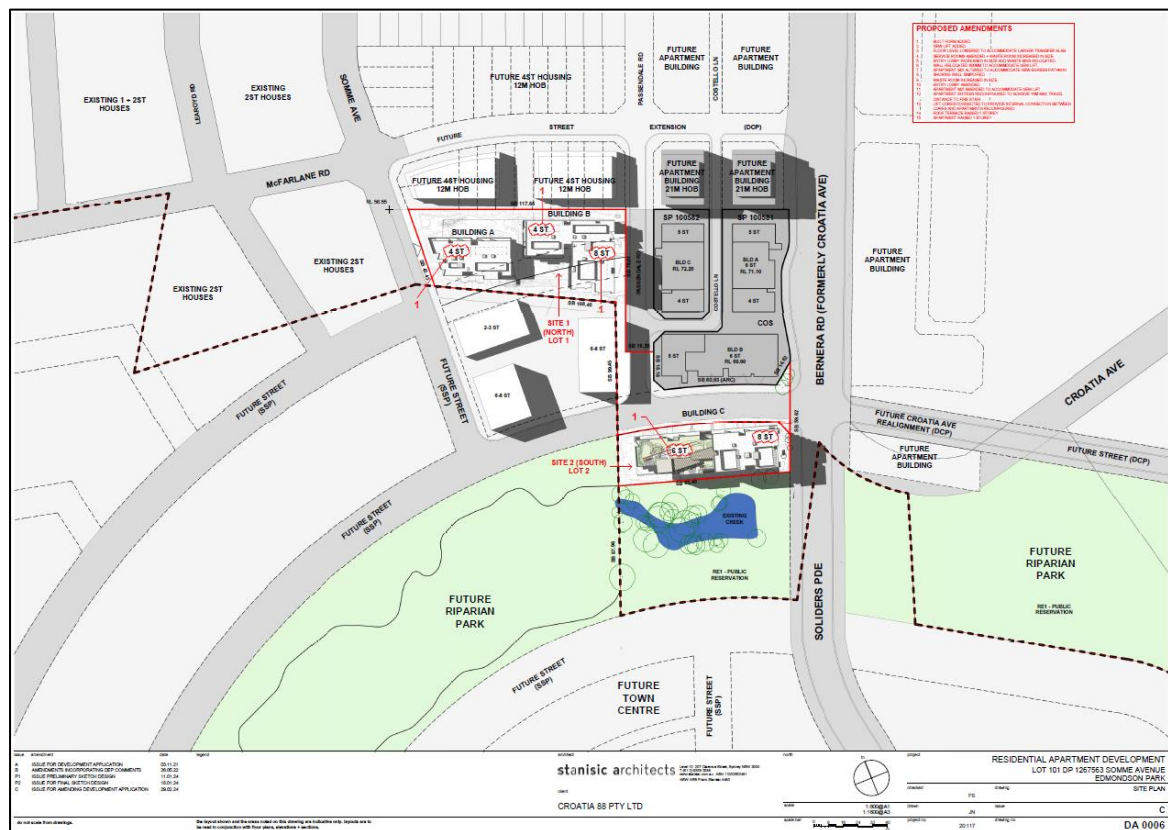
The proposed development comprises amendments to approved DA-1320/2021 for subdivision, construction of three residential flat buildings and associated strata subdivision, site preparation and civil works, and landscaping. The amendments proposed are as follows:

- Increase in the Gross Floor Area by 30%,
- Amendments to the approved buildings as follows:
  - Building A – increase from 20 apartments over 3 storeys to 27 affordable housing apartments over 4 storeys,
  - Building B – increase from 46 apartments over 3/6 storeys to 61 apartments over 4/8 storeys,
  - Building C – increase from 71 apartments over 5/6 storeys to 90 apartments over 6/8 storeys,
- Minor reconfiguration of apartments to accommodate additional lift and access arrangements in Building A, B and C,
- Floor level lowered to Basement 2 and Basement 1 to accommodate increased structural slabs, and
- Minor amendments to open space, service parking, waste, and egress.

**Table 1: Development Data**

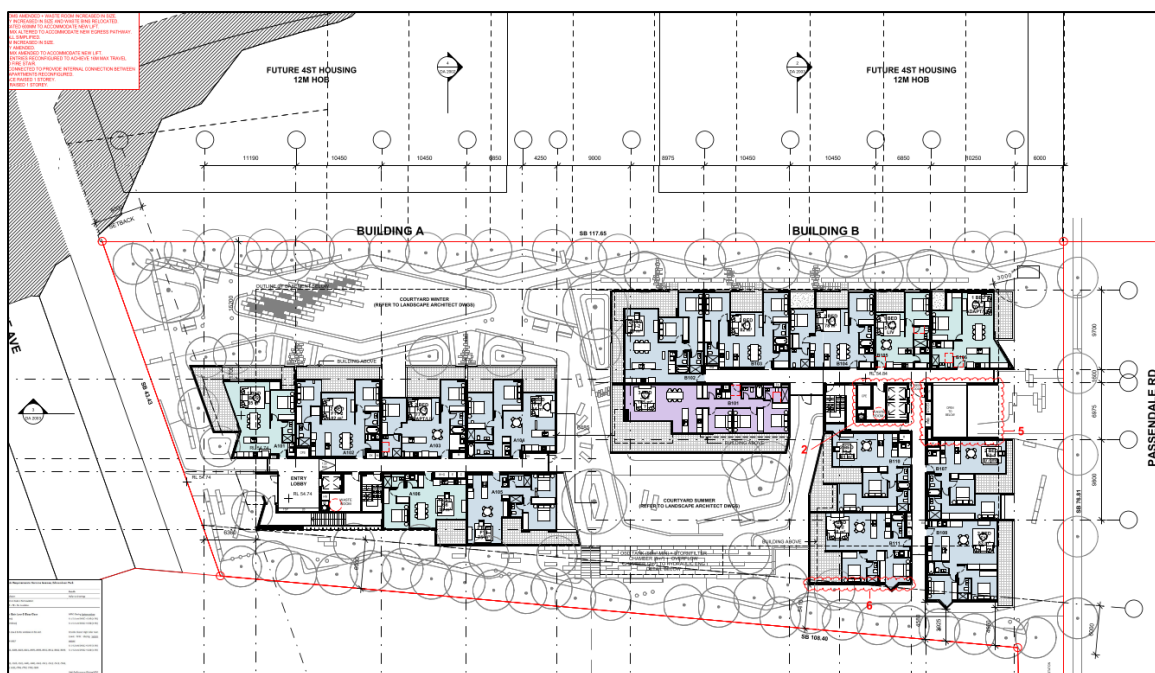
<b>Control</b>	<b>Approved Stage 2 DA-1320/2021</b>	<b>Proposal</b>
Site area (Min 450m <sup>2</sup> )	1.027ha	1.027ha
GFA	12,1063.46m <sup>2</sup>	15,867.49m <sup>2</sup> Affordable Housing 2,830m <sup>2</sup> (15%)
FSR (retail/residential)	1.197:1	1.57:1
Clause 4.6 Requests	Yes <ul style="list-style-type: none"> <li>Clause 4.3 Height of Buildings - Maximum above height of buildings standard 6.64m (55.3%)</li> </ul>	Yes <ul style="list-style-type: none"> <li>Clause 4.3 Height of Buildings (exceedance of 59.2%), and</li> <li>Clause 4.4 Floor Space Ratio (exceedance of 50.1%)</li> </ul>
No of apartments	38 x 1-bedroom (27.7%) 87 x 2-bedroom (63.5%) 12 x 3-bedroom (8.7%) Total = 137 Apartments	50 x 1-bed apartments (+12 units) – (28.5%) 114 x 2-bed apartments (+27 units) – (64.2%) 14 x 3-bed apartments (+2 units) – (7.3%) Total: 178 Apartments
Max Height	21.78m (6 storeys)	27.98m (8 storeys)
Landscaped area	4,523m <sup>2</sup> (44.7%)	4,523m <sup>2</sup> (44.7%)
Car Parking spaces	240	237
Setbacks	<p>Building A:</p> <ul style="list-style-type: none"> <li>- 6m to Somme Avenue (front);</li> <li>- 6m to southern boundary (side);</li> <li>- 15.2m to northern boundary (side);</li> <li>- 6.485m to Building B (rear)</li> </ul> <p>Building B:</p> <ul style="list-style-type: none"> <li>- 6m to Passendale Road (front);</li> <li>- 6m to northern boundary (side);</li> <li>- 3.925m-5.41m to southern boundary (side);</li> <li>- 6.485m to Building A (rear)</li> </ul> <p>Building C:</p>	<p>Building A:</p> <ul style="list-style-type: none"> <li>- 6m to Somme Avenue (front);</li> <li>- 6m to southern boundary (side);</li> <li>- 15.2m to northern boundary (side);</li> <li>- 6.485m to Building B (rear)</li> </ul> <p>Building B:</p> <ul style="list-style-type: none"> <li>- 6m to Passendale Road (front);</li> <li>- 6m to northern boundary (side);</li> <li>- 3.925m-5.41m to southern boundary (side);</li> <li>- 6.485m to Building A (rear)</li> </ul> <p>Building C:</p> <ul style="list-style-type: none"> <li>- 1.465-4.155m to future street/north boundary (front);</li> </ul>

	<ul style="list-style-type: none"> <li>- 1.465-4.155m to future street/north boundary (front);</li> <li>- 6m to Bernera Road/Soldiers Parade (front);</li> <li>- 3m to southern boundary (side);</li> </ul> <p>9.005-9.92m to western boundary (side/rear)</p>	<ul style="list-style-type: none"> <li>- 6m to Bernera Road/Soldiers Parade (front);</li> <li>- 3m to southern boundary (side);</li> <li>- 9.005-9.92m to western boundary (side/rear)</li> </ul>
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**Figure 3: Proposed Site Plan (Source: Stanisic Architects)**





**Figure 4:** Proposed Ground Floor Plan (Building A & B) (Source: Stanisc Architects)



**Figure 5:** Proposed Ground Floor Plans (Building C) (Source: Stanisc Architects)



**Figure 6:** Proposed Landscape Plan (Source: Sturt Noble Associates)



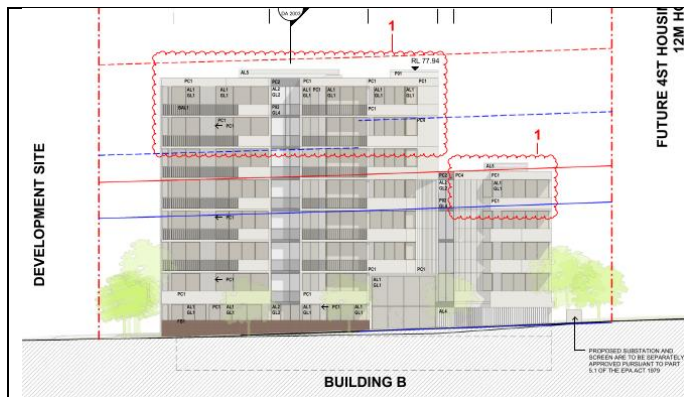
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Architectural site plan showing Building A and Building B. The plan includes various annotations, dimensions, and a north arrow. Key features include:

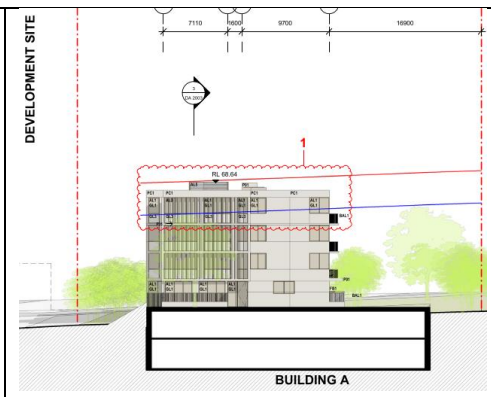
- Building A:** A large rectangular building with a red dashed outline. It is labeled with "1" and "2" and has a red arrow pointing to it.
- Building B:** A large rectangular building with a red dashed outline. It is labeled with "1" and "2" and has a red arrow pointing to it.
- Dimensions:** Various dimensions are provided, including "10450", "11100", "6000", "8075", "10450", "6125", "4325", "4475", "1850", "10775", and "6000".
- Annotations:** The plan includes "VARIES" and "NEW SB" (South Boundary) labels. It also features a north arrow and a scale bar.
- Other Labels:** "SOMME AVE" is labeled on the left, and "PASSEDALE RD" is labeled on the right. The plan also includes "BUILDING A" and "BUILDING B" labels at the bottom.
- Proposed:** A note at the bottom right states: "PROPOSED SUBSTANTIAL AND SIGNIFICANT TO BE APPROVED TO PART 1.1 OF THE BIA ACT 2011".

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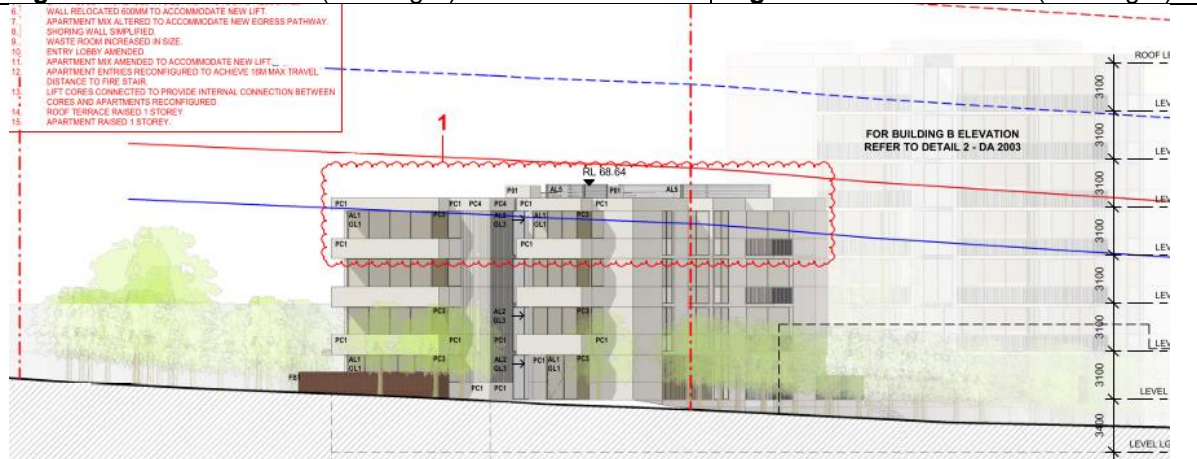




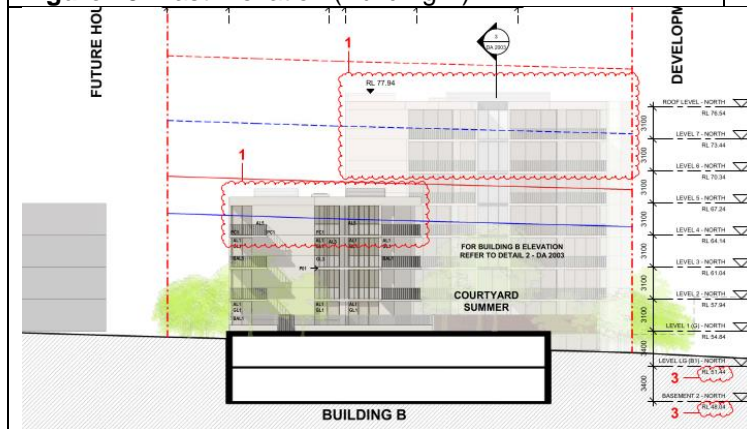
**Figure 11: East Elevation (Building B)**



**Figure 12: East Elevation (Building A)**

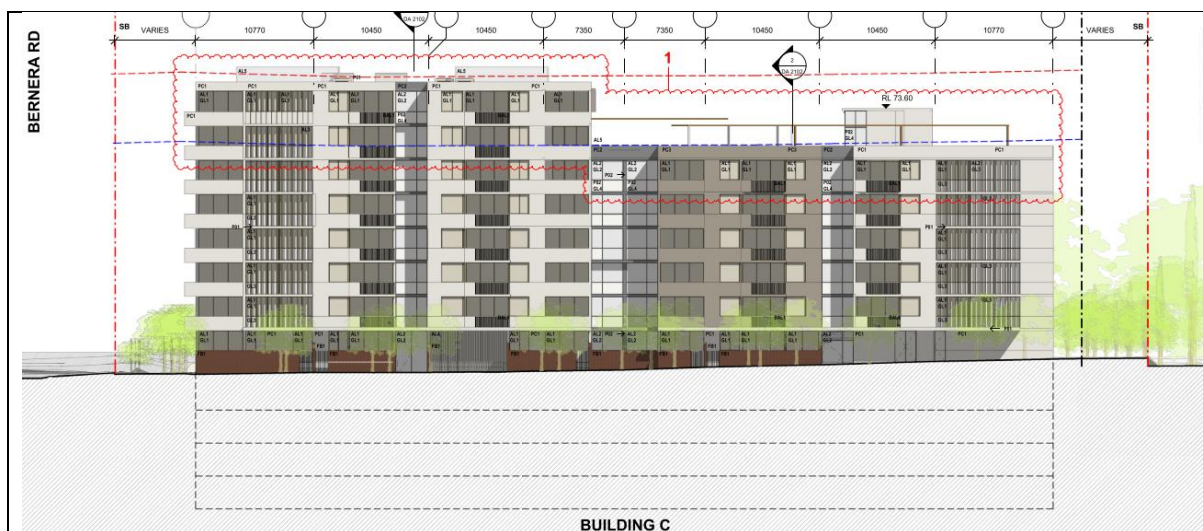


**Figure 13: East Elevation (Building A)**

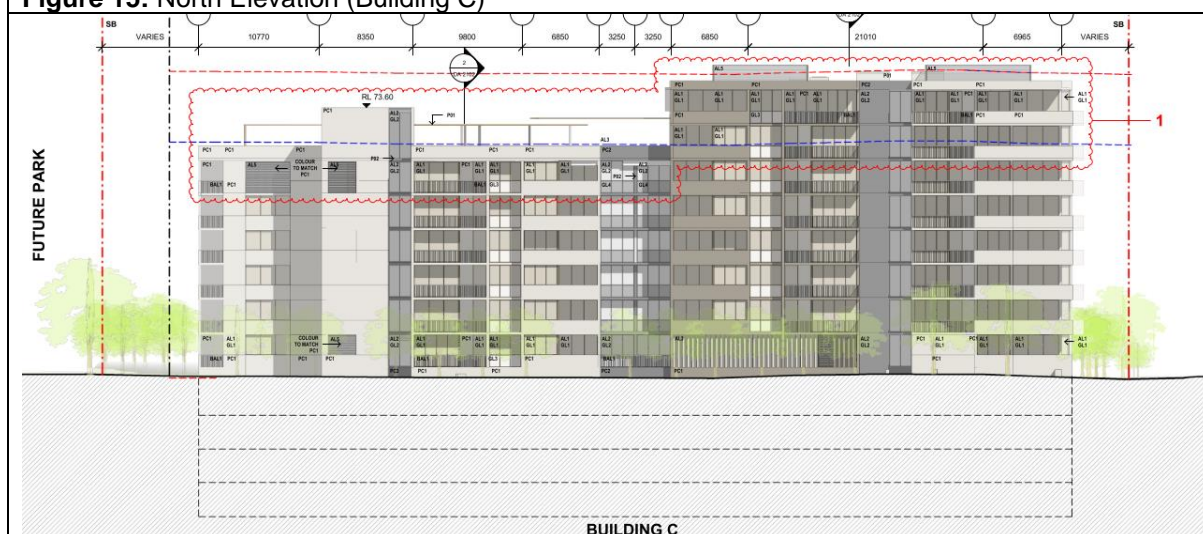


**Figure 14: West Elevation (Building B)**





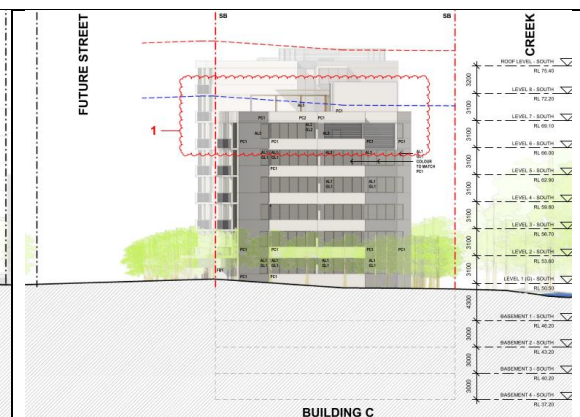
**Figure 15: North Elevation (Building C)**



**Figure 16: South Elevation (Building C)**



**Figure 17: East Elevation (Building C)**



**Figure 18: West Elevation (Building C)**



**Figure 19:** Perspective (looking south) (Source: Stanisic Architects)



**Figure 20:** Perspective (looking north) (Source: Stanisic Architects)

## 2.2 Background

The development application was lodged on **16 April 2024**. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

**Table 2: Chronology of the DA**

Date	Event
<b>16 April 2024</b>	DA lodged
<b>30 April 2024</b>	DA referred to external agencies
<b>15 May 2024- 12 June 2024</b>	Exhibition of the application
<b>13 June 2024</b>	TraDesign Excellence Panel Meeting
<b>4 September 2024</b>	Request for Information from Council to applicant
<b>23 September 2024</b>	Panel briefing
<b>23 September 2024</b>	Amended plans lodged addressing matters raised by Council letter, dated 18 September 2024 accepted by Council under CI 38(1) of the <i>Environmental Planning and Assessment Regulation 2021</i> ('2021 EP&A Regulation') on 23 September 2024.
<b>24 September 2024</b>	Additional amended plans lodged addressing matters raised by Council letter, dated 24 September 2024 accepted by Council under CI 38(1) of the <i>Environmental Planning and Assessment Regulation 2021</i> ('2021 EP&A Regulation') on 24 September 2024.
<b>2 October 2024</b>	Separate Clause 4.6 Variation Request reports for each variation provided by the applicant.
<b>14 October 2024</b>	Further correspondence addressing the application of the affordable housing bonus provided by the applicant.

## 2.3 Site History

DA-1320/2021, for two lot Torrens title subdivision and construction of three residential flat buildings ranging from three to six storeys comprising 137 flats and basement car parking with associated Strata subdivision, site preparation works, civil works, and landscaping, was approved by the Sydney Western City Planning Panel on 12 September 2022.

Development consent DA-1320/2021 approved variations to the ADG as follows:

- 6.485m separation between Buildings A and B (12m required);
- 4.5-6m southern boundary setback for Building B levels Ground to Level 5 (6m required Ground to Level 3, 9m required Levels 4 & 5);
- 3m southern boundary setback for Building C, levels 4 & 5 (9m required).

Development consent DA-1320/2021 approved variations to the LLEP 2008 as follows:

- 55.33% / 6.64m exceedance of Clause 4.3 Height of buildings for the portion of the site zoned with a maximum height of 12m



- 93.33% / 1,342.36m<sup>2</sup> exceedance of Clause 4.4 Floor space ratio for the portion of the site zoned with a maximum FSR of 0.75:1

This DA is intended to amend DA-1320/2021, as the proposal does not satisfy the 'substantially the same' test required for 4.55 modification of consent applications.

### 3.2 Design Excellence Panel

As part of the DA process, the proposed development was referred to the Design Excellence Panel (DEP) on 13 June 2024. The DEP was supportive of the proposal, subject to some minor design changes to be reviewed by Council. The comments from the DEP are provided below, including a response on how the comments have been addressed in the DA. The DEP minutes for the DEP meeting is attached to this report.

DEP meeting	
Comments/Recommendations	Response
<i>The Panel commends the Project Team for a well-considered and high-quality design proposal, setting an appropriate precedent for future development in high density areas. The development is an opportunity for new urban projects to create a positive contribution to a rapidly growing community, while maintaining quality open space, streetscapes, and generous landscaping.</i>	Noted.
<i>The Panel acknowledges the proposal has a previously approved Development Application, the proposal is to increase the GFA by 30% and provide affordable housing in line with recent amendments to the Housing SEPP. The Panel is supportive of the applicant's strategy to thoughtfully distribute the additional GFA across the buildings, including the variation in building height and focus of mass at more prominent corners.</i>	Noted.
<i>The Panel commends the rigour in envelope testing that was undertaken, demonstrating a sound understanding of the future potential developments on the neighbouring (Landcom) property has informed the design process. This also provided the Panel with an understanding of the extent of impact that the proposed scheme will have on this adjoining property, which is considered acceptable in the Panel's view.</i>	Noted.



<p><b><i>The applicant advised the affordable housing apartments will be consolidated in Building A rather than distributed throughout the development. The Panel encourages the applicant to consider an alternative strategy of distributing affordable housing across the development, to allow a more inclusive approach to fostering community.</i></b></p>	<p>The panel's recommendation is acknowledged and is preferred. However, the application maintains that focusing the affordable housing in one building streamlines services including streamlining management and providing improved community initiatives.</p> <p>Choosing one building in this location simplifies design efficiently adding features such as adaptable units and providing foresight into the layout of communal areas, factoring in the constraints of the site and the movement of people with mobility issues utilising adaptive units.</p> <p>The proposal indicates that the concentration of affordable housing aligns with objectives the following objectives of the EPA&amp;Act:</p> <ul style="list-style-type: none"> <li>- <u>Section 1.3(c) – Promoting the Social and Economic Welfare of the Community:</u> Centralising affordable housing in one location allows targeted social programs, fostering a cohesive support network. This approach promotes economic stability by reducing management costs and improving resource allocation.</li> <li>- <u>1(g) Ensuring Good Design and Amenity:</u> Building A is designed with specific amenities to support affordable housing residents. Consolidation ensures these features are concentrated and accessible, enhancing overall residential quality and promoting inclusivity within the broader development.</li> <li>- <u>Section 1.3(h) – Efficient and Orderly Development:</u> Focusing affordable housing within one building facilitates efficient use of land and resources, aligning with broader development strategies. This approach supports integrated, balanced, and economically sustainable urban growth.</li> </ul>
<p><b><i>The Panel is supportive of both the architecture and landscape architecture practices being retained after the Development Application phase and throughout the documentation and construction phases. Design intent sections for typical facades at 1:20 scale should be</i></b></p>	<p>Noted.</p>

<b><i>provided to ensure the design quality, materiality, and detailing is captured in the Development Application documentation.</i></b>	
<b><i>The Panel discussed that creating main entry definition and maximising its visibility is an important urban design consideration in a high-density residential environment. The Panel notes that while Buildings A and B are successful with their entry presence in the public domain, the Building C lobby appears recessed and should benefit from an increased street presence. The Panel encourages the applicant to create greater emphasis for the Building C main entry and recommends moving the entry lobby closer to the building line to increase street presence. Additionally, the entry space should incorporate landscape design and seating opportunities in the external forecourt to encourage a sense of community and inclusiveness.</i></b>	<p>Noted.</p> <p>The applicant has provided amended 3D plans proposing changes to the entry of Building C to align with the panel's comments. A condition of consent has been imposed requesting updated floor plans to reflect these changes.</p>
<b><i>The Panel notes human scale elements such as seats, letterboxes, signage, and planting contribute significant value to improving a building's identity, enhancing the journey from the street to the main lobby, and fostering a sense of belonging in a high-density residential environment. The Panel recommends the applicant provide drawings demonstrating how human scale elements are being thoughtfully integrated into the development.</i></b>	Imposed as a Condition
<b><i>The Panel highlights the unique opportunity to add value to the development through creating a view through Building C between the Future Street to its north and the creek, enabling natural light and landscaping to lead people through the building. The Panel recommends minor refinements to the layout and glazing incorporated at the cores in Entry Lobby A and Entry Lobby B to enable direct views through the building.</i></b>	The applicant provided amended plans to address these matters.
<b><i>The Panel notes Liverpool LGA experiences severe urban heat island</i></b>	Imposed as a Condition

<p><b><i>effect, and as part of the design excellence process requests the applicant include innovative sustainability strategies into the development and capture these strategies in the Development Application. Ceiling fans, EV charging points and full electrification of the building are appropriate measures to this end. With this suite of strategies, careful consideration of the role of canopy tree plantings to the street and sites are to be incorporated.</i></b></p>	
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### 3. STATUTORY CONSIDERATIONS

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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 be (which are considered further in this report):

- Integrated Development (s4.46)
- Requiring concurrence/referral (s4.13)

### 3.1 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.

#### 3.1.1 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 (Sustainable Buildings) 2022*
- *State Environmental Planning Policy (Housing) 2021*
- *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*
- *Liverpool Local Environmental Plan 2008;*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

**Table 3: Summary of Applicable Environmental Planning Instruments**

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 6: Water Catchments	Y
State Environmental Planning Policy (Sustainable Buildings) 2022	No compliance issues identified subject to imposition of conditions on any consent granted.	Y
State Environmental Planning Policy (Housing) 2021	Chapter 2: Affordable Housing • Division 1: In-fill affordable housing Chapter 4: Design of residential apartment development	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6 as it comprises development with a cost of works over \$30 million.	Y
State Environmental Planning Policy	Chapter 4: Remediation of Land	Y



(Resilience & Hazards) 2021	<ul style="list-style-type: none"> <li>Section 4.6 - Contamination and remediation has been considered and the proposal is satisfactory subject to conditions.</li> </ul>	
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> <li>Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions.</li> </ul>	Y
Proposed Instruments	No compliance issues identified.	Y
Liverpool Local Environmental Plan 2008	<ul style="list-style-type: none"> <li>Clause 2.3 – Permissibility and zone objectives</li> <li>Clause 4.3 – Height of buildings</li> <li>Clause 4.4 – Floor space ratio</li> <li>Clause 4.6 – Exceptions to development standards</li> </ul>	Y
Liverpool Development Control Plan 2008	<ul style="list-style-type: none"> <li>Part 1: General Controls for All Development</li> <li>Part 2.11: Land Subdivision and Development in Edmondson Park</li> </ul>	Acceptable

Consideration of the relevant SEPPs is outlined below.

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

Chapter 6 : Water Catchments, Part 6.2 Development in regulated catchments

The subject site is located within the Georges River catchment area and as such Part 2 – Development in regulated catchments of Chapter 6 – Water Catchments of the SEPP (Biodiversity and Conservation) 2021 applies to the development.

Control	Compliance
<b>Division 2 Controls on development generally</b>	
6.6 Water quality and quantity	Stormwater concept plans were submitted and reviewed by Council's Land Development Engineering Section and considered satisfactory subject to conditions.
6.7 Aquatic ecology	The works are not located on Environmentally Sensitive land and are unlikely to impact on aquatic ecology.
6.8 Flooding	The site is identified as flood prone. The proposal has been reviewed by Council's flooding engineers and considered satisfactory.
6.9 Recreation and public access	The development is unlikely to impact on recreational lands or public access to and around foreshores.
6.10 Total catchment management	Environmental Planning consideration through the provisions of the Liverpool LEP has considered the impact of the residentially zoned land within the catchment.
<b>Division 3 Controls on development in specific areas</b>	

6.11 Land within 100m of natural waterbody	Site is within 100m of a natural waterbody. The use is not a water-dependent use and does not cause any conflict between land uses. It is additionally noted that the application has been referred to DPE Water as a controlled activity and has been issued with General Terms of Approval.
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The application has been assessed against the provisions of Chapter 6 of the SEPP (Biodiversity and Conservation) 2021 and is considered to comply with the relevant controls subject to imposition of conditions of consent and general terms of approval.

**(b) State Environmental Planning Policy (Sustainable Buildings) 2022**

The proposal is accompanied by a BASIX Certificate which is consistent with the aims and intent of the Plan. It is recommended that appropriate conditions are imposed to ensure compliance with the BASIX commitments.

**(c) State Environmental Planning Policy (Housing) 2021**

Chapter 2: Affordable housing, Part 2, Division 1 In-fill affordable housing

The proposed development includes the addition of affordable housing to the site. Under the provisions of the SEPP (Housing) 2021, this development is classified as *in-fill affordable housing*. A full assessment of the development against the requirements of Chapter 2 is provided in Attachment 1; non-compliances and variations are detailed below.

Clause	Requirement	Comment
15C Development to which division applies	This division applies to development that includes residential development if— (a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5 or another environmental planning instrument, and (b) the affordable housing component is at least 10%, and (c) all or part of the development is carried out— (i) for development on land in the Six Cities Region, other than in the City of Shoalhaven or Port Stephens local government area—in an accessible area, or (ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone.	<b>Complies</b> (a) The development is permissible with consent under the Liverpool Local Environmental Plan 2008.  (b) The affordable housing component is > 10% by number of units and by FSR.  (c)(i) The proposed development is located within 800m walking distance of Edmondson Park Train Station, satisfying the definition of an accessible area.

	Affordable housing provided as part of development because of a requirement under another chapter of this policy, another environmental planning instrument or a planning agreement is not counted towards the affordable housing component under this division.	<b>Noted</b> Affordable housing is only proposed under the SEPP (Housing) 2021.
16 Affordable housing requirements for additional floor space ratio	(1) The maximum floor space ratio for development that includes residential development to which this division applies is the maximum permissible floor space ratio for the land plus an additional floor space ratio of up to 30%, based on the minimum affordable housing component calculated in accordance with subsection (2).	15% affordable housing is proposed, which would give an FSR bonus of 30% across the site (increasing permissible FSR from 0.75:1 and 1.5:1 to 0.975:1 and 1.95:1)  A Clause 4.6 Variation Request to vary Clause 4.4 of the Liverpool Local Environmental Plan has been received and is addressed below.
	(3) If the development includes residential flat buildings or shop top housing, the maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).	15% affordable housing is proposed, which would give a height bonus of 30% across the site (increasing permissible heights from 12m and 21m to 15.6m and 27.3m)  A Clause 4.6 Variation Request to vary Clause 4.3 of the Liverpool Local Environmental Plan has been received and is addressed below.
19 Non-discretionary development standards—the Act, s 4.15	(2)(b) a minimum landscaped area that is the lesser of— (i) 35m <sup>2</sup> per dwelling, or (ii) 30% of the site area	<b>Considered Satisfactory</b> The proposal as amended was accompanied by landscaped plans that showed generous landscaping throughout the development. Despite minor changes to the building footprint the landscaping and deep soil areas remain as initially approved and are considered satisfactory.

		25% percent of the site area is dedicated to landscaping. Therefore a shortfall of 5%. Notwithstanding the shortfall from the prepared the landscaping is consistent with the initially approved scheme and is consequently deemed satisfactory in this instance.
	(c) a deep soil zone on at least 15% of the site area, where— (i) each deep soil zone has minimum dimensions of 3m, and (ii) if practicable, at least 65% of the deep soil zone is located at the rear of the site	<b>Complies</b> The submitted landscape plans did not provide dimensions to identify the areas for deep soil, however, a review of the landscape plans identified that deep soil is consistent with the approved DA-1320/2021 in which 2,221m <sup>2</sup> of deep soil is proposed or 19%.
	(d) living rooms and private open spaces in at least 70% of the dwellings receive at least 3 hours of direct solar access between 9am and 3pm at mid-winter	<b>Considered Acceptable</b> The proposal provides for 69% of apartments to achieve the required solar access. Council's urban design team has reviewed the proposal and considers it acceptable.
	(e) the following number of parking spaces for dwellings used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.4 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 0.5 parking spaces, (iii) for each dwelling containing at least 3 bedrooms—at least 1 parking space, (f) the following number of parking spaces for dwellings not used for affordable housing— (i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces, (ii) for each dwelling containing 2 bedrooms—at least 1 parking space,	<b>Complies</b> The proposal includes a total of 27 affordable housing units with the following breakdown:  11 x 1 bedroom 13 x 2 bedroom 3 x 3 bedroom  Using the formula, 14 spaces are required for the affordable housing portion.  The proposal includes a total of 237 parking spaces, where 246 are required.  12 1-bed apartments are additionally proposed, requiring 4.8 parking spaces

	(iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,	<p>27 2-bed apartments are additionally proposed, requiring 13.5 parking spaces</p> <p>2 3-bed apartments are additionally proposed, requiring 2 parking spaces</p> <p>The original DA provided 240 car parking spaces where 226 were required; 246 would be required under this application, whereas only 237 have been provided.</p> <p>However, applying the rate without consideration for the previous DA-1320/2021 being amended, the proposal would require 150 parking spaces. Notwithstanding, the method used to calculate on-site parking, the proposal, and its proximity to the Edmondson Park Railway Station, which promotes reduced parking, is sufficient and complies.</p>
21 Must be used for affordable housing for at least 15 years	<p>Development consent must not be granted to development under this division unless the consent authority is satisfied that for a period of at least 15 years commencing on the day an occupation certificate is issued for the development—</p> <p>(a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and</p> <p>(b) the affordable housing component will be managed by a registered community housing provider.</p>	<p><b>Complies by Condition</b></p> <p>27 units are proposed to be used for affordable housing within Building A. Appropriate conditions of consent will be imposed to ensure these units as affordable housing for no less than 15 years and managed by a registered community housing provider.</p>

#### Chapter 4: Design of residential apartment development

The proposed development involves the construction of 3 residential flat buildings, and as such Chapter 4 applies to the development.

The requirements of Chapter 4 are as follows:

Clause	Requirement	Comment
145 – Referral to design review panel for development applications	Before determining the development application, the consent authority must refer the application to the design review panel for the local government area in which the development will be carried out for advice on the quality of the design of the development.	<b>Complies</b> The application has been referred to the Liverpool Design Excellence Panel, who supported the proposal.
147 – Determination of development applications and modification applications for residential apartment development	Development consent must not be granted to residential apartment development unless the consent authority has considered the following— (a) the quality of the design of the development, evaluated in accordance with the design principles for residential apartment development set out in Schedule 9, (b) the Apartment Design Guide, (c) any advice received from a design review panel within 14 days after the consent authority referred the development application or modification application to the panel.	<b>Considered</b> (a) The development has been evaluated in accordance with the design principles in Schedule 9  (b) The Apartment Design Guide has been considered in the assessment of the application  (c) As detailed above, the LDEP were supportive of the proposal and their advice has been considered in the assessment of the application.
148 – Non-discretionary development standards for residential apartment development	(a) the car parking for the building must be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide, (b) the internal area for each apartment must be equal to, or greater than, the recommended minimum internal area for the apartment type specified in Part 4D of the Apartment Design Guide, (c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in	<b>Partially Complies – Acceptable</b>  (a) As per the discussion of the application against the ADG below, the proposal does not comply with parking requirements.  (b) As per the discussion of the application against the ADG below, the proposal complies with internal area requirements.  (c) As per the discussion of the application against the ADG below, proposal complies with ceiling height requirements.



	Part 4C of the Apartment Design Guide.	
149 – Apartment Design Guide prevails over development control plans	A requirement, standard or control for residential apartment development that is specified in a development control plan and relates to the following matters has no effect if the Apartment Design Guide also specifies a requirement, standard or control in relation to the same matter— (a) visual privacy, (b) solar and daylight access, (c) common circulation and spaces, (d) apartment size and layout, (e) ceiling heights, (f) private open space and balconies, (g) natural ventilation, (h) storage.	<b>Noted</b> Compliance with the Apartment Design Guide is discussed below.

### Apartment Design Guide

In accordance with Clause 147(1)(b) of the SEPP (Housing) 2021, the application has been assessed against the Apartment Design Guide (ADG). A full assessment of the development against the requirements of the ADG is provided in Attachment 2; non-compliances and variations are detailed below.

Provision	Comment
<b>2F Building separation</b>	
Minimum separation distances for buildings are: Up to four storeys (approximately 12m): <ul style="list-style-type: none"> <li>- 12m between habitable rooms/balconies</li> <li>- 9m between habitable and non-habitable rooms</li> <li>- 6m between non-habitable rooms</li> </ul>	<p><b>Considered acceptable</b></p> <p><u>Buildings A and B</u> Ground – Level 3</p> <ul style="list-style-type: none"> <li>- Compliant setbacks to northern, western, and eastern boundaries (being 6m or more)</li> <li>- Noncompliant separation between Building A and Building B, being 6.485m between habitable rooms/balconies – however, this is consistent with DA-1320/2021</li> <li>- 3.9-6m setbacks to southern boundary, no justification for reduction from 4.5m to 3.9m</li> </ul> <p><u>Building C</u> Ground – Level 3</p> <ul style="list-style-type: none"> <li>- Insufficient information is provided to ascertain rear setback, as architectural plans are not</li> </ul>

	<p>dimensioned. DA-1320/2021 approved a 3m setback to the southern boundary.</p> <p>Notwithstanding the non-compliance, the setbacks are consistent with the approved DA-1320/2021.</p>								
<p>Five to eight storeys (approximately 25m):</p> <ul style="list-style-type: none"><li>- 18m between habitable rooms/balconies</li><li>- 12m between habitable and non-habitable rooms</li><li>- 9m between non-habitable rooms</li></ul>	<p><b>Considered acceptable</b></p> <p><u>Building B</u> Level 4-5</p> <ul style="list-style-type: none"><li>- Compliant setback to the northern boundary (17.3m)</li><li>- Acceptable setback to eastern boundary (6m) – fronts a road</li><li>- 3.9-6m setbacks to southern boundary, no justification for reduction from 4.58m to 3.9m</li></ul> <p><u>Building C</u> Level 4-5</p> <ul style="list-style-type: none"><li>- Insufficient information is provided to ascertain rear setback, as architectural plans are not dimensioned. DA-1320/2021 approved a 3m setback to the southern boundary.</li></ul> <p>Notwithstanding the non-compliance, the setbacks are consistent with the approved DA-1320/2021.</p>								
<b>3D Communal and public open space</b>									
<p>Communal open space has a minimum area equal to 25% of the site</p> <p>Developments achieve a minimum of 50% direct sunlight to the principal useable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</p>	<p><b>Complies</b></p> <p>DA-1320/2021 approved the following: Building A &amp; B (Lot 1): 2,547.37m<sup>2</sup> Building C (Lot 2): 1,536.19m<sup>2</sup> (ground level COS) + 595.84m<sup>2</sup> (rooftop terrace) Total COS = 4,679.39m<sup>2</sup> (46.3% of the site are of 10,110m<sup>2</sup>)</p> <p>Notwithstanding the non-compliance with the street setbacks, the communal open space proposed is consistent with the approved DA-1320/2021.</p>								
<b>3E Deep soil zones</b>									
<p>Deep soil zones are to meet the following minimum requirements:</p> <table><tr><td>Site Area</td><td>Minimum Dimensions</td><td>Deep Soil Zone (% of site area)</td></tr><tr><td>Less than 650m<sup>2</sup></td><td>-</td><td rowspan="2">15%</td></tr><tr><td>650m<sup>2</sup> to 1500m<sup>2</sup></td><td>3m</td></tr></table>	Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)	Less than 650m <sup>2</sup>	-	15%	650m <sup>2</sup> to 1500m <sup>2</sup>	3m	<p><b>Complies</b></p> <p>The submitted landscape plans do not identify deep soil areas, and the minimum dimensions required.</p> <p>DA-1320/2021 approved a total deep soil zone of 19% of the site area or 2,021m<sup>2</sup></p>
Site Area	Minimum Dimensions	Deep Soil Zone (% of site area)							
Less than 650m <sup>2</sup>	-	15%							
650m <sup>2</sup> to 1500m <sup>2</sup>	3m								

Greater than 1500m <sup>2</sup>	6m		The submitted landscape plans are consistent with DA-1320/2021. Notwithstanding, Updated landscape plans have been conditioned as the submitted set dates back to 2021 and do not indicate the proposed minor changes to the entries as suggested by the DEP, which also have been conditioned, nor do the plans highlight the deep soil areas on site.	
Greater than 1500m <sup>2</sup> with significant tree cover				
<b>3J Bicycle and Car Parking</b>				
For development in the following locations: <ul style="list-style-type: none"><li>- On sites that are within 800 meters of a railway station or light rail stop in the Sydney Metropolitan Area; or</li><li>- On land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li></ul> The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.				<b>Considered satisfactory</b> As addressed above in the SEPP (Housing) assessment, a total of 246 car spaces are required, while only 237 have been provided, however, this is considered acceptable as noted in the body of the report.  Bicycle parking will be conditioned to be provided on site.
<b>4A Solar and Daylight Access</b>				<b>Considered Acceptable</b> The proposal provides 178 apartments over three (3) buildings. The proposal has identified 69.7% meet the required 2 hours of solar access at mid-winter. This has been considered acceptable noting the increase of 41 units across the site.
<b>4E Private Open Space and Balconies</b>				<b>Considered acceptable</b> The architectural plans are not dimensioned to confirm the ground floor apartments meet the minimum area of 15sqm.  A review of the plans noted that the majority of the ground floor apartments will comply with 15 sqm and 3m dimensions, however, there are a number of units that do not comply. Notwithstanding, the non-compliant units, the proposal has various communal areas located to the north, south, east, and west that can be utilised by the tenants.
<b>4G Storage</b>				<b>Comply by Condition</b>  The architectural plans are not dimensioned to confirm the location of storage areas within the apartments. Notwithstanding, the
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:				
Dwelling Type	Storage Size Volume			

Studio	4m <sup>3</sup>	apartments can comply, and revised plans have been conditioned to indicate storage in apartments and the basement to comply.
1 bedroom	6m <sup>3</sup>	
2 bedroom	8m <sup>3</sup>	
3 bedroom	10m <sup>3</sup>	
At least 50% of the required storage is to be located within the apartment.		
<b>4Q Universal design</b>		
Adaptable housing should be provided in accordance with the relevant council policy		<b>Complies</b> Amended plans indicate a number of units will be adaptable 10% of the units will be adaptable (as per Control 4 of Section 3.9 of Part 2.11 of the Liverpool Development Control Plan 2008).

**(d) State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')**

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 Planning Systems SEPP as the proposal is development with an estimated development cost of more than \$30 million. Accordingly, the Sydney Western City Planning Panel is the consent authority for the application. The proposal is consistent with this Policy.

**(e) 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 ('the 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.

Site contamination and remediation was considered under DA-1320/2021, and appropriate conditions of consent were imposed. No changes to remediation works or conditions are proposed under this application. As such, it is considered that the objectives and provisions of Chapter 4 are satisfied.

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

Chapter 2: Infrastructure, Division 5: Electricity transmission or distribution, Section 2.48(2) Determination of development applications—other development

Section 2.48(2) of State Environmental Planning Policy (Transport and Infrastructure) 2021 applies to the application as there is an easement over the site for underground cables. The application has been referred to Endeavour Energy for comment, who advised that the application is supported subject to imposition of conditions of consent.

**(g) Liverpool Local Environmental Plan 2008**

The relevant local environmental plan applying to the site is the *Liverpool Local Environmental Plan 2008* ('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 a range of housing, employment, recreation and services to meet the needs of existing and future residents of Liverpool,
- (b) to foster economic, environmental and social well-being so that Liverpool continues to develop as a sustainable and prosperous place to live, work, study and visit,
- (c) to provide community and recreation facilities, maintain suitable amenity and offer a variety of quality lifestyle opportunities to a diverse population,
- (d) to strengthen the regional position of the Liverpool city centre as the service and employment centre for Sydney's south west region,
- (e) to concentrate intensive land uses and trip-generating activities in locations most accessible to public transport and centres,
- (f) to promote the efficient and equitable provision of public services, infrastructure and amenities,
- (g) to conserve, protect and enhance the environmental and cultural heritage of Liverpool,
- (h) to protect, connect, maintain and enhance the natural environment in Liverpool, and promote ecologically sustainable development which takes into account the environmental constraints of the land,
- (i) to minimise risk to the community in areas subject to environmental hazards, particularly flooding and bush fires, by managing development in sensitive areas,
- (j) to promote a high standard of urban design that responds appropriately to the desired future character of areas,
- (k) to improve public access along waterways and vegetated corridors while ensuring the natural environmental values of riparian and bushland corridors and the habitat they provide are protected and enhanced,
- (l) to improve public transport accessibility, and facilitate the increased use of public transport, cycling and pedestrian activity,
- (m) to enhance the amenity and positive characteristics of established residential areas,
- (n) to ensure the agricultural production potential of rural land and prevent its fragmentation,
- (o) to encourage development opportunities for business and industry so as to deliver local and regional employment growth.

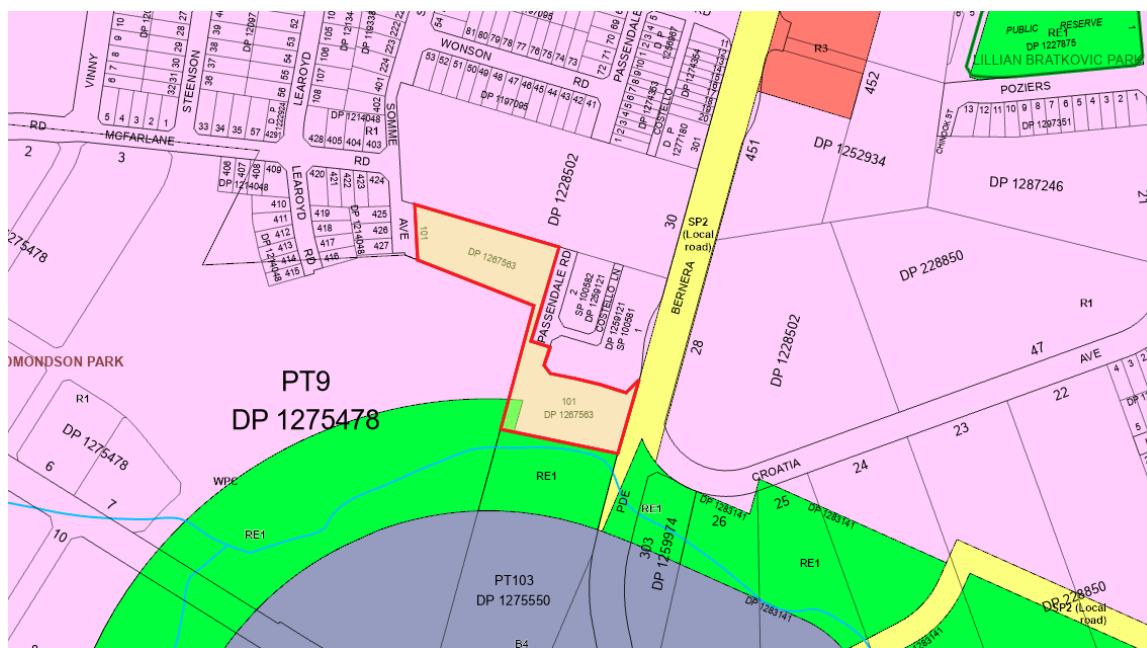
The proposal is consistent with these aims as the proposal:

- Provides a range of housing to meet the needs of existing and future residents of Liverpool;
- Concentrates intensive land uses in locations most accessible to public transport and centres;
- Minimises risk to the community in an area subject to environmental hazards, particularly flooding and bushfire.

- Promotes a high standard of urban design that responds appropriately to the desired future character of areas.

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

The site is located within the R1 General Residential Zone pursuant to Clause 2.2 of the LEP.



**Figure 21:** Land Zoning (Source: Geocortex, Liverpool City Council)

According to the definitions in Clause 1.4 (contained in the Dictionary), the proposal satisfies the definition of residential flat building which is a permissible use with consent in the Land Use Table in Clause 2.3.

The FSR

objectives include the following (pursuant to the Land Use Table in Clause 2.3):

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that housing densities are broadly concentrated in locations accessible to public transport, employment, services and facilities.*
- *To facilitate development of social and community infrastructure to meet the needs of future residents.*

The proposal is considered to be consistent with these zone objectives for the following reasons:

- The proposed development provides for the housing needs of the community, through the provision of both affordable and market housing;
- The proposed development provides for a variety of housing types, comprising a mix of 1-, 2- and 3-bed apartments;
- The proposed development concentrates high-density housing in an area accessible to public transport, employment, services and facilities, being within 800m of Edmondson Park Train Station.



**(ii) 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 4** below. The proposal does not comply with the development standards in Part 4 of the LEP and accordingly, a Clause 4.6 request has been provided with the application for the exceedance of the maximum height of buildings and floor space ratio.

**Table 4: Consideration of the LEP Controls**

Control	Requirement	Proposal	Comply
Minimum subdivision Lot size (CI 4.1)	300m <sup>2</sup>	Lot 1: 5244m <sup>2</sup> Lot 2: 2707m <sup>2</sup>  The remainder of the lot is future roads to be constructed and dedicated, and therefore the minimum lot size is not applicable to those portions of the site.	Yes
Height of buildings (CI 4.3(2))	Part 12 metres (15.6m under SEPP (Housing) 2021) Part 21 metres (27.3m under SEPP (Housing) 2021)	Height of buildings varies from 15.5m to 27.98m.  Maximum exceedance of 59.2%, being 9.23m. Clause 4.6 Variation Request made and considered below.	No – 4.6 Variation request provided and is Considered Acceptable.
FSR (CI 4.4(2))	Part 0.75:1 (GFA 2,961.38m <sup>2</sup> ) (0.975:1 / 3,849.89m <sup>2</sup> under SEPP (Housing) 2021) Part 1.5:1 (GFA 9,244.5m <sup>2</sup> ) (1.95:1 / 12,017.85m <sup>2</sup> under SEPP (Housing) 2021)	0.75:1 section: 5,779.05m <sup>2</sup> / 3,948.5m <sup>2</sup> = 1.464:1 (50.1% variation)  1.5:1 section: 10,088.45m <sup>2</sup> / 6,163m <sup>2</sup> = 1.64:1 (complies)  A Clause 4.6 Variation Request has been made and considered below.	No – 4.6 Variations request provided and is Considered Acceptable.
Flood Planning (CI 5.21)	Proposal is to comply the flood planning controls.  The proposed development site is located on the floodplain of Maxwells Creek. Maxwells Creek runs through the property and the site is affected by flooding under the 1% Annual	The proposal has been referred to Council's Flood Engineering section and Sydney Water, both of whom considered it satisfactory subject to conditions of consent.	Yes

	Exceedance Probability (AEP) event.		
Public Utility Infrastructure (CI 6.5)	Public utility infrastructure must be available or adequate arrangements made.	Conditions of consent to be imposed to require provision of infrastructure.	Yes
Minimum Dwelling Density (CI 7.11)	Part 17 dw/ha Part 28 dw/ha	Proposed development is across approximately 1ha and involves >100 dwellings.	Yes
Earthworks (CI 7.31)	Council to consider matters such as cut and fill, general excavation and drainage for the site.	Matters addressed by applicant and considered by Engineers – conditioned as required	Yes

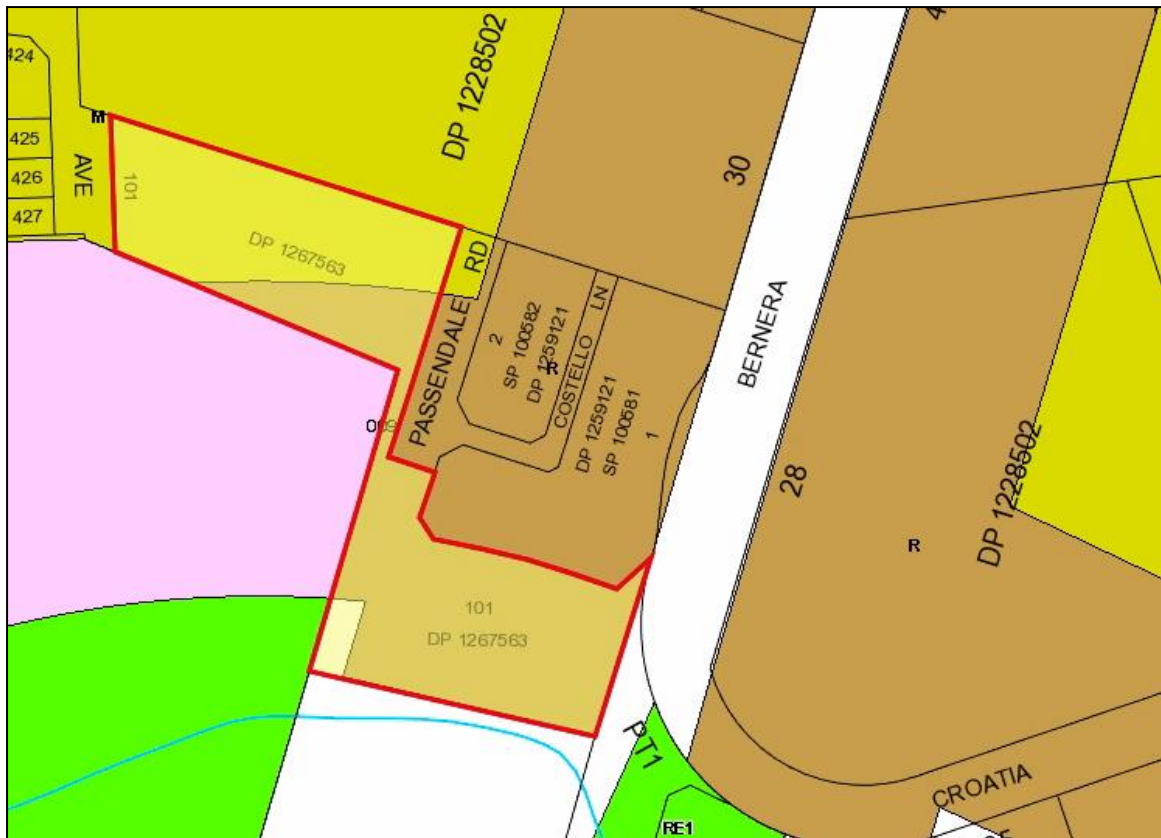
The proposal is considered to be generally consistent with the LEP and where variations are proposed, the impacts are negligible and will not contribute additional negative environmental impacts.

**(iii) Discussion on variation under Clause 4.6 of LLEP 2008 development standards**

As identified in the compliance table above, the proposal is generally compliant with the majority of provisions prescribed by LLEP 2008 with the exception of the following:

**a. Variation to Clause 4.3 Height of Buildings**

Clause 4.3 of the LLEP 2008, stipulates that the maximum height permissible on the subject site is 12m (part of Lot 1) and 21m (rest of the site) as indicated in the **Figure 22** below;

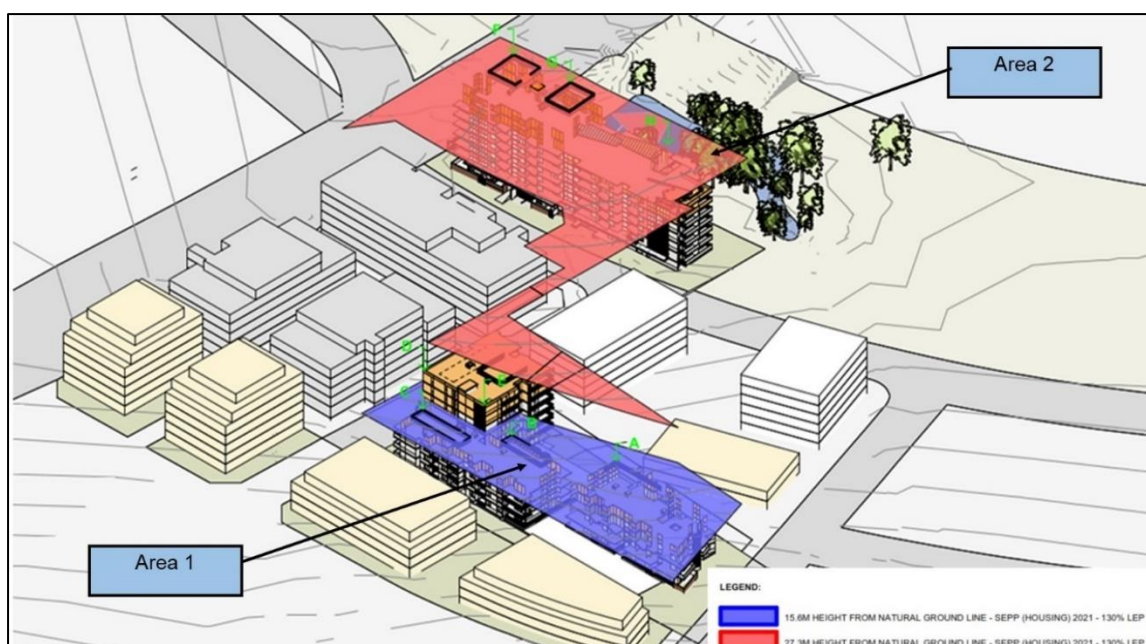


**Figure 22:** Applicable heights for the site

The proposal seeks a variation to Clause 4.3 – Maximum building heights under the Liverpool Local Environmental Plan 2008. The extent of the increased building heights of the development are shown in **Figures 23 & 24** and summarised in the table below



**Figure 22:** Height plane study submitted with Clause 4.6 variation



**Figure 23** Height plane study submitted with Clause 4.6 variation

The maximum variation to the building height is at Building B, where 8 storeys are proposed, and where the building height is 24.84 metres above the existing ground level, which is 9.24 metres (59%) above the development standard of 15.6 metres calculated as per the LEP. It is noted that under DA-1320/2021, that a maximum building height of 18.64 metres (55.3% variation to the LEP standard) has already been approved at Building B.

The table below summarises the maximum height of the topmost element above each point of the existing ground level in the amended DA.

PROPOSED BUILDING ELEMENT HEIGHT SCHEDULE					
ITEM	ELEMENT	PROPOSED RL AT GROUND	PROPOSED RL AT TOP	PROPOSED HEIGHT OF ELEMENT (m)	PROPOSED HEIGHT ABOVE MAX HOB + 130% (m)
A	PLANT SCREEN	53.24	68.74	15.50	-0.10
B	PLANT SCREEN	52.97	71.84	18.87	+3.27
C	PLANT SCREEN	52.58	68.74	16.16	+0.56
D	PARAPET	52.30	77.14	24.84	+9.24
E	PARAPET	52.90	77.14	24.24	+8.64
F	PLANT SCREEN	49.56	77.40	27.84	+0.54
G	PLANT SCREEN	49.42	77.40	27.98	+0.98
H	LIFT OVERRUN	49.49	73.70	24.21	+3.09

(Source: Clause 4.6 variation prepared by GNL).

Consequently, the applicant has provided a clause 4.6 variation to justify the non-compliance. The clause 4.6 variation is attached to this report. The details are as follows:

#### Building A

Building A is 4 storeys and situated fully within the 15.6 metre height standard that applies and is therefore compliant with the bonus provisions under the Housing SEPP.

#### Building B



Building B is 4 to 8 storeys in height. Minor variations to the height standard above the bonus provisions under the Housing SEPP are present on the 4<sup>th</sup> floor roof, comprising screens to shield plant equipment. The more substantial variation above the bonus provisions under the Housing SEPP is located at the parapets of the 8<sup>th</sup> floor, which is partly affected by the 15.6-metre height standard. Approximately one-third of the eight-storey structure encroaches into this zone.

### Building C

Building C is 6 to 8 storeys in height. More minor variations to the height standard are proposed above the bonus provisions under the Housing SEPP being limited to plant screening and a lift overrun, with no liveable floor space situated above the 27.3 metre height limit.

The submitted written request to vary Clause 4.3 (Height of buildings) has been assessed against the provisions of Clause 4.6; the objectives of the Clause being varied; and the objectives of the R1 zone, are discussed below:

The objectives and standards of Clause 4.6 of the Liverpool Local Environmental Plan (LEP) 2008 are as follows:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (1) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
  - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (2) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) the consent authority is satisfied that:*
    - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
    - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

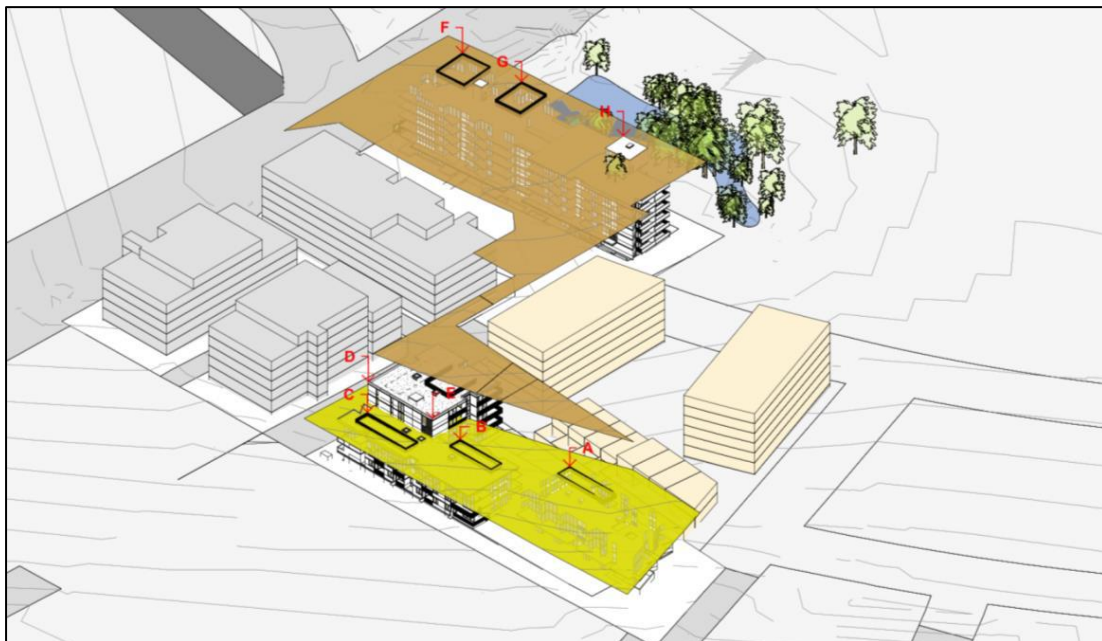
### 1) Circumstances of the development

The application seeks consent for the subdivision into two lots, construction of three residential flat buildings, and construction of roads to be dedicated to the Council.

- 2) Written request addressing why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the contravening of the development standard

The applicant has provided the following comments addressing why compliance with the development standard is unreasonable or unnecessary in this case, as summarised:

- The Original Consent was approved under DA-1320/2021 and included the construction of 137 apartments in three residential flat buildings. Buildings A and B were approved over the north western portion of the Site. Building C was approved over the eastern portion of the Site. The total gross floor area (GFA) approved under the Original Consent is 12,106.46m<sup>2</sup>. Technically the proposal included a departure from the FSR control of 45% for the portion of the Site to which the 0.75:1 FSR control applies. Similarly, the Original Consent included a departure from the 12m maximum height of building standard by 6.64m in part. The request to vary the departure from these standards was supported as the proposal did not exceed the overall FSR that could otherwise be achieved across the Site, whilst the exceedances to the height standard were acceptable as they resulted from a split height control that followed a former road anticipated by Landcom Master Plan, which has since been removed. Other minor exceedances to the maximum height of building development standard were limited to services, lift overruns etc.



**Figure 24:** Previously Approved Height Exceedance (Source: Stanisic Architects)

- *The Site is primarily zoned R1 General Residential under the LEP. The proposed development is contained to the land zoned R1 General Residential portion of the site.*
- *The Development Standard being varied is that which is applied under Clause 16(3) of the Housing SEPP. Division 1 of the Housing SEPP applies as residential flat buildings are permitted in the R1 General Residential zone of the LEP, the amended DA delivers an affordable housing component of 15% of the total GFA of the development and the Site is in an accessible area.*

- The “In-fill affordable housing – Practice note” prepared by the Department of Planning and Environment dated December 2023 specifically identifies Clause 16 of the Housing SEPP as a ‘development standard’. In accordance with Clause 16 of the Housing SEPP; for residential development that involves a residential flat building that includes an affordable housing component of 15%, a height and FSR of 130% of the maximum FSR under the LEP can be achieved.
- Under Clause 16(3) of the housing SEPP, the maximum permissible height of the building for the land is that under the LEP plus an additional height that is the same percentage as the additional FSR. Therefore, where 30% additional FSR is applied under Clause 16(1), and additional 30% height of the building can be achieved.
- In accordance with the Development Standards under Clause 16(3) of the Housing SEPP, where an additional 30% FSR is applied the maximum height attainable across the Site includes:
  - Area 1 + 30% – maximum height of building of 15.6m
  - Area 2 + 30% – maximum height of building of 27.3m



**Figure 25:** Previously Approved Height Exceedance (Source: Liverpool City Council)

- The rooftop screening on Buildings A, B and C hides air conditioning plant and is sited away from lower scale development where the impact is minimised or negated. The screens will not be visible from street level and the departures are in part a function of the slope of the land.

In response to the comments raised above, Council has provided the following justification as to why the imposition of the applicable height control is unreasonable and unnecessary in this instance:

- The rooftop screening on Buildings A, B and C hides air conditioning plant and is sited away from lower scale development where the impact is minimised or negated. The screens will not be visible from street level and the departures are in part a function of the slope of the land.
- The lift overrun to Building C provides access to roof top communal open space containing facilities for future residents of the development in conjunction with ground

level communal open space. Access to the roof top communal open facilities could be provided by way of only stairs, potentially with stairlifts or platform lifts, to avoid non-compliances with the height standard. This would provide an inferior and undesirable level of access. The design of the roof top communal open space, and associated lift access, provides a common area with enhanced amenity and equitable access, that would not be achievable with full compliance with the height standard.



**Figure 26:** 4-6 storey RFB directly to the east of the site (120 Passendale Rd)

- The development provides a consistent floor to floor height of 3.1m, which exceeds the minimum floor to ceiling height in the ADG. The additional height provides additional amenity for the units by enabling better solar access and cross-ventilation and enables a better urban design outcome.
- The development as amended provides much-needed affordable housing in the locality to meet the needs of future residents of various incomes.
- The proposed buildings remain consistent with the expected number of storeys envisaged by Housing SEPP the maximum height limits on the site. It envisaged that a 21m height limit will cater for a 6-8 storey building when considering the minimum 2.7m floor to ceiling height and a 3.1m floor to floor height under the ADG.
- Notwithstanding the height exceedance the proposed development does not create any additional overshadowing or privacy impacts on the adjoining developments.
- The proposed development is considered to be of an appropriate bulk and scale and is consistent with the design principles and relevant standards and objectives of the ADG and the Housing SEPP.

### 3) Consistency with objectives of the development standard Clause 4.3 Height of Buildings

The objectives of Clause 4.3 and assessment are as follows:

- (a) to establish the maximum height limit in which buildings can be designed and floor space can be achieved*
- (b) to permit building heights that encourage high quality urban form,*
- (c) to ensure buildings and public areas continue to receive satisfactory exposure to the sky and sunlight,*
- (d) to nominate heights that will provide an appropriate transition in built form and land use intensity.*

**Comment:** It is considered that the proposed development is consistent with the objectives of Clause 4.3 in that the proposed development encourages high quality urban form. Despite the non-compliance the proposed development achieves the required solar access to living areas, COS, and POS as required by the ADG. The proposed development provides an appropriate density outcome for the site, particularly when having regard to the 28 dwellings/hectare location of the site its close proximity to the Edmondson Park Town Centre and the Edmondson Park Station.

### 4) Consistency with objectives of the zone – R1 General Residential

The objectives of the R1 General Residential Zone under the LLEP 2008 are as follows;

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that housing densities are broadly concentrated in locations accessible to public transport, employment, services and facilities.*
- *To facilitate development of social and community infrastructure to meet the needs of future residents.*

The proposed development provides housing needs for the community. The proposed development also provides an opportunity for the provision of a variety of housing types and densities in a developing area. Having regard to the above it is considered that the proposed development is consistent with the objectives of the R1 General Residential Zone.

### 5) Consistency with Clause 4.6 objectives

- a) to provide an appropriate degree of flexibility in applying certain development standards to particular development*
- b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances,*

It is considered appropriate in this instance for the reasons stated above to apply a degree of flexibility when applying the maximum height development standard.

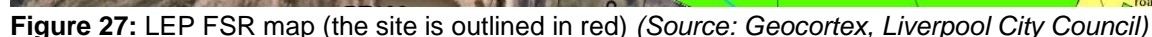
### 6) Recommendation

With considerations to the discussion above, the proposed variation to the Clause 4.3 “*height of buildings*” has satisfied the provisions of Clause 4.6 and is supported in this circumstance.



As identified in the compliance table above, the proposal is generally compliant with the majority of provisions prescribed by LLEP 2008 with the exception of the following:

Clause 4.4 of the LLEP 2008, stipulates that the maximum FSR permissible on the subject site are 0.75:1 (part of Lot 1) and 1.5:1 (rest of the site). The average FSR for the entire site is 1.12:2. The figure below indicates the applicable FSR's of the site.



The “In-fill affordable housing – Practice note” prepared by the Department of Planning and Environment dated December 2023 specifically identifies Clause 16 of the Housing SEPP as a ‘development standard’. In accordance with Clause 16 of the Housing SEPP; for residential development that involves a residential flat building that includes an affordable housing component of 15%, an FSR of 130% of the maximum FSR under the LEP can be achieved. Two maximum FSR controls apply to different parts of the Site:

- Area 1 – comprises of 3,948.5m<sup>2</sup> of land with a maximum FSR control of 0.75:1 (maximum GFA of 2,961.38m<sup>2</sup>).
- Area 2 – comprises of 6,163m<sup>2</sup> of land with a maximum FSR control 1.5 (maximum GFA of 9,244.5m<sup>2</sup>).

As previously outlined, the Original Consent supported the blending of the two FSR controls, proposing a maximum attainable GFA across the Site of 12,205.88m<sup>2</sup>.



**Figure 28:** FSR Map Extract (Source: Liverpool LEP 2008)

In accordance with the Development Standards under Clause 16(1) of the Housing SEPP, the maximum FSR attainable across these areas include:

- Area 1 + 30% –0.975:1 FSR (maximum GFA of 3,849.89m<sup>2</sup>).
- Area 2 + 30% 1.95 FSR (maximum GFA of 12,017.85m<sup>2</sup>)

Adopting the same “blended” approach from the Original Consent – the maximum GFA that can be attained across the Site is 15,867.64m<sup>2</sup>

The proposed development has a GFA of 15,867.49m<sup>2</sup>

The submitted written request to vary Clause 4.4 (Floor Space Ratio) has been assessed against the provisions of Clause 4.6; the objectives of the Clause being varied; and the objectives of the R1 zone, are discussed below:

The objectives and standards of Clause 4.6 of the Liverpool Local Environmental Plan (LEP) 2008 are as follows:

- to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
  - to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
    - that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
    - that there are sufficient environmental planning grounds to justify contravening the development standard.*
  - Development consent must not be granted for development that contravenes a development standard unless:*
    - the consent authority is satisfied that:*

- (iii) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (iv) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

## 7) Circumstances of the development

The application seeks consent for the subdivision into two lots, construction of three residential flat buildings, and construction of a road to be dedicated to Council.

## 8) Written request addressing why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient planning grounds to justify the contravening of the development standard

The applicant originally provided the following comments addressing why compliance with the development standard is unreasonable or unnecessary in this case, which remain consistent to the existing as summarised:

- *There is a correlation between the maximum development density provided in the planning controls and its relationship with the provision of infrastructure. This is where the 'blended' FSR discussed above is a better method to determine whether the total GFA proposed across the site would have been anticipated by the planning controls to support the infrastructure planned for the area. The blended FSR that includes roads shows that the total FSR of the proposed development is just under the total GFA permissible on the land. If, however, the method is applied excluding roads, then the proposed development includes excess floorspace.*
- *The traffic assessment shows that traffic from the development can be accommodated within the road system and civil engineer has confirmed there is adequate servicing capacity for the development.*

*It is noted that the consent authority has been approving developments that achieve an FSR including roads, and implicitly services have been planned based on development intensity calculated in this way.*

- *It will be noted that the proposed RFBs substantively meet the required height anticipated by the planning controls except including the affordable housing uplift for the encroachment of up to 8 storeys element into the 12m height and 0.75:1 FSR zone. This extension is to the north of the building and would not significantly increase overshadowing to the adjoining residential properties from the approved DA-1320/2021 and would have negligible privacy or visual impact when you factor in the approved scheme to the proposed scheme. The encroachment enables a suitable built form on this part of the site as the controls intended.*
- *Due to the size and shape of the land, and in particular the land within the 1.5:1 FSR zone, strict compliance would not result in the transition anticipated by the planning controls. The deletion of the local minor access road creates the opportunity for a building footprint for a building whereby this transition can occur, albeit some of the height and associated FSR extends into a different and lower FSR area which causes the non-compliance. Consequently, the proposed development better achieves the intent of the planning controls based on the size and shape of the land.*

In response to the comments raised above, Council has provided the following justification as to why the imposition of the applicable height control is unreasonable and unnecessary in this instance:

- As indicated in the LLEP assessment table above when taking into account the entire developable site area of 10,110m<sup>2</sup> the proposed development provides a total GFA of 15,867.49m<sup>2</sup> which is an exceedance over the approved 12,035.35m<sup>2</sup> from the initial scheme. Notwithstanding, the proposed additional GFA is a result of the new affordable housing provisions envisioned by the state legislation to achieve housing targets and provide housing choice for the public.
- The building footprint remain consistent with the initial scheme with minor changes proposed to improve the entry and decree of building C.
- Maintains the existing arrangement and management of the immediate road network as approved by DA-1320/2021. Notwithstanding that the road construction and dedication is a requirement of the Liverpool Development Control Plan Part 2.11, given the nature of the proposed development as a high-density residential development, the location of the development site on the proposal may have been able to obtain direct access off Croatia Avenue to each building without the need for the construction of the roads without affecting adjoining sites.

However, by providing the roads the proposal contributes to creating a safe and efficient street network, enables the creation of a connected suburb, encourages pedestrian walkability and also enables safe and direct vehicular and pedestrian connections to future public open space directly south of the site. This is considered consistent with the objectives of the zone and the DCP and contributes to an improved and connected urban environment, not only for the development but for the locality as a whole.

- The proposed development as amended remains consistent with the envisaged bulk and scale of development for the site. The subject site is located within the dwelling density of 28 dwellings/hectare under the LLEP 2008. This is the highest density afforded to Edmondson Park and it is envisaged that high density development be constructed in this location. As such it is considered the proposal is consistent with the intended and desired future character of the locality. It is also considered appropriate to provide a higher density form of development at this location, given the developments sites proximity to the Edmondson Park train station and the Edmondson Park Town Centre.
- The proposed development as amended remains consistent with the majority of standards and the objectives of the ADG and has been designed to minimise overshadowing, privacy impacts on adjoining properties, while still maintaining appropriate amenity for the development itself through the provision of generous POS, satisfactory solar access to living areas and POS and satisfactory natural ventilation.
- By providing the high-density urban form with an affordable housing component the proposal also contributes to the availability of housing choice within the locality. This is achieved through the development itself by providing an appropriate apartment mix of 1, 2, and 3 bedrooms, but also for the locality by contributing to a range of available dwelling types within Edmondson Park.

9) Consistency with objectives of the development standard Clause 4.4 Floor Space Ratio

The objectives of Clause 4.4 and assessment are as follows:

- (a) to establish standards for the maximum development density and intensity of land use, taking into account the availability of infrastructure and the generation of vehicle and pedestrian traffic,*
- (b) to control building density and bulk in relation to the site area in order to achieve the desired future character for different locations,*
- (c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
- (d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
- (e) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
- (f) to facilitate design excellence in the Liverpool city centre by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design.*

**Comment:** It is considered that the proposed development as amended is consistent with the objectives of Clause 4.4 in that the proposed development remains consistent with the intended bulk, scale, and density envisaged for the site. The proposal remains consistent with the current and desired future character of the locality by maintaining consistency with the expected development form for the site.

The proposal has been reviewed by the Design Excellence Panel and is considered to exhibit a good urban design outcome with limited impacts on adjoining properties while maintaining consistency with the objectives and standards of the ADG.

The proposal has been designed to take advantage of the future public open space south of the site, while also contributing to an accessible, connected, and walkable suburb.

The development has also been designed taking into consideration future development on adjoining sites by providing appropriate setbacks and building separation to enable similar built forms on adjoining sites to be constructed in accordance with the applicable development standards and controls of the LEP, DCP, and ADG.

#### 10) Consistency with objectives of the zone – R1 General Residential

The objectives of the R1 General Residential Zone under the LLEP 2008 are as follows;

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that housing densities are broadly concentrated in locations accessible to public transport, employment, services and facilities.*
- *To facilitate development of social and community infrastructure to meet the needs of future residents.*

The proposed as amended development provides a greater choice of housing meeting needs of the wider community. The proposed development also provides an opportunity for the provision of a variety of housing types and densities in a developing area. Having regard to the above it is considered that the proposed development is consistent with the objectives of the R1 General Residential Zone.



#### 11) Consistency with Clause 4.6 objectives

- a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development*
- b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances,*

It is considered appropriate in this instance for the reasons stated above to apply a degree of flexibility when applying the maximum Floor Space Ratio standard.

#### 12) Recommendation

With considerations to the discussion above, the proposed variation to the Clause 4.4 “*Floor Space Ratio*” has satisfied the provisions of Clause 4.6 and is supported in this circumstance.

### 4. Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are no proposed or draft environmental planning instruments relevant to the proposal.

### 5. Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- ***Liverpool Development Control Plan 2008*** (‘the DCP’)

Specifically, Part 1 – General Controls for All Development and Part 2.11 – Land Subdivision and Development in Edmondson Park apply to the development. A full assessment against the DCP is provided in Attachment B, with key noncompliance’s discussed below.

Part 1 – General Controls for All Development		
Development Control	Required	Compliance
20. Car Parking and Access	1 space per small dwelling (< 65sqm) or 1 bedroom 1.5 spaces per medium dwelling (65 - 110sqm) or 2 bedrooms 2 spaces per large dwelling (> 110sqm) or 3 or more bedrooms 1 visitor car space for every 4 dwellings or part thereof	<b>Does not comply</b> The proposal does not provide sufficient parking under these requirements, nor under the provisions of the SEPP (Housing) 2021.

Part 2.11 – Land Subdivision and Development in Edmondson Park		
Development Control	Required	Compliance
3.9 Residential Choice and Mix for Apartment Buildings	Studio & 1-bed - > 5% and < 25% 2-bed - < 75%	<b>Considered Acceptable</b> 28.5% 1-bed, 64.2% 2-bed, 7.3% 3-bed.  Whilst Councils would like to have seen an increase in three bedroom apartments. The noncompliance with a maximum of the site with

		25% of one bedroom apartment, is considered acceptable, noting the site proximity to Edmondson Park Town Centre and station.
	10% of all apartments are to be designed in accordance with the Australian Adaptable Housing Standard (AS 4299-1995), which includes 'pre-adaptation' design details to ensure visit ability is achieved.	<b>Complies</b> The applicant has provided 12% of the development as adaptable units through all 3 buildings.

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

- ***Liverpool Contributions Plan 2008 – Edmondson Park***

This Contributions Plan has been considered and included the recommended draft consent conditions imposing appropriate contributions payments for the proposed apartment buildings.

#### **6. Section 4.15(1)(a)(iia) – 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.

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

The provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

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

###### **(a) Natural and Built Environment**

The impacts of the development on the natural environment have been assessed and the development is considered to be acceptable and unlikely to cause adverse impacts. Issues considered included but were not limited to soil contamination; earthworks; stormwater management; erosion and sediment control; and landscaping.

The impacts on the built environment have also been assessed and are considered to be acceptable, subject to the application amending the contamination report to include the RE1 portion of the site as this will be dedicated to the Council as public land. It is anticipated this can be imposed as a condition of consent. Subject to this being dressed, the proposal can be supported. Other issues considered included, but were not limited to: the traffic impacts; adequacy of car parking; built form (height, bulk, scale); streetscape and visual impacts; overshadowing; compatibility with the future character of the locality; design; acoustic impacts; access; site layout; compliance with NCC and Australian Standards (AS); fire safety

requirements; adequacy of site services; waste management; and potential impact on amenity of locality.

## **(b) Social Impacts and Economic Impacts**

The proposal is unlikely to cause any adverse social impacts in the locality. Overall, the proposal is likely to contribute positively to the locality by providing required housing to the community and is acceptable with respect to any potential social impacts.

The potential economic impacts of the development in the locality are acceptable. The development is likely to have a minor but positive contribution to the local economy via the capital investment value associated with the proposal

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

The proposal has been designed in line with the desired future character of the site and the surrounding locality. The proposed development is of an appropriate bulk and scale and has been designed to accommodate the exiting site attributes. Given the above the proposed development is considered suitable for the site.

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

These submissions are considered in Section 8 of this report.

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

The proposal is considered to be in the public interest for the following reasons:

- It has acceptable impacts on the locality envisioned by the location;
- Complies with the relevant planning controls and where there are variations, the proposed variation will not contribute additional impact to the locality from the originally approved scheme.;
- The proposed development is consistent with the zoning of the land and would represent a quality development for the suburb. The development provides additional housing opportunities within close proximity to employment opportunities and public transport; and
- The economic and social benefits through the provision of additional affordable and market housing.

On balance, when you factor in the social and economic benefits of the proposed development the proposal is consistent with the public interest.

# **8. REFERRALS AND SUBMISSIONS**

## **8.1 Agency Referrals and Concurrence**

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in Table 5.

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 5: Concurrence and Referrals to agencies**

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
<b>Concurrence Requirements (s4.13 of EP&amp;A Act) – N/A</b>			
<b>Referral/Consultation Agencies</b>			
Electricity supply authority	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Endeavour Energy have reviewed the proposal and are supportive of it subject to imposition of standard conditions of consent.	Y
Design Excellence Panel	CI 145(2) – SEPP (Housing) 2021 Advice of the Design Review Panel ('DRP')	The advice of the DRP has been considered in the proposal and is further discussed in the SEPP (Housing) 2021 assessment and the Key Issues section of this report.	Y
<b>Integrated Development (S 4.46 of the EP&amp;A Act)</b>			
RFS	S100B - <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	The RFS has reviewed the application and issued general terms of approval and a bushfire safety authority for the development.	Y
Department of Planning and Environment – Water	S89-91 – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	DPE – Water has reviewed the application and issued general terms of approval to be applied to the development.	Y

## 8.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

**Table 6: Consideration of Council Referrals**

Officer	Comments	Resolved
Land Development Engineering	Supported subject to conditions.	Y

Traffic & Transport	Supported subject to conditions.	Y
Building	Supported subject to conditions.	Y
Environmental Health	<p>Insufficient Information – concerns around proposed remediation works and provided documentation.</p> <p>The Environmental Health officer noted that the original contamination reports and remediation action plan, were deficient in information surrounding the RE1 land portion of the site, considering it would need to be dedicated to the Council to become a public asset.</p> <p>The additional information was requested in the RFI dated 4 September 2024; however, the contamination matters were not addressed. In this regard, it is recommended that a condition of consent be imposed requiring updating of the PSI DSI, and RAP (if applicable), in order for the Council to be satisfied that the site can be made suitable.</p>	By Condition
Waste Management	Insufficient Information was provided – However, it is noted that in the original scheme, waste management was conditioned to be produced detailing operational waste management and ongoing waste management matters. The condition will remain the WMP will be required prior to Construction Certificate.	Y
Natural Environment - Flora	Supported subject to conditions.	Y
Heritage	Supported subject to conditions.	Y
Fire Safety	Supported subject to conditions.	Y
Flood Engineering	Supported subject to conditions.	Y
Landscape	Supported subject to conditions.	Y
Strategic Planning	Advice provided.	Y
Urban Design & Public Domain	<p>Insufficient Information was provided in order for UDPD Team to be satisfied – Primary, it is related to matters raised by the DEP, apartment mix, and bicycle parking. The matters are as follows:</p> <ul style="list-style-type: none"> <li>• Clarity of openings in the Building A and B building separation</li> <li>• Updated architectural and landscape plans reflecting Building C entry changes and DEP comment</li> </ul>	Y



	<ul style="list-style-type: none"> <li>EV Chargers and Façade Details at 1:20 as requested by DEP</li> </ul> <p>It is noted that the DPE provided design excellence and the matters raised by urban design will be addressed by condition of consent as they will not significantly impact the proposal or require significant changes to the development.</p>	
Community Planning	No objections.	Y
Public Art	Supported subject to conditions.	Y

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

### 8.3 Community Consultation

The proposal was notified in accordance with Council's Community Participation Plan from 9 May 2024 until 12 June 2024. The notification included the following:

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

The Council received a total of 63 submissions with 56 unique submissions, comprising 56 objections and 0 submissions in favour of the proposal. The issues raised in these submissions are considered in **Table 7**.

**Table 7: Community Submissions**

Issue	No of submissions	Council Comments
<b>Overlooking &amp; Privacy Impacts</b>	2	<p>The proposal complies with the ADG requirements for building separation. Additionally, trees with mature heights above 10m are proposed to the northern boundary which would provide appropriate screening to adjoining lots.</p> <p><b>Outcome:</b> This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Attachment A).</p>
<b>Traffic, Parking &amp; Pedestrian Safety</b>	12	<p>Additional roads are proposed to be constructed as part of the development, which would link Passendale Road to Bernera Road. Further, it is noted that there are several undeveloped or partially developed lots in the vicinity, and traffic will improve with the construction of more roads.</p>

		<p>It is additionally noted that the application has been referred to the Council's Traffic and Transport section and has been supported subject to conditions of consent, indicating there are no concerns around traffic generation and management.</p> <p><b>Outcome:</b> This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Attachment A).</p>
<b>Noise &amp; Air Pollution</b>	3	<p>Some objectors raised concerns around potential noise and air pollution which may be generated by the development. Conditions of consent will be imposed in relation to generation of noise from mechanical services within the buildings, and it is considered that the residential units will not result in unreasonable noise impacts. In regard to air pollution, the proposed use is residential and is unlikely to generate air pollution.</p> <p><b>Outcome:</b> This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Attachment A).</p>
<b>Impact on / Lack of Infrastructure</b>	43	<p>There is an existing approval for construction of residential flat buildings on the site. Considering this, the additional apartments would not be a critical factor in the impact of the development on infrastructure such as roads.</p> <p>It is acknowledged that objectors feel there is insufficient community infrastructure, such as parks, libraries, community centres, and childcare centres, however, it is noted that the suburb is still under development and provision is made in the applicable contributions plan for 2 childcare centres and multi-purpose community centres, 1 family and children's centre, 1 community centre, 1 branch library, and 1 youth centre. The proposal, being subject to Section 7.11 Contribution Fees, would aid in funding these community facilities.</p> <p><b>Outcome:</b> This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Attachment A).</p>
<b>Environmental Impacts</b>	3	<p>The proposed development involves the planting of a large number of native trees and other vegetation on a lot which is currently devoid of vegetation. The proposal principally uses light-coloured materials which would limit the impacts of urban heat island effect.</p>

		<b>Outcome:</b> This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Attachment A).
<b>Impact on Character of Area</b>	6	<p>The proposal is considered consistent with the higher density provision for the area and utilises the updated state government affordable housing uplift control close to a major transport route. This is considered the envisioned type of development that utilises the new provision to provide quality housing for people with various incomes along with good public domain outcomes.</p> <p><b>Outcome:</b> This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Attachment A).</p>
<b>Safety</b>	4	<p>CPTED principles have been addressed in the proposal and appropriate conditions of consent are to be imposed.</p> <p><b>Outcome:</b> This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Attachment A).</p>
<b>Waste Management</b>	1	<p>The application has been referred to Council's Waste Management section and was supported subject to imposition of conditions.</p> <p><b>Outcome:</b> This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Attachment A).</p>

## 9. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

### 9.1 Contamination Matters

During the previous Development Application (DA) process, a comprehensive contamination assessment was conducted, covering the entire site. However, in preparing the current DA, the assessment did not explicitly address the portion of land zoned RE1 (Public Recreation), which is proposed for dedication as public land.

The contamination assessment reports provided by the applicant are dated back to 2021 and relate to the previous DA-1320/2021. The proposal was referred to the Council's Environmental health officer who raised concern that this area was not included in the previous scheme and must be included in this amended DA.

The contamination assessment is largely satisfactory, expert for clarification of the RE1 portion of the land, therefore it is satisfactory that this matter can be dealt with under conditions. Conditions have been imposed accordingly

## 9.2 Solar and Daylight Access

The design of the proposed development is based on existing site conditions and constraints. The proposed development takes advantage of the northerly aspect where possible to maximize solar access to the development. The proposal provides for adequate presentation to the street and future public open space which provides for an aesthetically pleasing development. The additional height will contribute to providing additional local access to the northern-facing units but will result in reduced social access to the southernmost units. In considering whether the deficiency should be supported the following justification was provided:

- In a quantitative and qualitative assessment, the difference between 69% and 70% is marginal (1%). Given this minor shortfall, the practical impact on residential amenity is negligible, especially when balanced with other design benefits such as communal spaces and proximity to parks.
- The proposal achieves the intent of solar access guidelines, maximising sunlight penetration and daylight ensuring comfortable living environments. The focus on the quality of sunlight, rather than strict numerical adherence, aligns with best-practice urban design principles.
- The unique site conditions including the orientation and topography contribute to the non-compliance due to the sloping site. The design optimises solar access within these constraints, demonstrating a though through development.
- Adjustments to the building layout would compromise other planning objectives, such as open space, landscaping, or affordability. Therefore, the current design strikes a balanced outcome across multiple priorities.

Several LEC cases highlight the importance of assessing solar access within the broader planning context:

- **Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191:** This case emphasized that a minor numerical non-compliance must be weighed against overall design quality and the achievement of planning objectives. Rigid adherence to numerical standards can undermine the intent of planning policies.
- **Gordon v Gosford City Council [2005] NSWLEC 434:** The court ruled that solar access should consider both the quantity and quality of light, particularly how well the design mitigates overshadowing impacts and provides reasonable amenity.
- **Fodor Investments Pty Ltd v Hornsby Shire Council [2005] NSWLEC 71:** This case reinforced that compliance shortfalls should be evaluated in the context of site constraints, broader planning benefits, and whether the development still meets the overall intent of the control.

Resolution: The 69% solar and daylight access, while marginally below the 70% standard, meets the overarching intent of the controls. Supported by LEC precedents, the assessment should focus on the broader qualitative benefits, such as communal spaces,

affordability, and overall design quality, ensuring a well-balanced outcome aligned with planning principles.

### **9.3 Setbacks**

The development proposes varying setbacks as follows:

Building A:

- 6m to Somme Avenue (front);
- 6m to southern boundary (side);
- 15.2m to northern boundary (side);
- 6.485m to Building B (rear)

Building B:

- 6m to Passendale Road (front);
- 6m to northern boundary (side);
- 3.925m-5.41m to southern boundary (side);
- 6.485m to Building A (rear)

Building C:

- 1.465-4.155m to future street/north boundary (front);
- 6m to Bernera Road/Soldiers Parade (front);
- 3m to southern boundary (side);
- 9.005-9.92m to western boundary (side/rear)

While some of the setbacks are vary, these are consistent with the approved DA-1320/2021. A review of the proposed amendments which included an increase in the height all the buildings, Council reviewed the potential impacts that may arise from the setbacks not been altered.

Analysis shows that the overshadowing of the immediate neighbouring properties will not change in terms of additional overshadowing. The overshadowing will increase to the south over future recreational land; however, the changes are considered minor in nature.

The private impact when compared to the original approval will be negligible, as the higher apartments will provide an opportunity for overlooking the nearby lower-density residential dwellings. This is managed by privacy screens and design elements such as deep balconies. During the assessment, it was found that the additional height will not contribute to additional privacy due to the distance of the development from the lowered density residential area.

Resolution: Considered satisfactory as it is consistent with the original scheme.

### **9.4 Bicycle and Car Parking**

The development did not indicate any bicycle parking on site. Considering that the parking overall is being reduced from 240 to 237, bicycle parking becomes more paramount for residents as a mode of transport. Therefore, a condition of consent will be imposed requesting design changes that include bicycle parking in the basement.

Resolution: To be addressed by conditions of consent.

### **9.5 Urban Design and Built Form**



### **(a) Storage In Apartments and Basement**

The proposal did not provide adequate information regards the storage within apartments and whether it complies with the ADG. A review of the available floor plans indicates that there is sufficient space for storage to be indicated on plans and provided in apartments and the basement. This has been imposed as a condition of consent to ensure that sufficient storage is available for residents.

Resolution: To be addressed by conditions of consent.

### **(b) Building Separation**

The proposed building separation is proposed to be 6.485m between Building A and Building B with balconies facing each other for apartments F10 and F5-2 on the ground level and subject apartments above up to level 4. While strict adherence to the building separation requirements in the ADG is not met, the proposal is consist with the approved scheme DA-1320/2021 and was supported by the DEP. Any perceived privacy issues have been addressed by privacy screens to be provided for unit F10 and above and no privacy concerns is raised to the existing residents in the immediate locality as a result of the variation. In this regard, the variation does not contribute to privacy issues to existing residents nearby as it is only proportionate to this area on site. Therefore, the variation is supported in this instance.

Resolution: Considered satisfactory as it only impacts a minor portion of the development.

### **(c) Floor Space Ratio (FSR) and Height of Buildings**

Additionally, the proposal includes requests to vary Clause 4.3 Height of buildings and Clause 4.4 Floor space ratio of the Liverpool Local Environmental Plan 2008. These requests have been considered and are deemed supportable (refer to 4.6 assessment in the body of the report for details)

Resolution: The issue has been resolved through the recommended conditions of consent, Condition 13 for points (a) & (b).

## **9.6 Private Open Space**

The proposed development's design incorporates apartments that do not fully meet the 15m<sup>2</sup> minimum requirements for ground-level private open space (POS). This variation should be assessed holistically, considering the development's broader context, its benefits, and alignment with planning objectives. The following justification is provided:

- The proposal provides enhanced Communal Open Space (CoS) as their design benefit that offers substantial, well-designed communal open spaces at the ground level, which exceed minimum requirements. These areas encourage social interaction, foster community integration, and provide extensive recreational opportunities for residents.
- The Functionality of the Ground-level communal spaces is more flexible and accessible than individual private open spaces, offering facilities such as seating, landscaped areas, exercise, and children's play zones.
- The development is strategically located in close proximity to a future outdoor recreational park. The planned recreational park to the south will provide additional, high-quality open space for residents. This proximity supports outdoor recreation and compensates for any reduction in private open space. This enhanced amenity will

benefit residents from a broader range of recreational options, including larger green spaces not typically achievable within private open areas.

Resolution: Due to the above, the variation is not anticipated to impact the enmity of residents

## 10. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act 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.

The key issues associated with the application are provision of landscaping and deep soil zones, building separation, universal/accessible design, unit storage, communal and private open space, and variations to height of buildings and FSR controls.

Based on assessment against the relevant planning considerations, it is deemed that the site is suitable for the proposed development. The proposal is considered [not] to be compatible with the locality as it is of an envisioned bulk and scale, provides affordable housing, adaptable housing bulk, and improved amenity for residents. The proposal takes into consideration characteristics of the site and adjoining lots, as well as the locality, and produces an overall acceptable development with limited detrimental impacts to neighbouring lots.

It is considered that the key issues as outlined in Section 6 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

## 11. RECOMMENDATION

That the Development Application DA-171/2024 for amendment to DA-1320/2021 to increase Building A to 4 storeys, Building B to 6 and 8 storeys, and Building C to 8 storeys; resulting in a total GFA increase of 30% and an additional 41 apartments including 27 affordable housing apartments at Lot 101 Soldiers Parade, Edmondson Park be **APPROVED** pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of Consent – 396305.2024
- Attachment B: Draft SWCPP Assessment Report (Compliance Tables, SEPP (Housing) 2021, ADG and LDCP) Assessment Tables – 396302.2024
- Attachment C: Architectural Plans (Initial Set) – 294405.2024
- Attachment D: - Architectural Plans Amendments in Response to RFI (DEP & UD Comments) - 392584.2024
- Attachment D1: Revised Building Entry Designs (To address DEP & UD matters) - 392566.2024
- Attachment E: Landscape Plan - 294403.2024
- Attachment F: Clause 4.6 Request: FSR - 327786.2024
- Attachment G: Clause 4.6 Request: HOB - 327787.2024
- Attachment H: DEP Minutes from Meeting 13/06/2024 - 219656.2024
- Attachment I: Design Verification Statement - 294406.2024

- Attachment J: Letter to the SWCPP - 337609.2024
- Attachment K: Statement of Environmental Effects -
- Attachment L: Traffic Impact Assessment - 294414.2024
- Attachment L1: Traffic & Transport response - 343652.2024
- Attachment M: Stormwater Drainage Plans - 294413.2024
- Attachment N: BASIX Certificate - 294391.2024
- Attachment O: Bushfire Report - 294392.2024
- Attachment P: Acoustic Report - 122568.2024
- Attachment Q: Access Report - 122567.2024
- Attachment R: Preliminary Geotechnical Report - 122580.2024
- Attachment R1: Detailed Geotechnical Report - 122581.2024
- Attachment R2: Review of Geotechnical Report - 294395.2024
- Attachment S: Social Impact Statement - 122591.2024
- Attachment T: Waste Management Plan - 294402.2024
- Attachment U: Heritage Impact Statement - 294396.2024