

**TO:** Sydney Central City Planning Panel

**SUBJECT:** 2-36 Church Street LIDCOMBE NSW 2141

**APPLICATION No:** DA2021/0430

<b>Application Accepted</b>	7 September 2021																		
<b>Applicant</b>	Thomas Nader from Lidcombe Church Property Pty Ltd																		
<b>Owner</b>	New South Wales Land and Housing Corporation																		
<b>Application No.</b>	DA2021/0430																		
<b>Description of Land</b>	2-36 Church Street LIDCOMBE NSW 2141, Lot 1 DP 1259904																		
<b>Proposed Development</b>	Alterations and additions to an approved mixed use development currently under construction including the provision of additional levels to facilitate a varying height of 6 to 13 storeys, accommodating an additional 114 residential apartments (including an additional 10 social housing apartments), provision of a child care centre and three (3) neighbourhood shops), reconfiguration of basement layout and associated design changes																		
<b>Site Area</b>	10,132.7m <sup>2</sup>																		
<b>Zoning</b>	R4 High Density Residential																		
<b>Disclosure of political donations and gifts</b>	Nil disclosure																		
<b>Heritage</b>	The site is not a Heritage item and is not located in a Heritage Conservation Area. A number of heritage items are located within the vicinity of the site, being Rookwood Cemetery (State significance); Lidcombe Railway Station Group (local significance) and Lidcombe Signal Box (local significance). A Heritage Impact Statement (HIS) has been prepared by Weir Phillips which concludes that the alterations and additions will have an acceptable impact on heritage items in the vicinity.																		
<b>Principal Development Standards</b>	<p><u>FSR</u>  Permissible: 3.2:1  Proposed: 3.2:1</p> <p><u>Height of Building</u></p> <table> <tr> <td>Permissible:</td> <td>Building A</td> <td>22m</td> </tr> <tr> <td></td> <td>Building B</td> <td>32m</td> </tr> <tr> <td></td> <td>Buildings C &amp; D</td> <td>40m</td> </tr> <tr> <td>Proposed:</td> <td>Building A</td> <td>22.3m</td> </tr> <tr> <td></td> <td>Building B</td> <td>33.22m</td> </tr> <tr> <td></td> <td>Buildings C &amp; D</td> <td>43.12m &amp; 42.42m</td> </tr> </table>	Permissible:	Building A	22m		Building B	32m		Buildings C & D	40m	Proposed:	Building A	22.3m		Building B	33.22m		Buildings C & D	43.12m & 42.42m
Permissible:	Building A	22m																	
	Building B	32m																	
	Buildings C & D	40m																	
Proposed:	Building A	22.3m																	
	Building B	33.22m																	
	Buildings C & D	43.12m & 42.42m																	

## SUMMARY

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1. Development Application No. DA2021/0430 was received by Council on 7 September 2021 for alterations and additions to an approved mixed use development currently under construction including the provision of additional levels to facilitate a varying height of 6 to 13 storeys, accommodating an additional 114 residential apartments (including an additional 10 social housing apartments), provision of a child care centre and three (3) neighbourhood shops), reconfiguration of basement layout and associated design changes
2. DA2021/0430 seeks to amend approved Development Application (DA) DA2019/94 which granted consent for the demolition of existing structures and construction of 4 residential flat buildings of varying heights from 5 to 10 storeys, comprising 262 units (including 53 social housing units) over basement car parking for 264 vehicles (pursuant to SEPP (Affordable Rental Housing) 2009) and construction of a roundabout at the intersection of Martin Street and Church Street. The development as proposed to be amended will not be substantially the same development as required by Section 4.55(2) of the Environmental Planning and Assessment Act 1979.
3. The application was publicly notified to occupants and owners of the adjoining properties for a period of fourteen (14) days between 17 September 2021 and 1 October 2021. In response, no submissions were received.
4. The development provides a compliant floor space ratio of 3.2:1. Variations are sought to the maximum building heights applicable to the site pursuant to Clause 5.6 (Architectural roof features) and Clause 4.6 (Exceptions to development standards) of the Auburn Local Environmental Plan 2010. The building height exceedances comprise lift-override and roof elements; no habitable floor area exceeds the maximum building heights applicable to the site.
5. The subject site is not a Heritage item and is not located in a Heritage Conservation Area, in accordance with the provisions of the Auburn Local Environmental Plan 2010. A number of heritage items are located within the vicinity of the site, being Rookwood Cemetery (State significance); Lidcombe Railway Station Group (local significance) and Lidcombe Signal Box (local significance). A Heritage Impact Statement (HIS) has been prepared by Weir Phillips which concludes that the alterations and additions will have an acceptable impact on heritage items in the vicinity, where they are sufficiently separated from the subject site. The increased height will not block any significant view corridors to/from these heritage items and will not overshadow any part of the Rookwood Cemetery.
6. The owner of the subject property is NSW Land and Housing Corporation. Consequently, the application has been made on behalf of the Crown, and is defined as a Crown Development pursuant to Division 4.6 of the Environmental Planning and Assessment Act, 1979. The draft notice of determination provided as **Attachment 1** to this report has been issued to the Applicant for their review.
7. The application is referred to the Sydney Central City Planning Panel (SCCPP) as the CIV of the proposal exceeds the \$5 million threshold as identified for Crown development at Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011.

8. The application is recommended for approval subject to the conditions as provided at **Attachment 1** to this Report.

## REPORT

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

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The subject site is known as 2-36 Church Street, Lidcombe, and is legally described as Lot 1 in DP 1259904. The site is irregularly shaped, and has a frontage of 307.155m to Church Street, a rear boundary of 296.7 metres which adjoins a railway corridor, a western boundary of 20.565 metres and an eastern boundary of 11.885 metres. The total site area is 10,132.7sqm.

The site is cleared of all structures and basement excavation works have commenced under DA2019/94.



**Figure 1: The Site (Source: Nearmap, 2021)**

The surrounding locality is characterised as follows:

- North Church Street, with one and two storey low and medium density residential developments beyond, with the exception of development opposite 2 Church Street, Lidcombe, being 81 Church Street, Lidcombe, which is maintained to a 8 storey residential flat building.
- East Church Street, with the railway corridor and industrial development beyond.
- South Railway corridor, with Railway Street and Rookwood Cemetery beyond.
- West Railway land, with Church Street beyond, and residential flat buildings of 8 and 6 storeys beyond located at 81 Church Street, Lidcombe.



Figure 2: The Locality (Source: Nearmap, 2021)

## DESCRIPTION OF THE PROPOSED DEVELOPMENT

Council has received a development application for alterations and additions to an approved residential flat building development currently under construction including the provision of additional building levels to facilitate a varying height of 6 to 13 storeys, catering for an additional 114 residential apartments (including additional affordable and social housing units), provision of a new child care centre and 3 neighbourhood shops, alteration to basement configuration and associated design changes.

It is acknowledged that DA2019/94 approved a total of 262 residential units (including 53 social housing units) across 4 residential flat buildings of varying heights from 5 to 10 storeys.

In summary, this amending DA seeks approval for the following changes to DA2019/94:

- Increase the building heights, overall gross floor area and number of units in Buildings A – D, to comprise the following:
  - Building A: 6 storeys (22.3m) accommodating 63 social housing units (+10 social housing units);
  - Building B: 10 storeys (33.22m) accommodating 93 market housing units and 362m<sup>2</sup> for a future child care centre (+34 market housing units);
  - Building C: 13 storeys (43.12m) accommodating 109 market housing apartments (+36 market housing units); and
  - Building D: 13 storeys (42.42m) accommodating 111 market housing apartments and 195.3m<sup>2</sup> retail floor area across three (3) ground floor retail tenancies (+34 market housing units).
- Replace two (2) approved apartments at Basement 1 level of Building D (D1 and D2) with three (3) neighbourhood shop tenancies;
- Replace five (5) approved apartments at the Ground Level of Building B (B5 – B9) with floor area for a future child care centre (to be subject to a separate DA for fitout and use);

- Amend the car parking layout of the basements, including the provision of an additional 162 vehicular parking spaces, to support the above changes, resulting in a total provision of 426 parking spaces (noting that no changes are proposed to the approved basement footprint);
- Amend the landscaping to accommodate the above changes; and
- Amend conditions 55, 65, 88, 90, 102, 122 , 126 and 130 of the DA2019/94 conditions of consent to provide clarification and/or further design refinements.

A detailed discussion of these amendments is provided below:

### Built Form

The amended development retains the existing approved four (4) buildings, which step down in height from west to east, in correlation with the maximum building heights applicable to the site. The building footprints, setbacks and site layout remains generally unchanged from DA2019/94. Each building’s apartment planning and design also remains similar notwithstanding minor refinements resulting from design progression. This includes the provision of a new community room at the eastern end of the ground floor of Building D in response to feedback from the Cumberland Design Excellence Panel.

The following table provides an analysis of the development approved under DA2019/94 and the development proposed under this amending DA:

<b>Building</b>	<b>DA2019/94 Approval</b>	<b>Amending DA</b>	<b>Difference</b>
<b>Maximum height in storeys</b>			
A	5 storeys	6 storeys	+ 1 storey
B	7 storeys	10 storeys	+ 3 storeys
C	9 storeys	13 storeys	+ 4 storeys
D	10 storeys	13 storeys	+3 storeys
<b>Maximum building height - including lift overrun (metres)</b>			
A	17.7m	22.3m	+4.6m
B	21.9m	33.22m	+11.32m
C	31.9m	43.12m	+11.22m
D	28.1m	42.42m	+14.32m

### Apartment Mix

The amending DA seeks to improve housing diversity across the development, through minor increases in the proportion of 1-bedroom and 3-bedroom apartments; a decrease in the proportion of 2-bedroom apartments; and the introduction of a new 4-bedroom apartment at the top of Building D.

The proposed development increases the social housing provision of the development from the 53 approved social housing units to provide 63 social housing units in Building A. The proposed development provides a total of 313 market units across Buildings B, C and D, an increase of 104 from the approved 209 market units.

The following table provides an analysis of the unit mix approved under DA2019/94 and the proposed unit mix:

	<b>DA2019/94 Approval</b>	<b>Amending DA</b>	<b>Difference</b>
<b>Tenure Type</b>			
Social Housing (Building A)	53 units	63 units	+10 units
Market Housing (Buildings B, C & D)	209	313	+ 104 units
<b>Apartment Size Breakdown</b>			
1 bedroom	74 (28%)	130 (35%)	+56 (+7%)
2 bedroom	135 (52%)	154 (41%)	+ 19 (-11%)
3 bedroom	53 (20%)	91 (24%)	+38 (+4%)
4 bedroom	0 (0%)	1	+ 1
<b>Total</b>	<b>262 units</b>	<b>376 units</b>	<b>+114 units</b>

### Neighbourhood Shops

As part of the proposed development, the two approved apartments (numbered D1 and D2) located at Basement level 1 at the western end of Building D are proposed to be replaced with three (3) neighbourhood shops comprising the following areas 78.44m<sup>2</sup>, 73.3m<sup>2</sup> and 44.29m<sup>2</sup>. These tenancies will front a new, small retail forecourt that faces Church Street near the intersection with Swete Street.

It is acknowledged that the fitout and use of these tenancies will be subject to future approvals, either DA or Complying Development Certificate (CDC).

### Child Care Centre

The proposed development replaces the approved apartments numbered B5 to B9 with 362m<sup>2</sup> of floor space for a future 60 place child care centre within the ground floor of Building B. This DA seeks approval for the shell only, with the fitout and operation of the childcare to be subject to a future approval.

The indoor and outdoor spaces have been designed to meet relevant regulations and operational requirements, including the provision of a 1.8 metre fence screening along the perimeter, pergolas, and awnings to provide privacy and acoustic and solar protections.

### Access and Parking

Pedestrian and vehicular access to the Building A – D apartments will continue to be provided off Church Street. This amending DA does not propose alterations with regards to pedestrian access to the residential apartments.

Pedestrian access to the neighbourhood shop tenancies is proposed to be provided from Church Street near the intersection to Swete Street, where there is to be a small retail forecourt.

Pedestrian access to the child care centre is proposed to be provided from both to the left of the Building B front entrance, and from the inside of Building B through the lobby. Site servicing for the neighbourhood shop tenancies and child care use will be undertaken via the designated retail loading space.

The proposed development provides an increase in car parking from the approved 264 car parking spaces to provide a total of 426 car parking spaces, as identified in the following table:

Type	No. of Spaces
Building A – social housing	29
Buildings B, C & D – market residential	314
Buildings B, C & D – residential visitor	63
Neighbourhood shop	5
Child care centre	15
<b>Total</b>	<b>426</b>

It is acknowledged that the additional car parking spaces have been accommodated within the existing basement footprint by converting storage areas to car parking and reconfiguring the storage areas behind car parking spaces, as opposed to mass storage areas, as approved.

The maximum size of delivery vehicles to the site has also been amended from the approved Heavy Rigid Vehicles (HRV) to Medium Rigid Vehicles (MRV). It is noted that this arrangement has been supported by Council’s Development Engineer.

Site Landscaping

The landscape design has been amended to reflect the proposed amendments to the building layouts and designs, including the provision of a new retail forecourt plaza with associated landscaping elements and seating in front of Building D, two turfed landscaped open areas with buffer planting between buildings B and C, and between buildings C and D and a lawn with pedestrian pathway, buffer planting and amenities area with shelter in front of Building A.

Accessible upper level gardens continue to be provided for buildings A, C and D, consistent with the DA2019/94 approval, with minor further refinements to the gardens as the detailed design of the development has progressed.

Amendments to DA2019/94 Conditions

Amendments are also sought to the following conditions of consent included in DA2019/94:

- Condition no. 55 – Switchboards/Service Panels  
Switchboards and/or service panels for utilities are not to be attached to the front facades/elevations of the buildings(s), **unless required to meet servicing requirements.**

Reason: Certain switchboards and service panels (including kiosk substations, booster valves, water meter and gas boundary regulator) are generally required to be located on the site boundary to meet authority safety or servicing requirements and are required to be located on the Church Street frontage.

- Condition no. 65 – Television Aerial/Satellite Dish  
A single common television aerial, and/or satellite dish **for each building** (having a maximum diameter of 700mm and not located on the front or street elevation of the building) is to be installed to serve the development.

Reason: Each building requires its own television aerial and/or satellite dish.

- Condition no. 88 – Opaque Glazing

Opaque **and/or clear** glazing shall be installed to the balustrading of the balconies.

Reason: The Applicant intends to install clear glazed balustrading on the upper floors of the buildings where this would not result in adverse privacy impacts or negatively affect the buildings' presentation to the streetscape, and instead provide improved amenity for future residents. It is intended for all balconies within the lower podium levels to continue to receive tinted, opaque glazing. Clear glazing will only be employed for balconies on the upper stories which are less visible from the streetscape.

- Condition no. 90 – Clothes Drying Facilities

~~Open air clothes drying facilities shall be provided in a sunny, ventilated and convenient location which is adequately screened from streets and other places, where possible.~~

Reason: This condition is proposed to be deleted. The design of the development (both as approved under DA2019/94 and under this Amending DA) provides for a laundry and washer/dryer facilities in each apartment. This negates the requirement for a communal air-drying facility, which are generally unused by residents. The provision of a communal drying facility would reduce the amount of space that can be utilised for meaningful communal open space and landscaping.

- Condition no. 102 – Basement Drainage Facility

Basement drainage is to comply with the following criteria:

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e) Storage areas and areas used for purposes other than car parking or access aisles, **where located within Basement Level 1 of the Building A basement, or Basement Level 3 of the Buildings B, C and D** shared basement, are to be constructed a minimum of 150mm above the level of the surrounding area to achieve additional freeboard above the water level.

Reason: Clarify that the requirement of constructing plinths within the storage cages only applies to the lowest basement level (being that of Basement 1 for Building A and Basement 3 for Buildings B, C and D) as other basement levels are gravity drained into levels below.

- Condition no. 122 - Construction Plan for Proposed Roundabout

Prior to works commencing, a detailed construction plan for the proposed roundabout at the intersection of Martin Street and Church Street shall be submitted to Council for Cumberland Traffic Committee approval.

In this regard, the following shall be submitted:

- A detailed plan showing the construction details, sign and line marking shall be submitted;
- **A 600mm wide central median within Church Street, extending between Swete Street and Martin Street shall be incorporated as per TfNSW comments.**
- Detailed cost estimate for the proposed works shall be submitted.



- Street lighting design shall be submitted to comply with the lighting requirements.
- Detailed drainage plans shall be submitted to the satisfaction of Council.
- Details of existing and proposed service diagrams around the area of the construction.

All associated cost shall be borne by the applicant.

(Reason: to facilitate traffic movements generated by the development)

- Condition no. 126 – Waste/Recycling

- a) The waste service requirements for the proposed development of **376 262** units is as follows:
  - Building A (53 units) – **2 4** x 660 litre garbage bins and **4 3** x 660 litre recycling bins;
  - Building B (59 units) - **3 4** x 660 litre garbage bins and **6 4** x 660 litre recycling bins;
  - Building C (73 units) - **4 5** x 660 litre garbage bins and **7 5** x 660 litre recycling bins; and
  - Building D (77 units) - **4 5** x 660 litre garbage bins and **7 5** x 660 litre recycling bins.

Garbage bins will be serviced three times a week, and recycling bins will be serviced weekly.

- b) The temporary bin holding area shall be able to accommodate the above waste service requirements at any given point in time.
- c) **For Building A, two** Two (2) x 240 litre bins are to be made available in each service chute room on each habitable level (240 litre recycling bins are to be made available to the property to be placed in the service chute room on each level).
- d) **For Buildings B, C and D, one (1) x 240 litre recycling bin and E-diverter waste chute access point is to be made available in each service chute room on each habitable level.**
- d) ~~A bin lifter shall be made available for the life of the development, to transfer recycling from the 240 litre bins to the 660 litre bins for servicing for Buildings B, C and D.~~
- e) A bin tug shall be made available for the life of the development, and shall be placed within a secure location within the bin storage room.

Reason: With regards to Buildings B, C and D, industry best practice has indicated that the provision of one 240L recycling bin on each level, in addition to an E-diverter waste chute capable of disposing both general waste and recyclables, significantly reduces the waste management demand compared to two 240L bins. Such an arrangement allows residents to throw smaller recyclables into the chute, leaving the bin for larger items.

It is noted that the number of garbage bins required has been reduced notwithstanding the increase in apartments as the E-diverter will also compact the generated garbage, thereby halving the number of bins required following the Applicant's discussions with Council's Waste Officer.

The bin lifter is proposed to be deleted. It is the Applicant's experience with apartment operations that these types of bin lifters generally remain underutilised, leading to them entering a state of disrepair and/or being eventually removed. Industry general practice is for building managers and waste contractors to utilise a bin tug or ute/truck when transferring recycling, and such an arrangement is already accounted for under sub-condition (e).

- Condition no. 130 - Compliance with submitted Acoustic Report

The noise control measures specified in the ~~Acoustic report DA Acoustic Assessment~~ prepared by ~~Wood and Grieve Engineers Acoustic Logic~~, Reference Number ~~39211 20200542.6/1603A/R2/WY~~, Revision ~~004 2~~, dated ~~13 September 2018 16/03/2021 and Acoustic Response Letter prepared by Wood and Grieve Engineers, Reference Number 39211, dated 12 August 2019~~, shall be incorporated / installed in the building prior to occupation. This also includes the alternative method for supplying natural air to sole occupancy units per ~~Appendix C Appendix 3~~ of the Report. All noise reduction measures and noise levels for plant items not yet selected (a/c units, basement carpark ventilation, lift motors and like) shall accord with requirements of the Report.

(Reason: to ensure a reasonable internal noise environment is provided for occupants of the building and to also minimise the noise impact of the development on the neighbourhood.)

(Reason: To ensure consistency between development consents DA2019/94 and DA2021/0152)

Having regard to the above, it is acknowledged that all amendments have been incorporated into the recommended conditions of consent.

## **HISTORY**

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On 11 December 2019 the Sydney Central City Planning Panel granted deferred commencement consent to DA2019/94 for the demolition of existing structures and construction of 4 residential flat buildings of varying heights from 5 to 10 storeys, comprising 262 units (including 53 social housing units) over basement car parking for 264 vehicles (pursuant to SEPP (Affordable Rental Housing) 2009) and construction of a roundabout at the intersection of Martin Street and Church Street.

DA2019/94 became operative on 4 May 2020.

On 24 September 2020 Cumberland City Council granted consent to a Section 4.55(1A) modification which sought changes to the approved basement of Building A and the amendment of condition no. 4 of DA2019/94 as it related to the section 7.11 amount payable (MOD2020/0226). It is noted that the change to the basement related to the addition of new plant rooms to ensure optimal operation of the building, including electrical switch room, exhaust fan plant room, comms room, and fire pump room; additional storage cages for

Building A residents, the relocation of four car parking spaces to accommodate the proposed changes; and adjustments to the location of basement shoring walls to accommodate the proposed changes. The changes sought to the basement did not result in any change to the approved number of car parking spaces in DA2019/94.

On 23 February 2021, Cumberland City Council granted consent to a Section 4.55(1A) modification relating to tree removal, street tree placement, replace condition 66 relating to above ground powerlines and modify condition 91 relating to street trees (MOD2020/0437).

On 29 April 2021, Cumberland City Council granted consent to a Section 4.55(1A) application for various modifications to the approved residential flat buildings including reconfiguration of basement layout, addition of car park entrance ramp and relocation of basement shoring walls and on-site detention tank (MOD2021/0371). The amendments under this modification did not result in any change to the number of approved car parking spaces under DA2019/94.

On 14 May 2021 Amendment No. 32 to the Auburn Local Environmental Plan 2010 was gazetted to amend the maximum building heights and maximum floor space ratios applicable to the site. The gazetted amendment increases the maximum building height across the site from 14.9 metres to 27 metres, 22 metres to 40 metres and increases the maximum floor space ratio from 1.29-2.6:1 to a sitewide maximum floor space ratio of 3.2:1.

The development has been designed in accordance with Amendment No. 32.

On 24 March 2021 a development application was lodged with Council seeking consent for alterations and additions to an approved residential flat building development currently under construction including the provision of additional building levels to facilitate a varying height of 6 to 13 storeys, catering for an additional 114 residential apartments (including additional affordable and social housing units), provision of a new child care centre and 3 neighbourhood shops, alteration to basement configuration and associated design changes (DA2021/0152). The application was withdrawn by the applicant during the course of the assessment in order to facilitate further amendment to the proposal.

This change has been incorporated into DA2021/0430 which is the subject of this application. It is noted that the built form, basement footprint and development yield of 376 residential units, three (3) neighbourhood shops and a child care centre has not changed from what was proposed under DA2021/0152.

## **APPLICANTS SUPPORTING STATEMENT**

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The applicant has provided a Statement of Environmental Effects prepared by Ethos Urban dated 19 August 2021 in support of the application.

## **CONTACT WITH RELEVANT PARTIES**

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The assessing officer has undertaken a site inspection of the subject site and surrounding properties and has been in regular contact with the applicant throughout the assessment process.

## **INTERNAL REFERRALS**

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### Development Engineer

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

### Environmental Health Officer

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

### Tree Management Officer

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

### Waste Management Officer

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

### Heritage Committee

The development application was referred to Council's Heritage Committee for comment who raised the following issues for consideration:

- The size and proximity of the development to a number of Heritage Items, especially Rookwood Cemetery.
- Over-population of the area.
- Increase in traffic (both motorised and pedestrian) and the future detrimental effect it will have on Rookwood Cemetery and the surrounding residential area.
- The impact of the development on the nearby Ukrainian Church on Church Street which is now recommended for heritage listing by Council.

The DA has been accompanied by a Heritage Impact Statement which relevantly provides:

The subject site is not listed but lies within the vicinity of local and State heritage listed items. It is proposed to increase the height of the buildings to align with the proposed 60m height limit to the Lidcombe town centre, which the subject site adjoins. The core of the buildings will vary in height from 22m to 40m compared to the existing 17.7m to 28.1m.

The proposal will have an acceptable impact on heritage items within the vicinity as they are sufficiently separated from the subject site and the height increase will not change this outcome. The building heights will continue to vary and diminish in scale to the east. As a result, the massing of the group will vary, reducing their visual impact from all angles. The increase in height will not block any significant view corridors towards or from these items,

and would not overshadow any part of Rookwood Cemetery. The increase in height, however, will ensure the buildings become a characteristic element in the future character of the Lidcombe town centre which forms the wider setting of these items.

### Cumberland Design Excellence Panel

The DA was referred to the Cumberland Design Excellence Panel (DEP) in accordance with the Cumberland Design Excellence Panel Policy, which requires any development proposal incorporating buildings with a height greater than 25 metres to be referred to the DEP for comment.

The DA was considered by the DEP at the 19 May 2021 meeting and the following comments were provided:

*The Panel is satisfied that this DA proposal has the potential to meet the criteria for design excellence, and recommends that the Applicant address the detail design issues raised in the development documentation phase.*

The issues raised by the DEP related to:

### Context and neighbourhood

- The Panel recommended that the Applicant address the Child Care Centre drop off in greater detail, this should utilise both basement drop off and any agreed scope with Council to establish drop off zones in Church Street that could provide enhanced convenience and amenity.
- The Panel recommends that the Applicant work closely with Council to provide a development that is fully integrated with its urban and suburban context. This needs to happen on a number of levels regarding the ground level public domain.
- The new roundabout, street footpaths and signalised and other pedestrian crossing points need to address the proposed increased residential population and a likely high proportion of residents utilising pedestrian and cycle access.
- The pedestrian footpath network of the development needs to connect with improved footpaths and crossings providing convenient and safe access, including wheelchair and pram users, to Lidcombe Town Centre and railway station, e.g., the pedestrian crossing and ramps at the Church Street railway bridge signal crossing and at the roundabout at Swete Street need to be upgraded by Council (potentially funded by the Applicant) to support the proposed new residential population.
- The proposed new street tree planting and footpath along Church Street is supported, however this needs to be developed further in coordination with Council to address the change to a more urban context and the introduction of the new roundabout and associated pedestrian crossings.

### Sustainability

- The Panel acknowledges the addition of sun shading louvres to the north and west faces and suggests that a different approach to the sun shading on the west facing facades e.g., vertical louvres (as originally conceived), may yield better sun protection in low sun angle situations. Revise the strategy to increase the effectiveness of sun control.

- Whilst the new 200mm deep louvres may provide adequate sun shading to the facades the panel feels that from a solar shading (environmental management) standpoint the louvres are proportionally undersized and could benefit from being larger in dimension.
- The Panel recommends the inclusion of ceiling fans to all apartments as a sustainability initiative regardless of the intended market. In addition, there should be clear indication of how air conditioning condensers are located to avoid any visual or acoustic issues whether they are located on balconies or in common plant areas.

General

- Whilst the Communal Open Spaces (COS) have evolved, the Panel suggests that during design development there be a focus on developing potential ‘bump’ spaces along paths and near entries that allow for casual interactions that cause ‘pause moments’ for residents and visitors.
- The Panel recommends that the Applicant develop and submit further 1:20 scale details and thermal calculations of the proposed façade shading technique to confirm the effectiveness of the sun shade louvres.
- The addition to the Child Care Centre of external shading canopies and pergolas is a positive contribution to the development. However, reconsider the direction of the pergola louvres to provide increased visual privacy between the playground and the apartments above.

The Applicant provided a subsequent amended package for the consideration of the DEP, addressing the above matters. In response, the DEP provided the following comments:

*Overall, the Panel believes that this is a very good response, a complete and well-presented submission that should enable the required design excellence outcome. The Panel generally agrees that the graduation of built form and colour palette is sophisticated and well resolved, and coordinates the variety of component parts through scale, articulation, and texture.*

With reference to the Applicant’s CDEP response, these are items that the Panel has noted as worthwhile or requiring further attention that could be via DA conditions:

<b>CDEP Comment</b>	<b>Applicant Response</b>	<b>Council Response</b>
P.5 3.1, 3.2 Noted improvement in sun shading with vertical blades on western elevations, and horizontal spandrels on north that also provide more visually interesting articulation to ends of all buildings (p.8,9)	Noted.	Noted, no further action required.
P6 3.3 Ceiling fan inclusions are good - it should be noted that updated BASIX compliance benefits from	Noted.	Noted, no further action required.

<p>use of ceiling fans and locations should be shown on plans. While a/c condenser visual and acoustic issues may appear to be resolved from the street views, there may still be impacts within or between units and detail plan layouts (with sections as needed) should demonstrate how these are addressed.</p>		
<p>P.12 5.1 Inclusion of bump space benches within landscape features is positive gesture that will create social bump potential, and image showing some timber elements (p.13) to relieve the hard surfaces would be encouraged to soften these elements and provide more comfort in hot summer days. 5.2 Sections should also be showing how construction and facade details are envisaged, with 1:20 scale that demonstrates structural and service provisions. As noted above - a/c condenser visual and acoustic issues may be resolved from the street, but there may still be impacts within or between units requiring further review.  5.3 The childcare privacy pergolas are better resolved, but would some vegetation (e.g., climbers) over these provide more shade and help soften the appearance. It is still of concern that the drop-off and pickup for childcare is in a basement</p>	<p>Noted. Refer to updated bump spaces with timber seating elements (see <b>Attachment 4</b>).</p> <p>Note solid precast balustrade, tinted glass, perforated screen + strategic location (hidden at back of balconies/behind balustrades). Refer to diagrams below demonstrating visual impact between each buildings. Majority of AC condensers are located either to the North and South balconies, the Eastern and Western facade will have minimal visibility of AC condensers, (see <b>Attachment 4</b>).</p> <p>Agreed. Subject to future childcare fitout DA.</p>	<p>The Applicant has provided amended plans which satisfactorily address this comment.</p> <p>The Applicant has provided amended plans which satisfactorily address this comment.</p> <p>A condition of consent has been recommended for the fitout and use of the child care centre component of the development. The condition includes the recommendation of the CDEP. The child care centre drop-off and pickup arrangement has been considered and it is noted that the car parking</p>

<p>area, and needs more consideration when a DA is submitted by a future operator.</p>		<p>spaces for the child care centre are centrally located within close proximity to the lift which provides direct access from the basement to the child care centre on the ground level of Building B. This arrangement is considered to be satisfactory having regard to safety as parents/children have direct pedestrian access from the designated car parking spaces to the lift.</p>
<p>On further review of the DA drawings looking at the larger plans of 2/3 bed unit layouts, it was noted that some bedrooms are directly accessed off living areas that could be avoided with minor changes to the following layouts:                  Building A – 4, 8, 11                  Building B – 2, 4, 16, 17                  Building C – 2, 2a and 3 (enclosed study should be open)                  Building D - 17</p>	<p>Unit layout variations have been tested since the beginning of the Approved DA. The current proposal are those we believe best meet the objectives of the ADG. Refer to Design Verification Statement.</p>	<p>Council has considered the Design Verification Statement provided and note that these units achieve compliance with the objectives of the ADG and therefore consider the layouts of these units to be satisfactory.</p>
<p>With respect to the public realm, it is noted that:</p> <ul style="list-style-type: none"> <li>• Mix of uses at ground level will contribute to its success - socially and in an urban activation sense – and Building D retail tenancies is a significant improvement.</li> <li>• Introduction of the 'bump spaces' has really added to the appeal and social potential of the entry zones and interface with the public domain.</li> </ul>	<p>Noted.</p>	<p>Council notes the comments in relation to the provision of crossings at the existing and proposed roundabouts and the requirement for these has been considered by Council's Development Engineer who has advised that any future pedestrian crossings would be subject to the approval of the Cumberland Local Traffic Committee.</p>



<ul style="list-style-type: none"> <li>• Church Street nature strip, pathway and new crossings at the existing and proposed roundabouts are still important to sort out with Council, and should be a condition for next iteration of the urban/landscape design.</li> </ul>		
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Having regard to the above, all matters raised by the CDEP have been addressed, to the satisfaction of Council.

A copy of the CDEP Minutes and Applicant responses are attached at **Attachment 4** of this Report for the consideration of the SCCPP.

## EXTERNAL REFERRALS

### Sydney Trains

The development application was referred to Sydney Trains in accordance with the provisions of Clauses 85 and 86 of State Environmental Planning Policy (Infrastructure) 2007, noting the proposed development is adjacent to a railway corridor, with excavation proposed to a depth of at least 2 metres within 25 metres of the rail corridor. Sydney Trains has assessed the application and provided concurrence subject to conditions of consent, which have been included in the recommended conditions at **Attachment 1**.

### Transport for NSW

The development application was referred to Transport for NSW (TfNSW) for comments, noting the proposed development is classified as 'Traffic Generating Development' pursuant to State Environmental Planning Policy (Infrastructure) 2007. TfNSW has assessed the application and have provided conditions which have been included in the recommended conditions at **Attachment 1**.

### AusGrid

The development application was referred to Ausgrid for comment and correspondence has been received advising that Ausgrid raises no objection to the proposed development.

### Sydney Water

The development application was referred to Sydney Water for comment and correspondence has been received advising that Sydney Water raises no objection to the proposed development.

### NSW Police

The development application was referred to the NSW Police Force for comments, who has advised that the proposed development is supported.

**PLANNING COMMENTS**

**The provisions of any Environmental Planning Instruments (EP&A Act s4.15 (1)(a)(i))**

State Environmental Planning Policies

The proposed development is affected by the following State Environmental Planning Policies:

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

Development of a type that is listed in Schedule 7 of SEPP (State and Regional Development) 2011 is defined as ‘regional significant development’. Such applications require a referral to a Sydney District Panel for determination as constituted by Part 3 of Schedule 2 under the *Environmental Planning and Assessment Act 1979*. The proposed development constitutes ‘Regional Development’ as it has a Capital Investment Value (CIV) which exceeds the \$5 million threshold for Crown development. While Council is responsible for the assessment of the DA, determination of the Application will be made by the Sydney Central City Planning Panel.

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

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

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

Matter for Consideration	Yes/No
Has the site been the subject of known pollution incidents or illegal dumping?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Does the site adjoin any contaminated land/previously contaminated land?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Has the appropriate level of investigation been carried out in respect of contamination matters for Council to be satisfied that the site is suitable to accommodate the proposed development or can be made suitable to accommodate the proposed development?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>The issue of contamination was assessed as part of DA2019/94, which was accompanied by a Detailed Site Investigation (DSI) prepared by Benvin Group, which identified:</p> <ul style="list-style-type: none"> <li>• The site has been filled to a depth of approximately 0.2m to 0.9m previously, consisting a mixture of layered materials.</li> <li>• No odours or staining were noted during intrusive works.</li> <li>• All soil sampled analysed during the site assessment were below adopted soil criteria and / or the 95% upper confidence limit.</li> <li>• Fragments of fibro asbestos were present on the surface of the site, which are likely remnants from the demolition of dwellings previously on the site.</li> </ul> <p>Noting the above, the DSI concluded that following the removal of the fibro fragments found on the surface of the site, the site is suitable for the proposed development. The DSI was reviewed by Council’s Environmental Health Unit, as part of the assessment of DA2019/94 and considered acceptable and standard conditions of consent were included in DA2019/94.</p> <p>It is noted that the child care centre use proposed as part of this DA did not form part of the approved DA2019/94. In order to address the suitability of the site for the child care centre use correspondence has been provided by Reditus Consulting Pty Ltd, dated 1 June 2021.</p> <p>Reditus has relevantly concluded that the site is suitable for the proposed use (residential use with accessible soils, including childcare centres).</p> <p>Council’s Environmental Health Unit has reviewed the correspondence and advised that the site is suitable for the proposed child care centre use.</p> <p>A standard condition to address any unexpected finds during construction has been recommended.</p>	

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

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

The proposal is generally compliant with the provisions of SEPP 65 and the ADG, with the exception of natural ventilation and the maximum number of apartments off a circulation core on a single level.

These variations are discussed below:

ADG Requirement	Variation Discussion	Satisfactory
<p><b>4F-1</b>  <b>Common Circulation and Spaces</b></p> <p><b>Design Criteria</b>                      The maximum number of apartments off a circulation core on a single level is eight.</p>	<p>Building A: Maximum of 12 apartments per level                      Building B: Maximum of 10 apartments per level                      Building C: Maximum of 9 apartments per level                      Building D: Maximum of 9 apartments per level</p> <p>Although the proposed development does not strictly comply with the criteria, it complies with the design guidance advising no more than 12 apartments where this criterion is not achieved. This is considered to be acceptable as two lifts will service each building.</p> <p>It is noted that DA2019/94 was approved with a variation to this requirement.</p>	<p>Yes</p>

A comprehensive assessment against SEPP 65 and the ADG is contained at **Attachment 5** to this Report.

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

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

*e.g., Clause 45 - Development likely to affect an electricity transmission or distribution network*

The subject development occurs within 5 metres of an overhead electricity power lines. As such, the Consent Authority is required to give written notice to an electricity supply authority. The development application was referred to AusGrid, who advised that the development proposal is supported.

*Clause 85 – Development adjacent to railway corridors*

The subject site is adjacent to a railway corridor, and as such, the Consent Authority is required to give written notice to the rail authority. Consequently, the development application was referred to Sydney Trains, who have assessed the application and provided General Terms of Approval, which have been included in the recommended conditions of consent at **Attachment 1**.

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

The proposed development involves excavation to a depth of at least 2 metres below ground level (existing), on land within 25 metres (measured horizontally) of a rail corridor and as such, the Consent Authority is required to give written notice to the rail authority. Consequently, the development application was referred to Sydney Trains, who have assessed the application and provided General Terms of Approval, which have been included in the recommended conditions of consent at **Attachment 1**.

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

The subject site is adjacent to a rail corridor, and is likely to be adversely affected by rail noise and vibration. As such, an Acoustic Report has been submitted, which has been referred to Council's Environmental Health Officer for comment, who advised that the proposed development satisfactory, subject to standard acoustic conditions of consent, which have been included in the recommended conditions of consent at **Attachment 1**.

*Clause 101 – Frontage to classified road*

The application is not subject to clause 101 of the ISEPP as the site does not have a frontage to a classified road.

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

The application is not subject to clause 102 of the ISEPP as the annual average daily traffic volume of Church Street is less than 40,000 vehicles.

*Clause 104 – Traffic generation developments*

The proposed development is defined as 'Traffic Generating Development' pursuant to Schedule 3 of the ISEPP, as the development proposes in excess of 200 car parking spaces, with 408 car parking spaces proposed. As such, the Consent Authority is required to give written notice to Transport for NSW. Transport for NSW has assessed the application and advised that no objection is raised subject to conditions, which have been included in the recommended conditions of consent at **Attachment 1**.

**(e) State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)**

The SEPP ARH contains provisions for in-fill affordable housing at Part 2 (New affordable rental housing) Division 1 (In-fill affordable housing). It is noted that the proposed development provides a total of 63 social housing units in Building A of the development.

Pursuant to Clause 10 of the SEPP ARH, Division 1 (In-fill affordable housing) applies to residential development if:

<b>Clause 10</b>	<b>Discussion</b>
<i>(a) the development is permitted with consent under another environmental planning instrument, and</i>	Residential flat building development permitted with consent pursuant to the Auburn Local Environmental Plan 2010.
<i>(b) the development is on land that does not contain a heritage item that is identified in an environmental planning instrument, an interim heritage order or on the State Heritage Register under the Heritage Act 1977, and</i>	The subject site does not contain a heritage item.
<i>(c) the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20%, and</i>	<p>Legal advice has been provided which has been reviewed by Council’s General Counsel who concurs that Clause 6(2) is applicable to the development, to the effect that, because the land is owned by the Land and Housing Corporation, all of the residential development is taken, for the purpose of the policy, to be affordable housing.</p> <p>The development provides a total residential gross floor area of 98% (excluding the floor area for the neighbourhood shops and child care centre components of the development).</p> <p>On this basis, the 20% criteria at clause 10(1)(c) is complied with.</p>
<i>(d) for development on land in the Greater Sydney region, Newcastle region or Wollongong region—all or part of the development is within an accessible area, and</i>	The site is 370 metres walking distance from the Lidcombe Train Station.

A detailed assessment of the proposed development against the provisions of SEPP ARH is provided at **Attachment 6** to this Report.

Following is an assessment of the character of the local area pursuant to Clause 16A of SEPP ARH.

A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area. SEPP ARH does not contain any guidance for assessing whether a proposal is compatible with the character of the local area. However, a planning principle for assessing compatibility in the urban environment was established by the Land and Environment Court in the judgement

for Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191. This involves consideration of the following two questions:

- Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.
- Is the proposal's appearance in harmony with the buildings around it and the character of the street?

A merit assessment of the character of the local area should therefore consider the following 3 steps:

- Step 1 – Identify the 'local area'.
- Step 2 – Determine the character of the 'local area'.
- Step 3 – Determine whether the design of the proposed development is compatible with the character of the 'local area'.

An assessment against each step is provided below:

Step 1 – Identify the local area.

This assessment identifies the local area as primarily the visual catchment of the site (hatched in red) as viewed from directly within the site and adjacent to the site on the street. Figure 8 below illustrates an aerial perspective of the site and the general surroundings, and the visual catchment, as denoted by a red outline.



**Figure 3 – Aerial Photo (Source: Intramaps, 2021)**

Step 2 – Determine the character (present and future) of the local area.

The zoning of the immediate locality comprises R4 High Density Residential to the north-west of the site, R3 Medium Density Residential to the north of the site, and SP2

Infrastructure to east, south and west of the site pursuant to the Auburn Local Environmental Plan 2010 (ALEP), as shown in Figure 9 below:

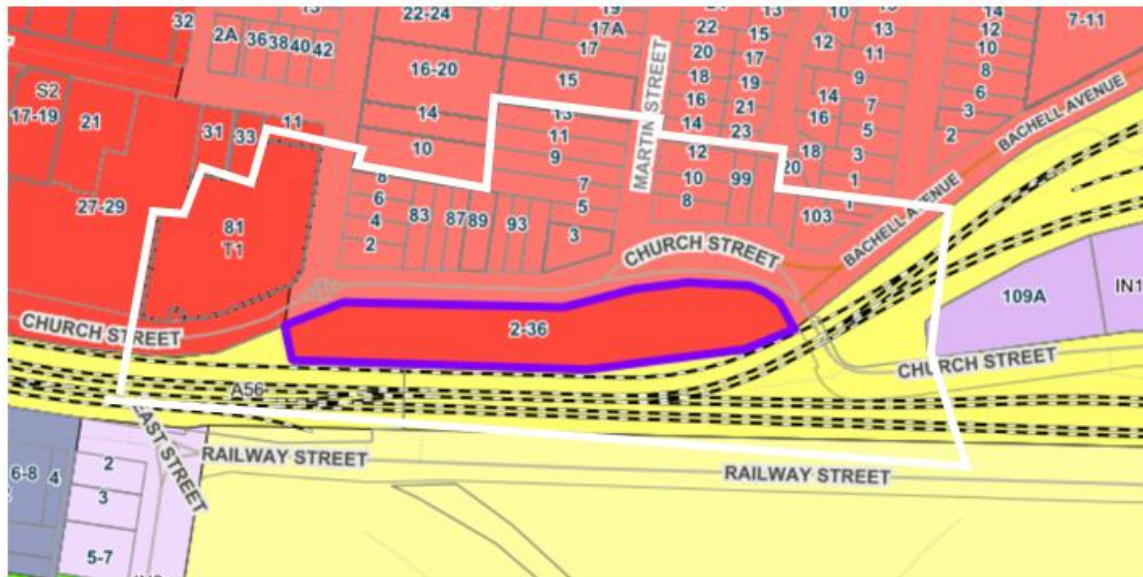


Figure 4 – Zoning Map (Source: Intramaps, 2021)

### Present Character of the Area

The existing character of the local area is as follows:

- North One and two storey low and medium density residential developments, with the exception of development opposite 2 Church Street, Lidcombe, being 81 Church Street, Lidcombe, which is maintained to an 8 storey residential flat building.
- East Railway corridor.
- South Railway corridor.
- West Railway land, and residential flat buildings of 8 and 6 storeys beyond located at 81 Church Street, Lidcombe.

### Future Character of the Area

The future character of the area is unlikely to change, noting:

- North The maximum Height of Buildings (HOB) and Floor Space Ratio (FSR) of the R3 Medium Density Residential zone is maintained to 9 metres / 0.75:1 FSR. Furthermore, the site opposite 2 Church Street, Lidcombe, being 81 Church Street, Lidcombe, which is zoned R4 High Density Residential, maintains a maximum HOB and FSR of 25 metres (approximately 8 storeys), and 2:1 FSR respectively.
- East Railway corridor.
- South Railway corridor.
- West Railway land, and residential flat buildings of 8 and 6 storeys beyond located



at 81 Church Street, Lidcombe, maintain a maximum HOB and FSR of 25 metres (approximately 8 storeys), and 2:1 FSR respectively.

Step 3 - Determine if the development is compatible with the character of the local area.

In accordance with the Land and Environment Court's planning principle, and relevant case law, compatibility is best defined as 'capable of existing together in harmony'. In order to test compatibility, two questions are required to be considered. These questions, as well as a response to each, are provided below:

- Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.

Physical impacts general include privacy, overshadowing, and visual bulk. In terms of the physical impacts of the development:

- Privacy within the development and to adjoining sites has been maintained to an acceptable level, through the incorporation of sufficient building separation in accordance with the Apartment Design Guide (ADG), and appropriate privacy treatments, where necessary.
- Overshadowing to adjoining developments is limited by virtue of the orientation of the site. The shadow cast from the development is maintained predominately to the railway corridor, and road network located to the south of the subject site.
- The setback of the proposed development from Church Street is consistent with the desired future character of residential flat buildings in the area, as defined within the Auburn Development Control Plan 2010 (ADCP).
- The height of the development, while exceeding the maximum height as defined within the Auburn Local Environmental Plan 2010 (architectural roof features), maintains the tallest building located closest to the railway station, with building massing tiered from the western end of the site to eastern end.
- The development meets the requirement of the ALEP 2010 in terms of Floor Space Ratio (FSR) and maximum Gross Floor Area (GFA).
- The proposal will not result in the isolation of adjoining sites, nor does it unduly constrain adjoining sites.
- Is the proposal's appearance in harmony with the buildings around it and the character of the street?

The proposed residential flat building development is considered to be in harmony with nearby buildings and the desired character for the street, consistent with the approval issued for DA2019/94.

**(f) State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

The proposal does not exceed the biodiversity offsets scheme threshold. Therefore, the proposed vegetation removal is considered acceptable. Please refer to the DCP compliance table for further discussion.

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

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

The proposed development includes the provision of a child care centre on the Ground level of Building B, with a maximum capacity of 60 children. Consent is sought as part of this application for the shell of the future child care centre, with the fitout and use to be subject to a future approval. A condition of consent has been included requiring a separate DA for the fitout and use of the child care centre demonstrating compliance with the Education SEPP and the Education and Care Services National Regulations.

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

BASIX Certificate Number: 998954M\_07 issued on 24 August 2021 prepared by Integreco Consulting Pty Ltd and BASIX Certificate Number: 948618M\_09 issued on 24 August 2021 prepared by Integreco Consulting Pty Ltd have been submitted with Council and are considered to be satisfactory.

Regional Environmental Plans

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

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

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

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

Local Environmental Plans

**(a) Auburn Local Environmental Plan 2010**

The provision of the Auburn Local Environmental Plan 2010 (ALEP 2010) is applicable to the development proposal. It is noted that the development achieves compliance with the

key statutory requirements of the ALEP 2010 and the objectives of the R4 High Density Residential land use zone.

**(b) Permissibility:-**

The proposed development is defined as comprising “residential flat building”, “neighbourhood shop” and “centre-based child care facility” uses, all of which are permissible in the R4 land use zone with consent:

**residential flat building** means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

**neighbourhood shop** means premises used for the purposes of selling general merchandise such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include neighbourhood supermarkets or restricted premises.

**centre-based child care facility** means—

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

but does not include—

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

DEVELOPMENT STANDARD	COMPLIES	DISCUSSION
<b>4.3 Height of Buildings</b> 22m – Building A 32m – Building B	N	Building A – 22.3 metres Building B – 33.22 metres Building C – 43.12 metres

<p>40m – Buildings C &amp; D</p>		<p>Building D – 42.42 metres</p> <p>A Clause 4.6 variation request has been submitted for the building height departure of a portion of Building B, which does not constitute part of the remaining architectural roof feature of the building. The portions of Buildings A, C and D over the maximum building height comprise architectural roof features, refer to the discussions in the following sections of this Table.</p>
<p><b>4.6 Exceptions to development standards</b></p>	<p>-</p>	<p>There is a portion of Building B which comprises rooftop mechanical plant, that is separate from the architectural roof feature component of the development. The portion of the mechanical plant exceeding the maximum building height is 780mm above the 32 building height, at 32.78 metres. This equates to a 2.4% departure from the development standard. Accordingly, a Clause 4.6 variation request has been submitted to seek to vary the maximum 32 metre building height development standard applicable to Building B.</p> <p>Refer to the following Clause 4.6 variation discussion in relation the building height departure and the Clause 4.6 request at <b>Attachment 8</b> to this Report.</p>
<p><b>5.6 Architectural roof features</b></p>		<p>The portions of Buildings A, B, C and D that are over the maximum building heights applicable to the site comprise architectural roof features.</p> <p>These portions of the building comprise decorative elements on the uppermost portions of the building, which add visual interest and articulation to the development. These portions do not comprise advertising structures and do not include any floor space area capable of being modified to include floor space area. These portions of the buildings do not contribute to an increase in overshadowing of the building. These elements have been supported by the CDEP.</p>

		<p>It is noted that the rooftop mechanical plant on Building B has not been integrated into the design of the roof feature of Building B and as such a Clause 4.6 variation request has been submitted for this portion of the building.</p>
<p><b>5.10 Heritage Conservation</b></p>	<p>Y</p>	<p>The subject site is not a Heritage item and is not located in a Heritage Conservation Area, in accordance with the provisions of the Auburn Local Environmental Plan 2010.</p> <p>A number of heritage items are located within the vicinity of the site, being Rookwood Cemetery (State significance); Lidcombe Railway Station Group (local significance) and Lidcombe Signal Box (local significance). A Heritage Impact Statement (HIS) has been prepared by Weir Phillips which concludes that the alterations and additions will have an acceptable impact on heritage items in the vicinity, where they are sufficiently separated from the subject site. The increased height will not block any significant view corridors to/from these heritage items and will not overshadow any part of the Rookwood Cemetery.</p>

**(c) Clause 4.6 – Variation to Height of Building (HOB)**

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

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

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

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

Applicant's justification:

The proposed development is consistent with the objectives of the R4 High Density Residential zoning of the site.

Planner's comment:

The development provides a mix of social, and market housing,; which contributes to the provision of a variety of housing types within a high density residential environment to meet the housing needs of the community. In addition, the development also provides three (3) neighbourhood shops and a child care centre to meet the day to day needs of residents, it is noted that the child care centre is located on the ground floor of Building B. The development is located within proximity to bus and railway services, with the site being in the order of 370 metres walking distance from the Lidcombe Railway Station.

Despite the minor numerical departures from the maximum building height development standard, the development remains consistent with the objectives of the R4 High Density Residential zone.

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

Applicant's justification:

The rooftop plant does not accommodate any floor area, and Building B complies with the maximum floor space ratio permitted for the site under clause 4.4 of the ALEP 2010. Therefore, the proposed density on the site is consistent with the Council's expectations.

The proposed height of Building B is consistent with the maximum permitted under clause 4.3 of the ALEP 2010. The building will remain compatible with character of the area notwithstanding the minor and localised variation to accommodate a small area of roof top plant.

Planner's comment:

The portion of Building B subject to the height breach, i.e., rooftop mechanical plant, does not have the potential to minimise the visual impact, disruption of views or the loss of privacy or solar access to existing development and is not incompatible with the character of the locality. The development is considered to be consistent with the building height objectives of the ALEP 2010.

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

Applicant's justification:

The following points demonstrate that compliance with the development standard is unreasonable and unnecessary in the circumstances because the underlying objectives of the standard are achieved notwithstanding the non-compliance with the standard.

- The rooftop plant does not accommodate any floor area, and Building B complies with the maximum floor space ratio permitted for the site under clause 4.4 of the ALEP 2010. Therefore, the proposed density on the site is consistent with the Council's expectations.

- The proposed height of Building B is consistent with the maximum permitted under clause 4.3 of the ALEP 2010. The building will remain compatible with character of the area notwithstanding the minor and localised variation to accommodate a small area of roof top plant.

Planner's comment:

The rooftop mechanical plant of Building B does not comprise any habitable floor area and is not capable of being converted to habitable floor area; the portion of the breach comprises a servicing function only. The numerical variance sought, i.e., 2.4% is considered to be reasonable, in that they do not add any unnecessary bulk to the buildings, given the minor nature of the numerical departures. In the circumstances of the case, compliance with the development standard is unreasonable.

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

Applicant's justification:

The proposed contravention of the development standards does not raise any matters of significance for the State or regional environmental planning. Further, there is no public interest in maintaining the numerical building height standard in this instance. As outlined above there are sufficient environmental planning grounds to warrant contravention of the development standard and it is therefore considered to be in the public interest for the variation to be supported in this case.

Planner's comment:

For the reasons detailed above, there are sufficient environmental planning grounds to justify contravening the development standard and the Applicant's written justification is well founded.

Conclusion:

Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6 subclause (3). Council is further satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the height of building development standard and the objectives for development within the R4 High Density Residential land use zone in which the development is proposed to be carried out.

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

The relevant matters to be considered under the ALEP 2010 for the proposed development are detailed in the Table at **Attachment 7** to this Report.

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

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

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

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

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

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

**(b) Draft Cumberland Local Environmental Plan (Draft CLEP)**

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

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

The current planning controls for the subject site, as contained within the ALEP 2010 (Amendment No. 32), are not proposed to change under the Draft CLEP. The site retains the R4 High Density Residential land use zone and the 40 metre, 32 metre and 22 metre maximum building heights and 3.2:1 maximum floor space ratio.

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

The Auburn Development Control Plan 2010 (ADCP 2010) provides guidance for the design and operation of development to achieve the aims and objectives of the ALEP 2010.

A comprehensive assessment and compliance table is contained in **Attachment 9** to this Report.

The following table highlights non-compliances with the DCP, which relate primarily to front setback, rear setback, deep soil provision and the number of residential car parking spaces provided. The variations sought are considered satisfactory on merit in this instance.

Clause	Control	Proposed	Satisfactory
<b>RESIDENTIAL FLAT BUILDINGS</b>			
<b>2.4.1 Front setback</b>	The minimum front setback shall be between 4 to 6m (except for residential flat	Whilst it is noted that DA2019/94 approved a minimum front setback to Church Street of 4.1	Yes



	development in the B1 and B2 zones) to provide a buffer zone from the street where residential use occupies the ground level	metres, it is noted that a portion of Building D provides a minimum front setback of 3.8 metres, with the remainder of the building maintaining a front setback of between 4.8 metres and 8.3 metres.  The proposed variation is considered to be minor, given the 200mm variation and the fact that this only applies to a portion of Building D.	
<b>2.4.3 Rear setback</b>	Rear setbacks shall be a minimum of 10m from the property boundary.	Whilst it is noted that DA2019/94 approved a rear setback of between 5.3 metres and 9.6 metres, it is noted that a portion of Building B maintains a minimum rear setback of 4.8 metres. The remainder of the buildings maintain a rear setback of between 6 metres to 14 metres.  It is acknowledged that the rear setbacks have been guided by the requirements of Sydney Trains, who own the land to the immediate south of the site. Given that the land backs onto the railway corridor, the proposed variation is considered acceptable, as it does not generate any amenity, privacy impacts.	Yes
<b>3.3 Deep soil zone</b>	A minimum of 30% of the site area shall be a deep soil zone.	A deep soil provision (with minimum dimensions of 6mx6m) of 794sqm is provided, which equates to 7.83%	Yes – compliant with ADG

		<p>of the site.</p> <p>A further deep soil provision (with minimum dimensions of 3mx3m) of 541sqm is also provided.</p> <p>The total deep soil provision on the site is 1,335sqm or 13.17%.</p> <p>This deep soil provision is compliant with the ADG.</p>	
<p><b>4.4.1 Number of parking spaces</b></p>	<p>Car parking for residential flat buildings shall comply with the requirements:</p> <p>1 bedroom dwelling 1.0 parking space                  2 bedroom dwelling 1.0 parking space                  3 bedroom dwelling 2.0 parking space                  4 bedroom dwelling 2.0 parking space                  Visitor spaces                  0.2 parking space</p>	<p>For the purpose of calculating car park required for the development, the Traffic Generating Development requirements of the RMS have been applied to Buildings B, C and D (the market housing), generating the following requirement:</p> <p>109 x 0.6 =65.5                  112 x 0.9 =100.8                  92 x 1.4 =128.8                  Total = 295 residential spaces</p> <p>313 x 0.2 =63 visitor spaces</p> <p>The development provides a total of 314 residential spaces for Buildings B, C and D and 63 visitor spaces.</p> <p>It is noted that the car parking provisions of the SEPP ARH, in the case of a development application made by a social housing provider for development on land in an accessible</p>	<p>Yes</p>

		<p>area, have been applied to the affordable housing provided within Building A.</p> <p>1 bedroom - 0.4 space                  2 bedrooms – 0.5 space                  ≥3 bedrooms - 1 spaces</p> <p>21 x0.4= 8.4                  42 x0.5= 21</p> <p>Total = 28.4                  Rounded up to 29 spaces</p> <p>A total of 29 car parking spaces are proposed to be allocated to the social housing units in Building A; compliant with the minimum requirement of SEPP ARH.</p> <p>A total of 406 residential and visitor spaces are provided, in addition to 15 child care spaces and 5 neighbourhood shop spaces.</p> <p>The total car parking provision of 426 spaces is considered adequate to service the development.</p>	
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The above departures from the ADCP 2010 are considered acceptable on merit, for the reasons discussed above.

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

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

As part of the Planning Proposal to increase the building height and floor space ratio, which was gazetted on 14 May 2021, a Voluntary Planning Agreement (VPA) was executed on 23 April 2021. The VPA requires the payment of a monetary contribution for the total

amount of \$4,750,000 (to be paid in instalments. The monetary contribution is for public domain, open space and drainage improvements in the Lidcombe Town Centre.

A condition of consent requiring compliance with the terms of the VPA has been included in the recommended conditions of consent at **Attachment 1**.

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

The proposed development raises no concerns as to the relevant matters arising from the Environmental Planning and Assessment Regulations 2000 (EP&A Reg).

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

It is considered that the proposed development will have no significant adverse environmental, social or economic impacts in the locality.

**The suitability of the site for the development (EP&A Act s4.15 (1)(c))**

The subject site and locality is not known to be affected by any natural hazards or other site constraints likely to have a significant adverse impact on the proposed development. Accordingly, it is considered that the development is suitable in the context of the site and surrounding locality.

**Submissions made in accordance with the Act or Regulation (EP&A Act s4.15 (1)(d))**

Online (Council website)       Mail       Sign       Not Required

In accordance with Council's Notification requirements contained within the ADCP 2010, the proposal was publicly notified for a period of fourteen (14) days between 17 September 2021 and 1 October 2021. The notification generated no submissions in respect of the proposal.

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

In view of the foregoing analysis, it is considered that the development, if carried out subject to the conditions set out in the recommendation below, will have no significant adverse impacts on the public interest.

**CUMBERLAND LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN 2020**

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It is acknowledged that the development contribution payable in accordance with Condition no. 4 (Auburn DCP 2007: Section 7.11 Development Contributions) of DA2019/94 (as amended by MOD2020/0226 to deduct the social housing from the contribution amount) has been paid on 2 December 2020.

The amended development proposed requires the payment of contributions in accordance with the Cumberland Local Infrastructure Contributions Plan 2020.

In accordance with the Contribution Plan a contribution is payable, pursuant Section 7.11 of the EP&A Act, calculated on the unit mix proposed. A total contribution of \$1,513,185.00 would be payable prior to the commencement of works. Accordingly, a condition of consent has been included in the recommended conditions at **Attachment 1** to this Report.

## **DISCLOSURE OF POLITICAL DONATIONS AND GIFTS**

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

## **CONCLUSION**

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The development application has been assessed in accordance with the relevant requirements of the *Environmental Planning and Assessment Act 1979*, State and Regional Development SEPP, SEPP 55, SEPP 65, ISEPP, Vegetation SEPP, BASIX SEPP, ARH SEPP, Education SEPP, SREP 2005, ALEP 2010, Draft Environment SEPP, Draft CLEP and ADCP 2010 and is considered to be satisfactory for approval, subject to conditions at **Attachment 1** of this Report.

The proposed development is appropriately located within the R4 High Density Residential land use zone under the relevant provisions of the Auburn Local Environmental Plan 2010. The proposal is generally consistent with all statutory and non-statutory controls applying to the development. Minor non-compliances with Council's controls have been discussed in the body of this Report. The development is considered to perform adequately in terms of its relationship to its surrounding built and natural environment, particularly having regard to impacts on adjoining properties.

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

## **RECOMMENDATION**

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- 1. That the variation to the maximum 32 metre building height development standard, as contained in Clause 4.3 of the Auburn Local Environmental Plan 2010 be approved, as the Applicant's Clause 4.6 request has adequately addressed the matters at Clause 4.6(3) and the development will be in the public interest as it is consistent with the objectives of the height standard and the objectives of the R4 High Density Residential zone.**
- 2. That Development Application No. DA2021/0430 for alterations and additions to an approved mixed use development currently under construction including the provision of additional levels to facilitate a varying height of 6 to 13 storeys, accommodating an additional 114 residential apartments (including an additional 10 social housing apartments), provision of a child care centre and three (3) neighbourhood shops), reconfiguration of basement layout and associated design changes on land at 2-36 Church Street LIDCOMBE NSW 2141 be approved.**

## **ATTACHMENTS**

1. Draft Notice of Determination
2. Architectural Plans
3. Landscape Plans
4. DEP Package
5. ADG Assessment Table
6. SEPP ARH Assessment Table
7. ALEP 2010 Assessment Table
8. Clause 4.6 Variation Request
9. ADCP 2010 Assessment Table
10. DA2019/94 Approval Documentation