

# MATTERS FOR THE LOCAL PLANNING PANEL'S DETERMINATION

**Monday, 13 April 2026**

**MS TEAMS**

Commencing at **1:30 PM**

**Microsoft Teams**

**[Microsoft Teams meeting](#)**

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**<https://teams.microsoft.com/meet/46152131037>**

**[465?p=QN3f46jtXNi5NvjH5L](#)**

**[Meeting ID: 461 521 310 374 65](#)**

**[Passcode: BR9fT7NG](#)**

Submissions by the applicant and concerned parties will be considered at the meeting. A concerned party is deemed to be a person who has made a written submission in respect to the application. The Panel shall, upon request, hear submissions from persons who identify prior to a meeting that they wish to make a submission to be considered by the Panel. Presentations to the Panel by the applicant and concerned parties shall be restricted to **3 minutes each**. The Panel Chairperson has the discretion to extend the period if considered appropriate.

For further information relating to the Local Planning Panel please refer to Council's web page:

**[Liverpool Local Planning Panel / Liverpool City Council \(nsw.gov.au\)](#)**

**COUNCIL ASSESSMENT REPORT**  
LIVERPOOL LOCAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSSWC-544 – DA-199/2025
<b>PROPOSAL</b>	<p>This application seeks approval for alterations and additions to the consent issued to Development Application No. 1092/2017/A.</p> <ul style="list-style-type: none"> <li>• Additional Residential Storeys: The proposal includes an additional 78 units, of which 30 units (15% of the total floor area) will be dedicated as affordable housing.</li> <li>• Childcare Centre: The development also includes an 84 place centre-based childcare facility on the Ground Level Building C, Site B</li> </ul>
<b>ADDRESS</b>	<p>Lot 35 DP 1266697 / Lot 35 Stock Street, Austral Lot 36 DP 1266697 / Lot 36 Selale Street, Austral</p>
<b>APPLICANT</b>	Mr Daniel McNamara
<b>DA LODGEMENT DATE</b>	23/04/2025
<b>APPLICATION TYPE</b>	Development Application
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	Clause 5, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> : CIV of community facilities component (affordable housing and child care centre) over \$5 million.
<b>CIV</b>	<p>\$26,800,000 (excluding GST)</p> <p>Pursuant to Planning Circular PS 10-008 CIV “<i>includes all costs necessary to establish and operate the project...other than...(d) GST</i>”. Therefore, the proposed development does not Trigger Clause 2, Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i>.</p>
<b>CLAUSE 4.6 REQUESTS</b>	Clause 4.6 Height of Buildings pursuant to State Environmental Planning Policy (Precincts – Western Parkland City) 2021, Appendix 4 Liverpool Growth Centres Precinct Plan
<b>KEY SEPP/LEP</b>	<p>State Environmental Planning Policy (Planning Systems) 2021;</p> <p>State Environmental Planning Policy (Transport and Infrastructure) 2021;</p> <p>State Environmental Planning Policy (Biodiversity and Conservation) 2021;</p>

	<p>State Environmental Planning Policy (Resilience and Hazards) 2021;  State Environmental Planning Policy (Housing) 2021;  State Environmental Planning Policy (Sustainable Buildings) 2022;  State Environmental Planning Policy (Precincts – Western Parkland City) 2021.</p>
<p><b>TOTAL &amp; SUBMISSIONS ISSUES SUBMISSIONS</b></p>	<p>1 submission (total &amp; unique).  Key issues include overshadowing, solar access, visual impact, noise pollution, traffic congestion and parking.</p>
<p><b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b></p>	<ul style="list-style-type: none"> <li>• Attachment A: Draft Conditions of Consent</li> <li>• Attachment B: Tables of Compliance (SEPP, DCP, ADG and DEP minutes)</li> <li>• Attachment C: Architectural Plans – 018678.2026</li> <li>• Attachment D: Landscape Plan – 407058.2025</li> <li>• Attachment E: Approved Plans DA-1092/2017 Architectural Plans (approved) – 073224.2026</li> <li>• Attachment F: LEC Conditions of Consent DA-1092/2017 – 018530.2020</li>   <li>• Attachment G: DEP Minutes 9 October 2025 – 385711.2025</li> <li>• Attachment H: DEP Minutes 12 June 2025 – 216088.2025</li> <li>• Attachment I: Statement of Environmental Effects – 407072.2025</li> <li>• Attachment J: Clause 4.6 Request (Building Height) – 407064.2025</li> <li>• Attachment K: Access Assessment Report – 138703.2025</li> <li>• Attachment L: Affordable Housing Endorsement – 138732.2025</li> <li>• Attachment M: BCA Performance Report – 138718.2025</li> <li>• Attachment N: Design Verification Statement – 138724.2025</li> <li>• Attachment O: Environmental Noise Assessment – 315463.2025</li> <li>• Attachment P: Plan of Management (Childcare Centre) – 315470.2025</li> <li>• Attachment Q: Stage 1 Contamination Assessment – 315466.2025</li> <li>• Attachment R: Stormwater Drainage Plan – 407060.2025</li> <li>• Attachment S: Stormwater Management Report – 138738.2025</li> <li>• Attachment T: Traffic Impact Assessment – 138740.2025</li> <li>• Attachment U: Waste Management Plan – 138741.2025</li> </ul>

<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>	YES
<b>HOUSING PRODUCTIVITY CONTRIBUTION</b>	NO
<b>RECOMMENDATION</b>	Approval, subject to conditions of consent
<b>DRAFT CONDITIONS TO APPLICANT</b>	YES
<b>SCHEDULED MEETING DATE</b>	13 April 2026
<b>PLAN VERSION</b>	Architectural Set – Revision E
<b>PREPARED BY</b>	Ben Paterson
<b>DATE OF REPORT</b>	6 April 2026

## **1. EXECUTIVE SUMMARY**

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### **1.1 The proposal**

The Amending Development Application seeks consent for changes to the approved buildings within Stage 7 (Building A), Stage 8 (Building C) and Stage 9 (Building B) approved under DA-1092/2017 and subsequent modification DA-1092/2017/A. Specifically, the application proposes to increase the building height under the affordable housing policy established by State Environmental Planning Policy (Housing) 2021, increase the number of units by 77 resulting in a total of 190 units, and to incorporate an 84 place centre-based childcare facility on Ground level in lieu of the approved Community Room, Shop and residential Units of Building C.

This application being lodged as an amending DA will allow the current consent (DA-1092/2017) to be retained, while amending a component of the approved development through this approval as a separate consent.

### **1.2 The Site**

The subject site comprises Lot 35 Stock Street and Lot 36 Selale Street, Austral ('the site'), legally known as Lot 35 and Lot 36 in DP 1266697.

Lot 35 Stock Street is located within the block bounded by Selale Street to the west, Hackney Street to the south and Stock Street to the east and occupies an irregularly shaped area of 3,267m<sup>2</sup>, see **Figure 1** below.

Lot 36 Selale Street is located within the block bounded by Selale Street to the east, Hackney Street to the south, Batak Lane to the north and 320 Sixth Avenue to the west and occupies a near rectangular shaped area of 7,760m<sup>2</sup>, see **Figure 1** below.

Construction work under DA-1092/2017 has not commenced on the subject sites. The subject site currently contains an existing dwelling houses and associated structures.

### 1.3 The Issues

The key issues identified with the proposal are as follows:

- 1.1.1 **Building Height** – A height variation of 2.10m (or 13.45%) is proposed. The application is supported by a Clause 4.6 variation. It is considered that the proposed variation aligns with the broader planning objectives of the Precinct Plan, Housing SEPP and the Apartment Design Guide (ADG), particularly with respect to urban densification and efficient land use in the locality. The proposed building height variation is consistent with the future character of the precinct and will contribute to a coherent streetscape appearance.
- 1.1.2 **Building Density** – While the proposal meets the minimum numerical density requirements, it markedly exceeds this benchmark. Notwithstanding, it is considered that the proposal aligns with the objectives of the zone by delivering additional housing in a planned growth area, consistent with the intended urban character and supported by an appropriate built form, height, and design that maintain residential amenity and environmental quality.
- 1.1.3 **Building Separation** –It is noted that under the original court-approved consent (DA-1092/2017) a number of building separation variations were approved. While the subject application is non-compliant with the minimum separation criteria in some areas it remains largely consistent with, or improved upon, that of the original approval.
- 1.1.4 **Amending DA** – The Amending DA seeks consent for changes to the approved building design of the residential flat building component and the addition of a childcare centre. No change is proposed to the approved townhouses (Stage 1). As the application is being lodged as an amending DA it will allow the current consent (DA-1072/2017) to be retained, while amending a component of the approved development through this approval as a separate consent.

### 1.4 Exhibition of the Proposal

The application was notified in accordance with the Liverpool City Council Community Engagement Strategy 2022 between 30 April 2025 and 16 May 2025. Two (2) submissions were received comprising of just one (1) 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.

### 1.5 Reasons for the Report

The Sydney Western City Planning Panel is the determining body as the CIV of the community facilities component including affordable housing and a child care centre is over \$5 million, pursuant to Schedule 6 of the *State Environmental Planning Policy - SEPP (Planning Systems) 2021*.

The *Environmental Planning and Assessment Amendment (Regionally Significant Development) Regulation 2025* came into effect on 16 January 2026. This amendment modifies Section 275 of the *Environmental Planning and Assessment Regulation 2021*, which

governs the circumstances in which councils may exercise functions on behalf of the Sydney district or regional planning panels.

The amendment transfers certain decision-making functions that previously required determination by a Sydney district or regional planning panel to councils in areas where a Local Planning Panel has been constituted. As a result, development applications lodged on or after 16 January 2026 are now determined by the Local Planning Panel under the council's consent authority role, rather than being referred to a regional panel.

Section 275(3A) further provides that a council must not determine a development application on behalf of a Sydney district or regional planning panel if the application falls within a category identified in the *Instruction on functions not exercisable by council on behalf of Sydney district or regional planning panels—certain regionally significant development applications* (the Instruction). The Instruction specifies that councils are not permitted to determine development applications lodged before 4 September 2024. As the subject application was lodged on 23 April 2025, it does not fall within this exclusion. Accordingly, the Local Planning Panel is the appropriate consent authority for the determination of this application.

## 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 building development standard pursuant to Clause 4.6 of the *State Environmental Planning Policy (Precincts – Western Parkland City) 2021*, it is recommended that the application be approved, subject to conditions of consent.

## 2. THE SITE AND LOCALITY

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### 2.1 The Site

The Site comprises Lot 35 Stock Street and Lot 36 Selale Street, Austral.

Lot 35 Stock Street is identified as a 3,267m<sup>2</sup> corner allotment legally described as Lot 35 in DP 1266697. It is irregular in shape with a frontage to Selale Street of 48.115m, a 52.495m frontage to Hackney Street and a eastern frontage of 40.525m to Stock Street.

Lot 36 Selale Street is identified as a 7,760m<sup>2</sup> detached allotment legally described as Lot 36 in DP 1266697. It is near rectangular in shape with a frontage of 70.495m to Batak Lane, a 66.495m frontage to Hackney Street, a 99.32m frontage to Selale Street and a shared boundary to the neighbouring residential Lot 2 in DP 1281692 to the west.

The site is zoned R3 Medium Density Residential under the State Environmental Planning Policy (Precincts—Western Parkland City) 2021.

At present, each allotment contains a residential dwelling, several ancillary structures and is generally devoid of any significant vegetation. The demolition of existing structures has been approved under DA-1092/2017. Surrounding land uses can be summarised as primarily residential with a business development zone to the south. The site is also located in close proximity to public recreation land to the north and west.

A desktop analysis of the site indicates that the site is impacted by constraints including flood inundation and flood planning area. The analysis also indicates that essential services including electricity, reticulated water and sewer, waste collection, telecommunications and NBN are available to the site



Figure 1: Aerial Image of the subject site



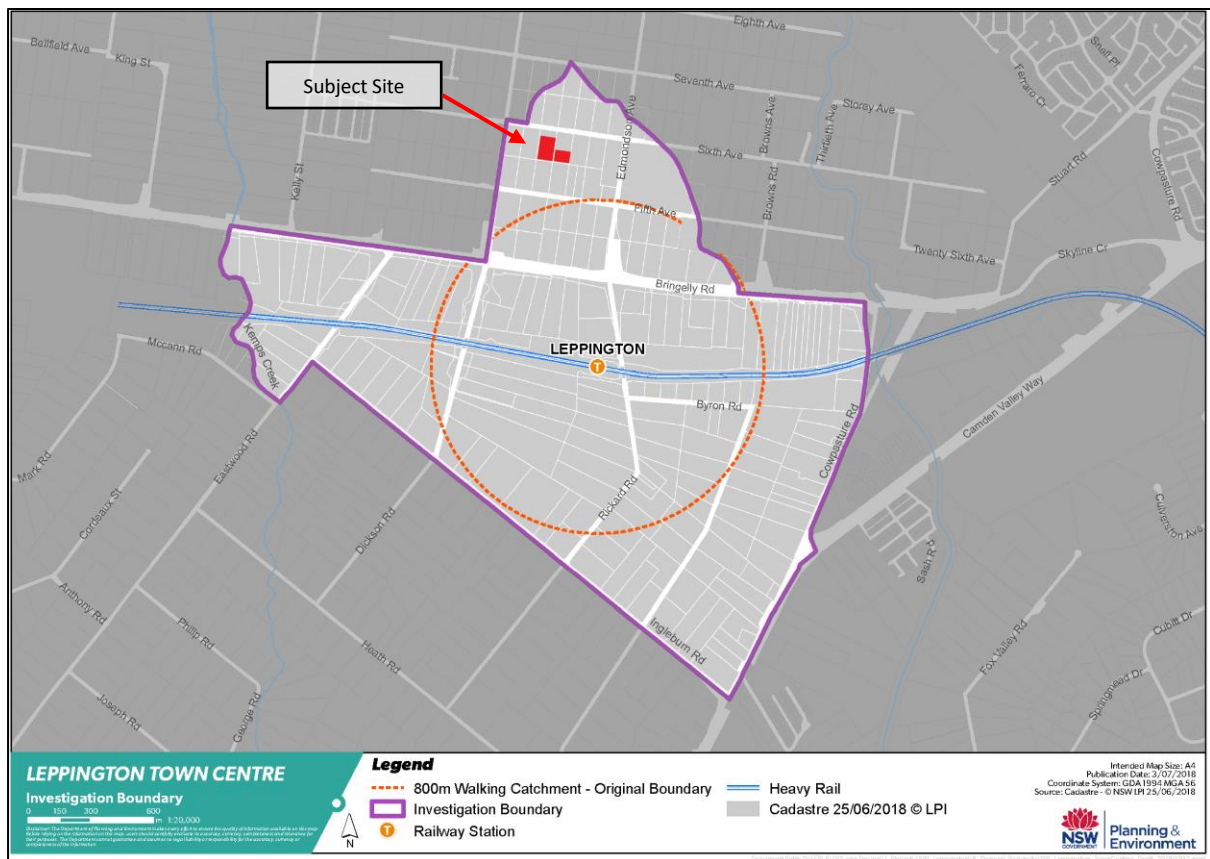
Figure 2: Locality Map

## 2.2 The Locality

The locality is characterised by small scale agricultural uses and rural residential living, which is being transitioned into low and medium-density residential subdivisions. The properties on all sides of the subject site are currently developed for rural residential living with small agricultural activities.

The site is located approximately 14km south-west of the Liverpool CBD and approximately 1km north of Leppington train station with an estimated walking distance of approximately 1.5km. The only bus stop within walking distance from the site is located on Edmondson Avenue approximately 300m east, which is serviced by route 855 and provides daily services from Rutleigh Park to Liverpool via Leppington Station. The timetable for Bus route 855 indicates that this bus stop is not serviced every hour.

The site is located within the future Leppington Town Centre. Leppington Town Centre is approximately 409 hectares in area and is bounded by Ingleburn Road to the south, Kemps Creek to the west, Camden Valley Way and Bonds Creek to the east, and by Bringelly Road and Fourth Avenue to the northwest.



**Figure 3: Leppington Town Centre (Source: DPHI)**

The table below outlines developments within close proximity to the site.

**Table 1: Adjacent Developments**

Location	Address	Development
Adjacent site to the east	320 Sixth Avenue	<u>Current</u> : Residential property.  <u>PL-77/2024</u> : Pre-DA and Design Excellence Panel recently held for:

		<p><i>Demolition of existing structures and removal of trees. Construction and dedication of the new roads along the west and south boundaries.</i></p> <p><i>Reconstruction of Sixth Avenue along the north boundary. Construction of 3-storey multi dwelling housing development buildings 1 to 4 comprising of total of 40 dwellings.</i></p>
Site opposite to the south	225 Fifth Avenue	<p><u>Current:</u> Vacant.</p> <p><u>DA-508/2022:</u> Approval for: <i>Demolition of existing structures and Torrens title subdivision of one existing allotment into 15 residential lots and one residue lot, including earthworks, road construction and civil works to be completed over two stages.</i></p>
Site opposite to the south	205 Fifth Avenue	<p><u>Current:</u> Vacant.</p> <p><u>DA-422/2022:</u> Approval for: <i>Demolition of the existing dwelling house and associated structures and Torrens title subdivision of Lot 1114 into 30 residential lots and Associated construction of temporary on-site stormwater detention basin, new road and other civil works.</i></p>
Sites opposite to the east	20 – 30 Stock Street	<u>Current:</u> Double storey dwellings.
Adjacent site to north	298 - 314 Sixth Avenue	<u>Current:</u> Double storey dwellings (Stage 1 townhouses completed as per DA-1092/2017).
Adjacent site to north	20 Selale Street & 17 Stock Street	<u>Current:</u> Double storey dwellings (Stage 1 townhouses completed as per DA-1092/2017).



**Figure 4:** Site photos (Source: Drawing No A006). Site A relates to Lot 35, Site B relates to Lot 36.

### 3. THE PROPOSAL AND BACKGROUND

#### 3.1 The Proposal

The proposal seeks consent for changes to the approved buildings within Stage 7 (Building A), Stage 8 (Building C), and Stage 9 (Building B) approved under DA-1092/2017 (refer to Figure 5) and subsequent modification DA-1092/2017/A. Specifically, the application proposes to increase the building height under the affordable housing policy established by State Environmental Planning Policy (Housing) 2021, increase the number of units, and to incorporate a centre-based childcare facility.

The proposal specifically involves:

#### Residential Component:

- An additional 82 units (30 of which are dedicated as affordable housing).
- Affordable units to be managed by My Life Housing, a registered Community Housing Provider.
- One (1) additional residential storey.
- 208 residential car parking spaces.
- 33 visitor car parking spaces.

**Table 1: Unit Breakdown**

Size	Building A	Building B	Building C	Total
1-Bed	3	11	0	14
2-Bed	46	39	33	118

3-Bed	16	17	22	55
4-Bed	0	2	2	4
<b>Total:</b>	<b>65</b>	<b>69</b>	<b>57</b>	<b>191</b>

**Childcare Centre:**

- 84 place centre-based childcare facility.
- 33 car parking spaces.
- Operation Monday to Friday 7:00am to 6:00pm.
- 19 staff (14 educators and 2 additional educators available).

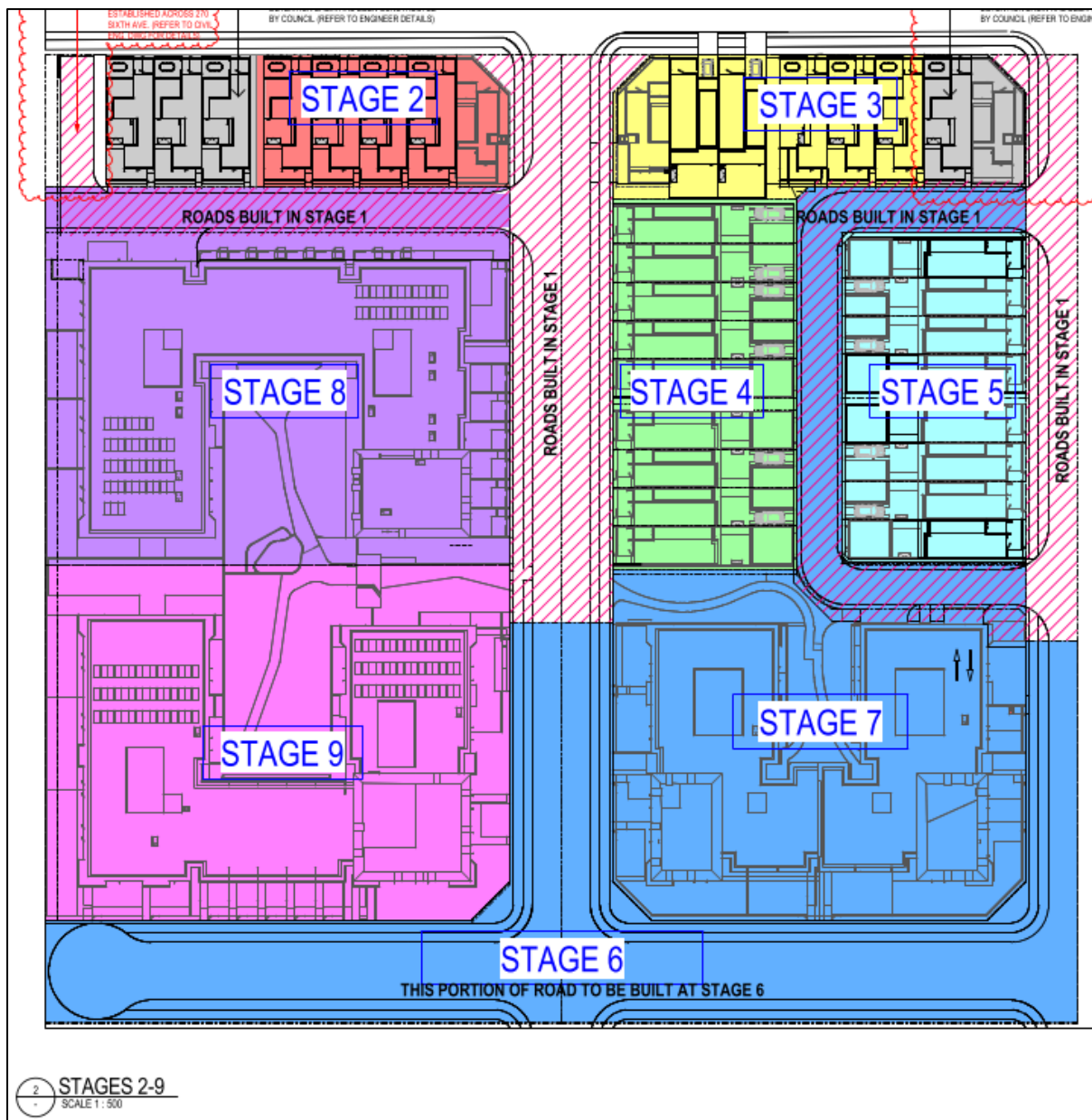
**Basement:**

- Total car parking spaces increased to 273 (from 220).
- One (1) additional basement level.

**Table 2: Overall Development Data**

<b>Control</b>	<b>Approved (RFB component only)</b>	<b>Proposed</b>	<b>Change</b>
Site area	Site Area: 11,027m <sup>2</sup>  (Total Site: 24,280m <sup>2</sup> )	Development Site: 11,027m <sup>2</sup>	-
Building Height (Storeys)	4	5	+1
Maximum Building Height	12m	16.89m	+4.89m
Basement (Levels)	1	2	+1
Car Parking Spaces	220  (Retail = 4 Visitor = 20 Residential = 196)	275  (Childcare = 33 Visitor = 32 Residential = 210)	+75
Bicycle Spaces	46	70	+24
GFA	13,225m <sup>2</sup>	19,422.30m <sup>2</sup> (18,840m <sup>2</sup> excluding the Childcare Centre)	+6,197m <sup>2</sup>
Density	102 dw/ha	173 dw/ha	+71
No of apartments	113 residential apartments comprising: • 7 1-bedroom units • 42 2-bedroom units • 60 3-bedroom units • 4 4-bedroom units	191 residential apartments comprising: • 14 1-bedroom units • 118 2-bedroom units • 55 3-bedroom units • 4 4-bedroom units	+78

Affordable Housing	Nil.	30 affordable apartments (2,878.27m <sup>2</sup> ) comprising: <ul style="list-style-type: none"> <li>• 26 2-bedroom units</li> <li>• 4 3-bedroom units</li> </ul>	+30
Site Coverage	5,767.40m <sup>2</sup> (52.3%)	4,598.39m <sup>2</sup> (41.7%)	-1,169m <sup>2</sup>
Deep Soil Area	1,844m <sup>2</sup> (16.7%)	2,011m <sup>2</sup> (18.2%)	+167m <sup>2</sup>
Landscaped Area	3,938.2m <sup>2</sup> (35.7%)	3,376m <sup>2</sup> (30.6%)	-562m <sup>2</sup>
Communal Open Space	2,324.30m <sup>2</sup> (21%)	3,064.6m <sup>2</sup> (27.8%)	+740m <sup>2</sup>
Additional Uses	Community Room GFA: 80m <sup>2</sup>	Community Room GFA: 59m <sup>2</sup>	-21m <sup>2</sup>
Additional Uses	Shop 01 GFA: 98m <sup>2</sup>	Child Care Centre Site Area: 1450m <sup>2</sup> GFA: 541m <sup>2</sup>	+443m <sup>2</sup>



**Figure 5:** Approved Staging Plan (DA-1092/2017).

### 3.2 Amending Development Application

As an amending DA, consent is sought to a new development whilst concurrently using the power under Section 4.57 of the EP&A Act to impose a condition that modifies another existing development consent. In effect, it utilises the existing consent (DA-1092/2017), while amending components of that approval as a separate consent.

This effectively allows the approved townhouses within Stages 2, 3, 4, & 5 shown in Figure 5 above (renamed ‘Stage 1’) to operate under the existing consent (DA-1092/2017), while the residential flat building is amended.

Whilst this might ordinarily be done via Section 4.55 Modification, in this case, Council considers the nature of the changes not to be considered ‘substantially the same development’ as required to satisfy the specific requirements of Section 4.55 of the EP&A Act, and therefore the proposed Amending DA pathway is considered appropriate.

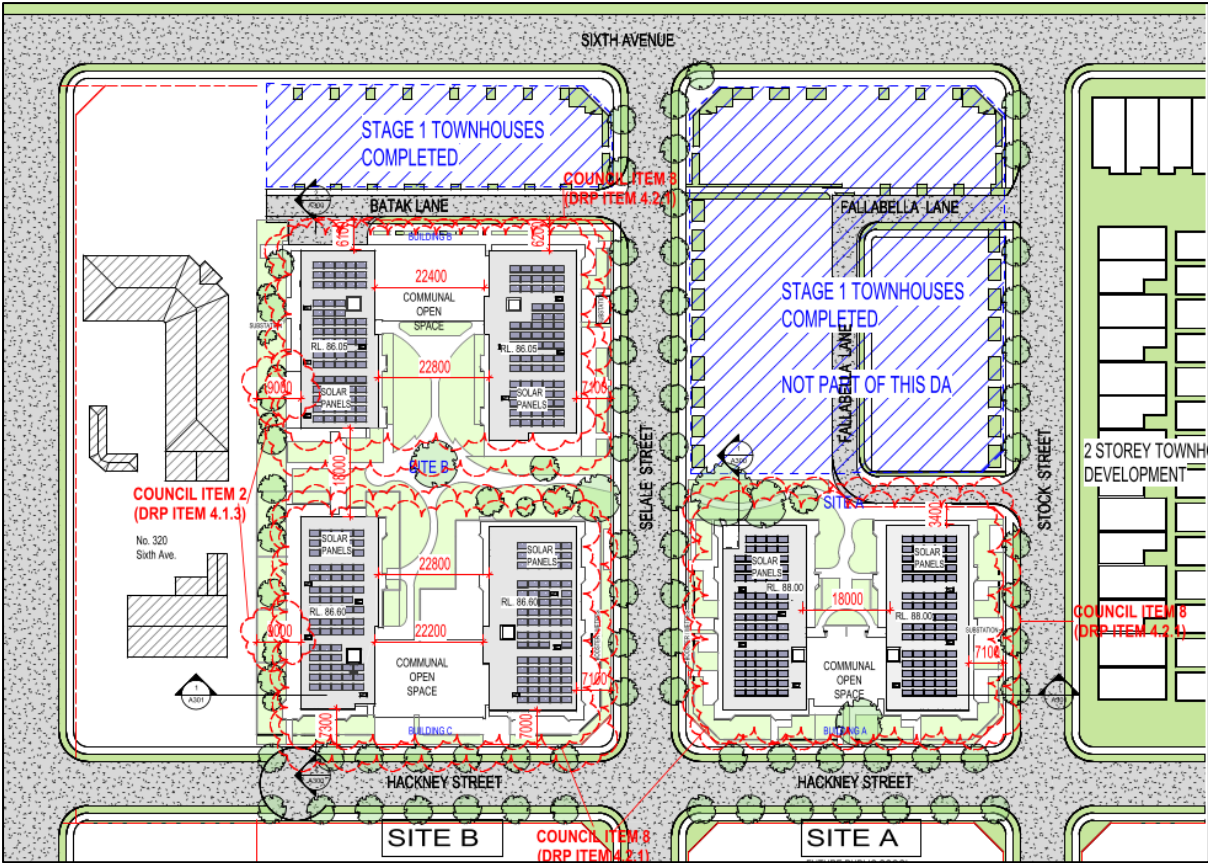


Figure 6: Proposed Site Plan.

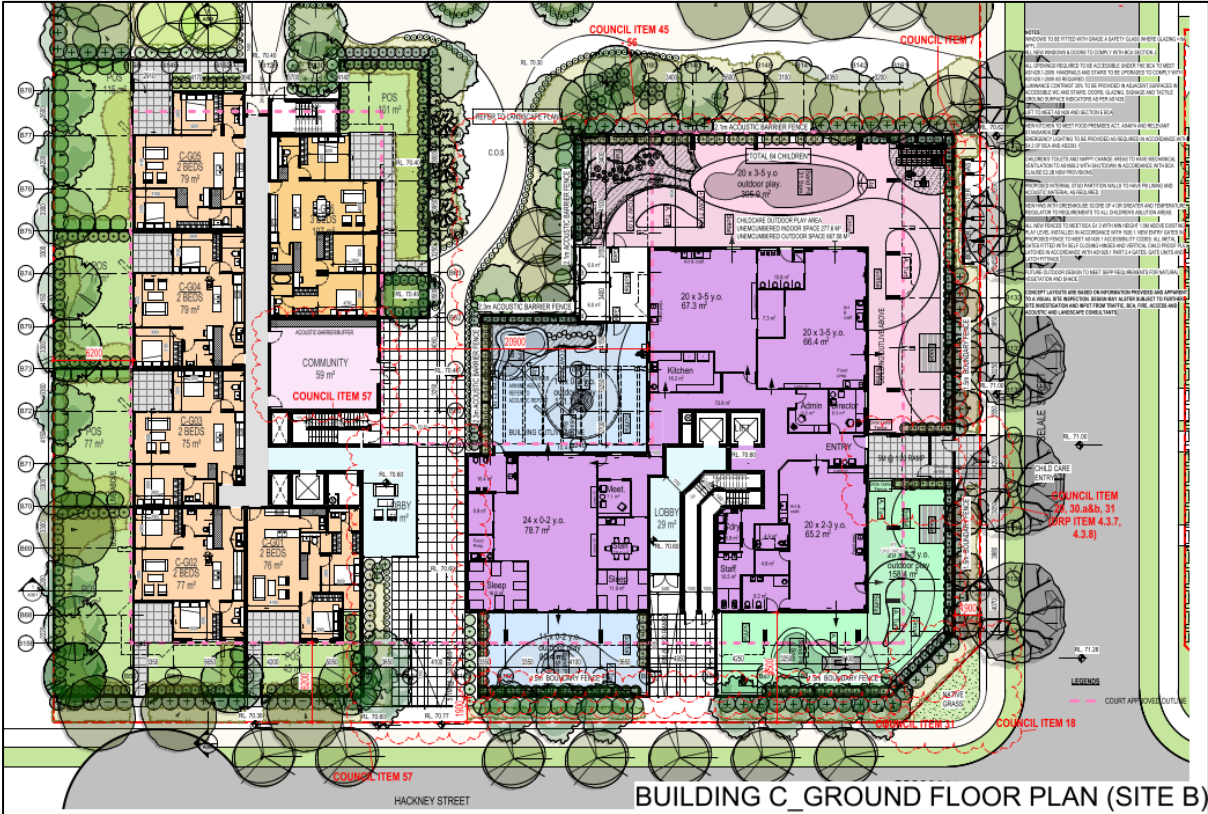


Figure 7: Ground Floor Plan Building C – including Childcare Centre.

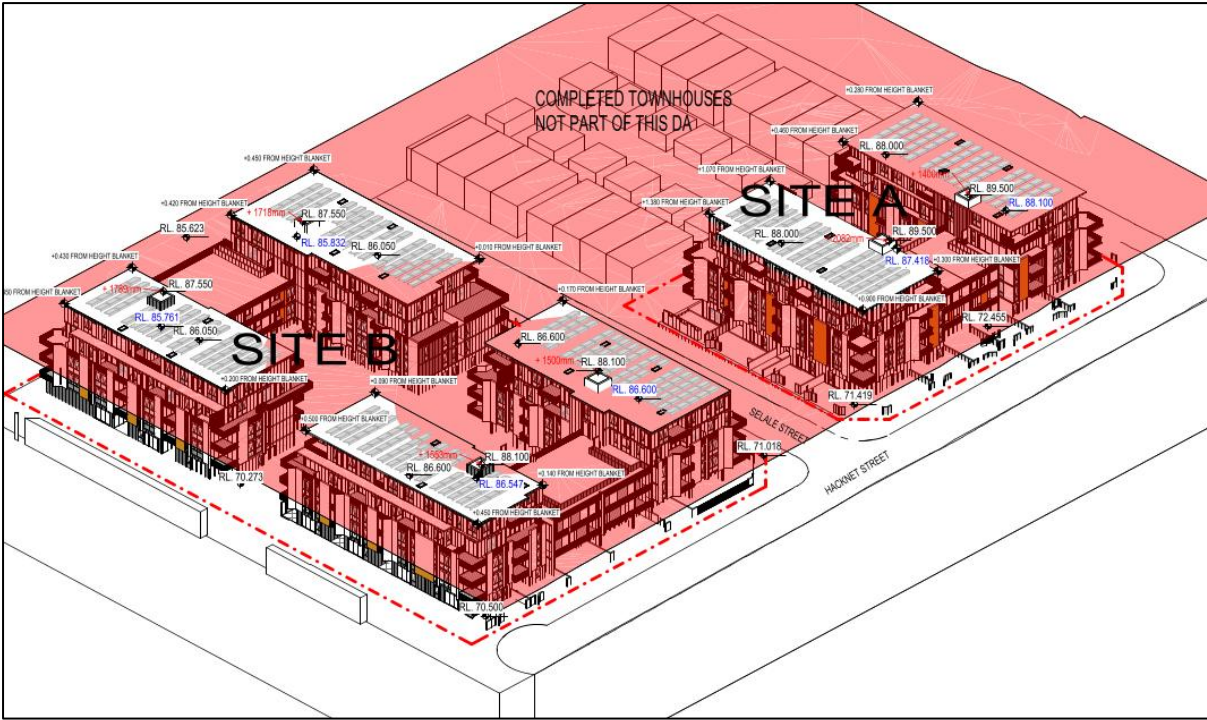


Figure 8: Maximum Height Plane Diagram.



Figure 9: 3D perspective.

### 3.3 Background

The original development application (DA-1092/2017) was lodged 11 December 2017 seeking consent for; *Demolition of existing structures and construction of thirty-four townhouses and six 4-storey residential flat buildings containing 187 apartments, two private laneways, one internal and two external roads, and associated car parking and landscaping.*

Sydney Western City Planning Panel were presented with this application on 7 May 2018 and issued a briefing note identifying the planning issues it saw of concern. The original application

was referred to the SWCPP as the Capital Investment Value (CIV) of the application was \$65,570,441 (excluding GST) and pursuant to *SEPP (State and Regional Development) 2011* (at the time), SWCPP was to be the determining body.

Notwithstanding, on 20 July 2018 the Applicant commenced proceedings in Class 1 of the Land and Environment Court's jurisdiction appealing against the 'deemed refusal' of the development application. Following conciliation, an agreement under s 34(3) of the LEC Act was reached between the parties as to the terms of a decision in the proceedings that would be acceptable to them. The decision agreed upon was to uphold the appeal and to grant development consent subject to conditions of consent, pursuant to s4.16 of the *EP&A Act*.

A subsequent modification application DA-1092/2017/A was approved by Council involving minor modifications "which will include minor design updates to the townhouse component, to improve efficiency of building design, increasing the upper floor areas to improve livability and incorporating various minor design changes for construction purposes." These modifications relate specifically to the townhouse development within Stage 1 that is not part of the subject amending development application. It is also noted that Stage 1 subdivision certificate has been issued under SC-71/2021 and construction works are nearing completion.

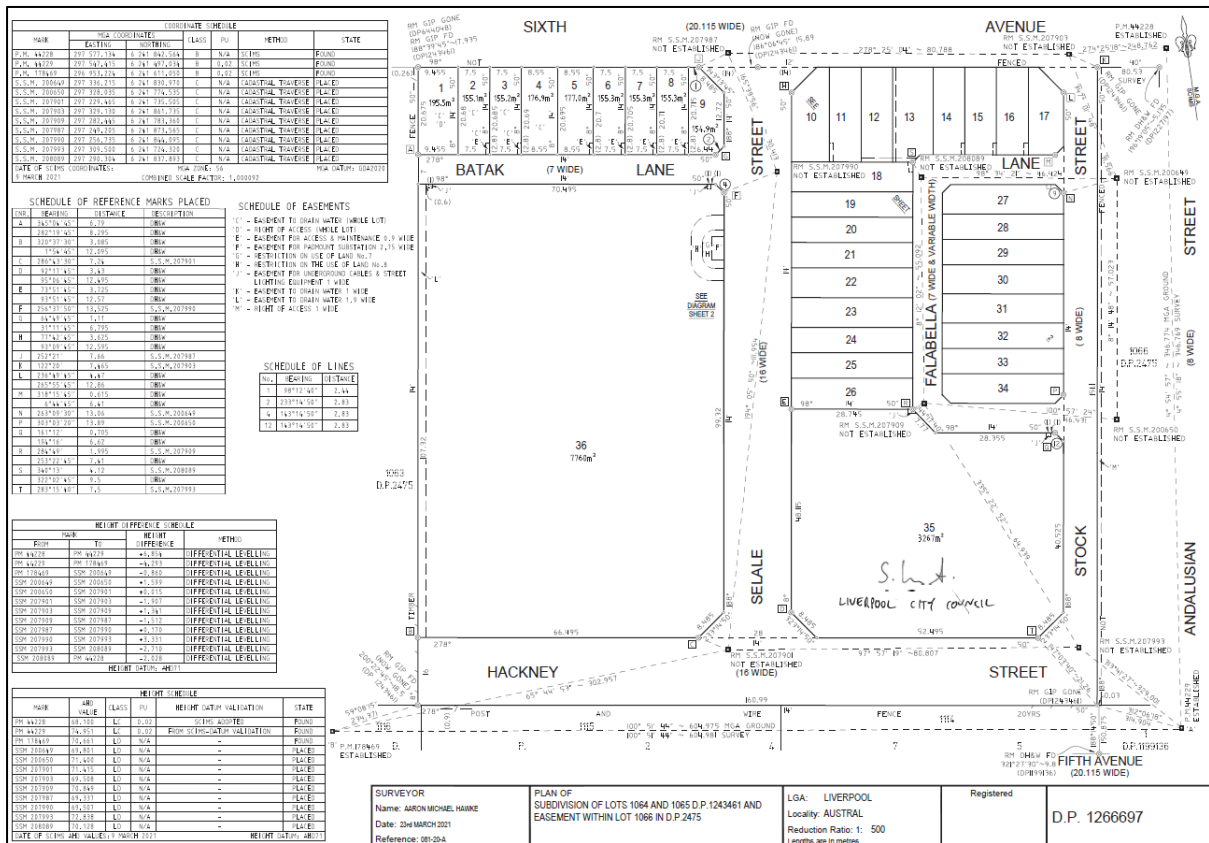


Figure 10: Approved Plan of Subdivision (SC-71/2021).

The subject amending development application was lodged on **23 April 2024**. A chronology of the development application since lodgement is outlined below including any Panel involvement (briefings, deferrals etc) with the application:

**Table 3: Chronology of the DA**

<b>Date</b>	<b>Event</b>
<b>23 April 2024</b>	DA lodged
<b>30 April 2024</b>	Advertising and notification of the application commenced
<b>30 April 2024</b>	DA referred to internal departments and external agencies
<b>16 May 2024</b>	Advertising and notification of the application concluded (1 unique submission received)
<b>12 June 2024</b>	DEP Meeting
<b>25 July 2024</b>	Request for Additional Information letter including DEP minutes sent to applicant.
<b>16 September 2024</b>	The applicant provided amended information.
<b>9 October 2024</b>	Second DEP Meeting
<b>25 November 2024</b>	Request for Additional Information letter including DEP minutes sent to applicant.
<b>2 December 2024</b>	The applicant provided amended information.

### 3.4 Site History

The following are previous development applications lodged and considered on the subject site.

**Table 4: Chronology of site history**

<b>DA Number</b>	<b>Proposal/Details</b>	<b>Status</b>
DA-1092/2017	Lodged 11 December 2017: Demolition of existing structures and construction of thirty-four townhouses and six 4-storey residential flat buildings containing 187 apartments, two private laneways, one internal and two external roads, and associated car parking and landscaping. Note: Liverpool City Council is the consent authority and the Sydney Western City Planning Panel has the function of the determining authority.	Approved LCC 23 January 2020
DA-1092/2017/A	Lodged 26 February 2021: Modification to Development Consent DA-1092/2017 under the Environmental Planning and Assessment Act 1979, to Minor design updates to the townhouses component to improve efficiency of building design, increase upper floor areas to improve livability and	Approved 29 July 2021

	incorporate various minor design development for construction purposes.	
PL-15/2025	Pre-DA meeting held 12 March 2025: Alterations and additions with reconfiguration of the residential flat buildings approved under (DA-1092/2017/A) to include approximately 64 additional apartments and a centre based child care facility.	Advice Provided 25 March 2025
DA-199/2025 <b>Subject Application</b>	<i>Lodged 23 April 2025: Amendment to approved Residential Flat Buildings (DA-1092/2017 and subsequent modifications), including alterations and additions to the residential flat buildings with changes to apartment layouts, an increase in the height of the buildings, the inclusion of in-fill affordable housing with an additional 83 apartments for a total of 18 x 1-bedroom units, 118 x 2-bedroom units, 59 x 3-bedroom units, of which there are 31 Affordable Housing Units. Amendments to the commercial space and a change of use to an 84-place centre-based childcare facility and a total of 274 basement parking of which 33 are allocated for the childcare facility. The proposal is for affordable housing pursuant to State Environmental Planning Policy (Housing) 2021.</i>	Currently Under Assessment

#### 4. STATUTORY CONSIDERATIONS

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.

#### 4.1 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.

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

The following Environmental Planning Instruments are relevant to this application:

- State Environmental Planning Policy (Planning Systems) 2021
- State Environmental Planning Policy (Resilience and Hazards) 2021
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- State Environmental Planning Policy (Sustainable Building) 2022
- State Environmental Planning Policy (Transport and Infrastructure) 2021
- State Environmental Planning Policy (Housing) 2021
- State Environmental Planning Policy (Precincts – Western Parkland City) 2021

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 5** and considered in more detail below.

**Table 5: Summary of Applicable Environmental Planning Instruments**

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Planning Systems) 2021	<u>Chapter 2</u> : State and Regional Development Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 5 of Schedule 6 as it comprises affordable housing & a child care centre with a combined cost of works greater than \$5 million.	Y
State Environmental Planning Policy (Resilience & Hazards)	<u>Chapter 4</u> : Remediation of Land Section 4.6 - Contamination was assessed during the determination of DA-1092/2017, which was supported by a Stage 2 Contamination Report prepared by Ground Technologies. The report confirmed the site was suitable for the proposed use without requiring a Remediation Action Plan. As the site characteristics remain unchanged with respect to contamination, it continues to be suitable for the purpose of alterations and additions to the approved mixed use development.	Y  Y
State Environmental Planning Policy (Biodiversity & Conservation) 2021	<u>Chapter 2</u> : Vegetation in non-rural areas • Does not conflict with objectives of Chapter 2.  <u>Chapter 6</u> : Water Catchments	Y  Y

	<ul style="list-style-type: none"> <li>Does not conflict with objectives of Chapter 6.</li> </ul>	
State Environmental Planning Policy (Sustainable Buildings) 2022	<u>Chapter 2</u> : Standards for residential development - BASIX <ul style="list-style-type: none"> <li>The application is supported by a compliant BASIX Certificate.</li> </ul>	Y
	<u>Chapter 3</u> : Standards for non-residential development <ul style="list-style-type: none"> <li>The child care centre component of the application does not have a CIV of greater than \$10 million and is therefore 'exempt'</li> </ul>	Y
State Environmental Planning Policy (Housing) 2021	<u>Chapter 2</u> : Affordable Housing <ul style="list-style-type: none"> <li>As demonstrated within <i>Attachment B Tables of Compliance</i> the proposal is consistent with Division 1 In-fill affordable housing requirements.</li> </ul>	Y
	<u>Chapter 4</u> : Design of Residential Apartment Development <ul style="list-style-type: none"> <li>As demonstrated within <i>Attachment B Tables of Compliance</i> the proposal is consistent with: <ul style="list-style-type: none"> <li>The design principles in Schedule 9;</li> <li>The objectives of the ADG;</li> </ul> </li> </ul> Pursuant to Clause 145(2) the proposal was referred to the design review panel.	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	<u>Chapter 3</u> : Educational Establishments and Child Care Facilities <ul style="list-style-type: none"> <li>As demonstrated within <i>Attachment B Tables of Compliance</i> the proposal is consistent with: <ul style="list-style-type: none"> <li>Part 3.3 Early education and care facilities – specific development controls;</li> <li>Education and Care Services National Regulations 2011;</li> <li>Child Care Planning Guideline 2021.</li> </ul> </li> </ul>	Y
State Environmental Planning Policy (Precincts—Western Parkland City) 2021	<u>Chapter 3</u> Sydney Region Growth Centres <ul style="list-style-type: none"> <li>The proposal is considered to be generally consistent with Chapter 3.</li> </ul>	Y
	<u>Appendix 4</u> Liverpool Growth Centres Precinct Plan <ul style="list-style-type: none"> <li>Clause 2.3 - The proposed development is permissible within the R3 zone and meets the zone objectives.</li> <li>Clause 4.6 – Exceptions to Development Standards – The proposal seeks to vary Section 4.3 Building Height.</li> </ul>	Y

Consideration of the relevant SEPPs is outlined below.

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

(i) 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 5 of Schedule 6 of the Planning Systems SEPP as the proposal comprises affordable housing & a child care centre with a combined cost of works greater than \$5 million.

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

### (i) Chapter 4: Remediation of Land

The proposal has been assessed under the relevant provisions of SEPP (Resilience and Hazards) 2021, specifically Chapter 4 – Remediation of Land.

The objectives of SEPP (Resilience and Hazards) 2021 are:

- *to provide for a statewide planning approach to the remediation of contaminated land.*
- *to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.*

Contamination was assessed during the determination of DA-1092/2017. This application was supported by a revised 'Stage 1 Contamination Assessment at No.250 & 260 Sixth Avenue, Austral' (GTE699 – Contamination Report Rev8) prepared by Ground Technologies Pty Ltd dated 9<sup>th</sup> November 2019. The consultant reported that the land had been used largely for residential purposes and the likelihood of unacceptable contamination risks being present on-site was low.

Ground Technologies Pty Ltd concluded that the land was suitable for the proposed residential use without the need for remediation. Based upon the consultant's findings, Council's Environmental Health Section was satisfied that the land would be suitable for the development proposed under DA-1092/2017 without the need for remediation. The inclusion of a childcare centre at the site does not involve a use that is more sensitive than those previously considered under DA-1092/2017.

Clause 4.6(1) prescribes the contamination, and remediation matters that must be considered by Council before determining the development application. Specifically, Council must consider:

- *whether the land is contaminated; and*
- *if the land is contaminated, the Council must be satisfied that the land is suitable in its contaminated state (or will be suitable after remediation); and*
- *if the land requires remediation to be made suitable, Council is satisfied that the land will be remediated before it is used.*

Pursuant to Clause 4.6(1) the following shall be addressed:

<b>Clause</b>	<b>Comment</b>
(1) A consent authority must not consent to the carrying out of any development on land unless—	
(a) It has considered whether the land is contaminated, and	The Preliminary Site Investigation found the site was suitable for the proposed development.
(b) 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, and	The PSI indicates that the site is suitable for the proposed use in its current state, and Council's Environmental Health section are supportive of the application subject to conditions of consent.
(c) If the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.	The site does not require remediation.

Based on the above assessment, the proposed development satisfies the requirements of Chapter 4 and is considered to comply with the SEPP (Resilience and Hazards) 2021.

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

(i) Chapter 2 – Vegetation in non-rural areas

The site is Biodiversity Certified. The subject amending development application would not conflict with the objectives of Chapter 2.

(ii) Chapter 6 – Water Catchments

The subject land is located within the Hawkesbury River catchment and as such State Environmental Part 6.2 – Development in regulated catchments applies to the application as the development is within the Hawkesbury-Nepean Conservation area Sub-Catchment. The relevant clauses are as follows:

Clause	Comment
6.6 Water quality and quantity	<p><b>Complies</b> The development would not result in any unreasonable impacts to water quality or quantity.</p> <p>The application is supported by a Stormwater Management Report by Stantech Pty Ltd. This report outlines measures to manage both stormwater quantity and quality, ensuring that there will be no adverse impact on water quality. The stormwater management plan includes sediment and erosion control measures to be implemented during the construction phase, minimising cumulative impacts on the surrounding catchment.</p>
6.7 Aquatic ecology	<p><b>Complies</b> The development would not result in any adverse impacts on aquatic ecology. The site is located away from any natural waterways, meaning no riparian vegetation will be disturbed. Consequently, the proposal is not expected to impact local fauna, wetlands, or aquatic environments. As the development does not interface with riparian areas, it will result in negligible environmental disturbance to surrounding watercourses and their ecosystems.</p>
6.8 Flooding	<p><b>Complies</b> The site is mapped within the Flood planning area and Flood inundation extent area.</p> <p>Stantec Australia Pty Ltd has prepared a stormwater strategy for the proposed development. The report considered the impact of flooding and confirms that the proposed design meets all necessary freeboard requirements and flood mitigation procedures have been achieved.</p>
6.9 Recreation and public access	<p><b>Not Applicable</b> No impact proposed to recreational land uses within the regulated catchment.</p>
6.10 Total catchment management	<p><b>Complies</b></p>

	The proposed modification would not detrimentally impact the existing stormwater management system, and as such it is considered that it would not have an adverse impact on the total catchment.
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Based on the above assessment, the proposal satisfies the requirements of Chapter 6 and is considered to comply with the SEPP (Biodiversity and Conservation) 2021.

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

SEPP (Sustainable Buildings) 2022 (SEPP Sustainable Buildings) was made in August 2022 and came into effect on 1 October 2023 and applies to both residential and non-residential development. The aims of the SEPP encourage design and construction of more sustainable buildings across NSW. The standards prescribed by the SEPP ensure the general sustainability measures incorporated into the building design including but not limited to water usage, energy consumption and thermal performance as well as the monitoring of embodied energy used within building materials.

(i) Chapter 2 – Standards for residential development - BASIX

As the proposed development involves residential development, it is considered a BASIX development to which this chapter applies. In accordance with the requirements of this SEPP, a BASIX Certificate has been obtained in support of the proposed development and accompanies this application. The BASIX Certificate also includes a reference to the quantified embodied emissions.

(ii) Chapter 3 – Standards for non-residential development

Chapter 3 applies to development, other than development for the purposes of residential accommodation, that involves-

- (a) the erection of a new building, if the development has a capital investment value of \$5 million or more, or*
- (b) alterations, enlargement or extension of an existing building, if the development has a capital investment value of \$10 million or more.*

The child care centre component of the application does not have a CIV of greater than \$10 million and is therefore 'exempt' as it does not meet the above criteria.

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

(i) Chapter 2 – Affordable Housing

Chapter 2 of SEPP (Housing) 2021 relates to development for affordable housing. In December 2023, the NSW Government implemented in-fill affordable housing reforms to encourage private developers to boost affordable housing and deliver more market housing. The objective of the new provisions is to facilitate the delivery of new in-fill affordable housing to meet the needs of very low, low and moderate income households.

Provisions	Comment
<b>Division 1 In-fill affordable housing</b>	
<b>15C Development to which division applies</b>	
<p>(1) This division applies to development that includes residential development if—</p> <p>(a) the development is permitted with consent under Chapter 3, Part 4, Chapter 5, Chapter 6 or another environmental planning instrument, and</p> <p>(b) the affordable housing component is at least 10%, and</p> <p>(c) all or part of the development is carried out—</p> <p style="padding-left: 20px;">(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</p> <p style="padding-left: 20px;">(ii) for development on other land—within 800m walking distance of land in a relevant zone or an equivalent land use zone.</p>	<p><b>Complies</b></p> <p>(a) The development is permitted under State Environmental Planning Policy (Precincts – Western Parkland City) 2021.</p> <p>(b) As illustrated on sheet A170 the affordable housing component comprises 30 units.</p> <p style="padding-left: 20px;">The total GFA of the proposed development is 18,840m<sup>2</sup> and the affordable housing component comprise 2,880.17m<sup>2</sup> (15%)*</p> <p>(c) (i) All parts of the development site are in an accessible location. As illustrated on sheet A011 the site is within 400m walking distance of a bus stop servicing the 855, 856 and 861 networks.</p>
<p><b>Note 1*</b>  <i>The application is lodged under Division 1 in-fill affordable housing. Pursuant to Clause 15 (1) This division applies to development that includes residential development if—</i>  <i>(b) the affordable housing component is at least 10%, and</i></p> <p><i>The phrase “development” means the entire development. While the originally approved development (DA-1092/2017) includes both RFB’s and townhouses, the subject Amending DA relates specifically to the RFB component. As such the minimum 10% is calculated as a percentage of GFA of the RFB component only, exclusive of the previously approved and constructed townhouse component.</i></p> <p><i>Furthermore, the Childcare Centre and Community Room are also included in the total GFA calculation even though they are not part of the residential component.</i></p>	
<p><b>Note 2*</b>  <i>When calculating the affordable housing component, the calculation is generally based on gross floor area (GFA). As per the definition in the Standard Instrument LEP, GFA does not explicitly exclude common horizontal circulation spaces such as corridors and lobbies.</i></p> <p><i>It is also noted that lobbies, even if not located directly adjacent to a lift as in this case, are to be included in GFA calculation.</i></p>	
<b>16 Affordable housing requirements for additional floor space ratio</b>	
<p>(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 development on 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).</p>	<p><b>N/A</b></p> <p>There is no prescribed floor space ratio for the site under SEPP (Precincts – Western Parkland City) 2021.</p>
<p>(2) The minimum affordable housing component, which must be at least 10%, is calculated as follows—</p>	

<p>affordable housing component = <math>\frac{\text{additional floor space ratio}}{2}</math> (as a percentage)</p>	
<p>(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 development on the land plus an additional building height that is the same percentage as the additional floor space ratio permitted under subsection (1).</p> <p><b>Example—</b></p> <p><i>Development that is eligible for 20% additional floor space ratio because the development includes a 10% affordable housing component, as calculated under subsection (2), is also eligible for 20% additional building height if the development involves residential flat buildings or shop top housing.</i></p>	
<p>(4) This section does not apply to development on land for which there is no maximum permissible floor space ratio.</p>	
<p><b>17 Additional floor space ratio for relevant authorities and registered community housing providers</b></p>	
<p>(1) This section applies to residential development to which this division applies that is carried out—</p> <p>(a) by or on behalf of a relevant authority or registered community housing provider, and</p> <p>(b) on land with a maximum permissible floor space ratio of 2:1 or less.</p>	<p><b>N/A</b></p> <p>There is no prescribed floor space ratio for the site under SEPP (Precincts – Western Parkland City) 2021.</p>
<p>(2) The maximum floor space ratio for the development is—</p> <p>(a) the maximum floor space ratio calculated in accordance with section 16, or</p> <p>(b) the maximum floor space ratio calculated in accordance with subsection (3).</p>	
<p>(3) The maximum floor space ratio for subsection (2)(b) is the maximum permissible floor space ratio for the development on the land plus an additional floor space ratio of—</p> <p>(a) if the affordable housing component is at least 50%—0.5:1, or</p> <p>(b) if the affordable housing component is between 20% and 50%—Y:1,</p>	

<p>where—</p> <p><b>AH</b> is the affordable housing component.</p> <p><b>Y</b> is <math>\frac{AH + 100}{2}</math>.</p>	
<p>(4) If development to which this section applies uses the maximum floor space ratio under subsection (2)(a), section 16(3) also applies to the development.</p>	
<b>18 Affordable housing requirements for additional building height</b>	
<p>(1) This section applies to development that includes residential development to which this division applies if the development—</p> <p>(a) includes residential flat buildings or shop top housing, and</p> <p>(b) does not use the additional floor space ratio permitted under section 16.</p>	<p><b>Complies</b></p> <p>(a) The proposal includes residential flat buildings and does not use the additional FSR under section 16.</p>
<p>(2) The maximum building height for a building used for residential flat buildings or shop top housing is the maximum permissible building height for the development on the land plus an additional building height of up to 30%, based on a minimum affordable housing component calculated in accordance with subsection (3)</p>	<p><b>Complies</b></p> <p>The maximum building height for the site is 12m under SEPP (Precincts – Western Parkland City) 2021.</p> <p>The additional building height permitted based on the calculation below is 3.6m.</p>
<p>(3) The minimum affordable housing component, which must be at least 10%, is calculated as follows—</p> $\text{affordable housing component} = \frac{\text{additional building height}}{2} \div 2$ <p style="text-align: center;">(as a percentage)</p>	<p><b>Non-Compliance</b></p> <p>The maximum permissible building height is 12m.</p> <p>The application proposes a 15% affordable housing component which permits up to a 30% percentage increase to the maximum building height.</p> <p>A 30% increase permits a building height of up to 15.6m. Council has measured the maximum proposed building height as <b>17.7m</b>.</p> <p>As the proposal exceeds the increased height limit by 2.1m. A Section 4.6 Variation request has been submitted to support this variation.</p>

Please refer to the SWCPP Assessment Report for detail.

**19 Non-discretionary development standards—the Act, s 4.15**

(1) The object of this section is to identify development standards for particular matters relating to residential development under this division that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

**Noted**

(2) The following are non-discretionary development standards in relation to the residential development to which this division applies—

**Complies**

- (a) a minimum site area of 450m<sup>2</sup>,
- (b) a minimum landscaped area that is the lesser of—
  - (i) 35m<sup>2</sup> per dwelling, or
  - (ii) 30% of the site area,

*landscaped area means the part of the site area not occupied by a building and includes a part used or intended to be used for a rainwater tank, swimming pool or open-air recreation facility, but does not include a part used or intended to be used for a driveway or parking area.*

- (a) The total site area is 11,027m<sup>2</sup>
- (b) The total landscaped area to be approximately 3,376m<sup>2</sup> (30.6%).
- (c) Refer to ADG item 3E below. 2,011m<sup>2</sup> (18.2%) deep soil has been provided, and is predominantly distributed along the boundaries of the site.
- (d) Refer to ADG item 3D and 4A below. 147 of the 191 (77%) units receive direct solar access for two (2) hours between 9am and 3pm at mid-winter.

(e)

Affordable Housing Component		
Number of Bedrooms	Number of Units	Parking Spaces Required
1-Bed	0	0
2-Bed	26	13
3-Bed	4	4
Total required:		17

(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,

(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,

(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

(f)

Non-Affordable Housing		
Number of Bedrooms	Number of Units	Parking Spaces Required
1-Bed	14	7
2-Bed	92	92
3-Bed	51	76.5
4-Bed	4	6
Total required:		182

The combined total number of parking spaces required is 199.

A total of 242 residential car parking spaces (excluding the childcare centre component) has been provided.

<p>not used for affordable housing—</p> <p>(i) for each dwelling containing 1 bedroom—at least 0.5 parking spaces,</p> <p>(ii) for each dwelling containing 2 bedrooms—at least 1 parking space,</p> <p>(iii) for each dwelling containing at least 3 bedrooms—at least 1.5 parking spaces,</p> <p>(g) the minimum internal area, if any, specified in the Apartment Design Guide for the type of residential development,</p> <p>(h) for development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces)—the minimum floor area specified in the Low Rise Housing Diversity Design Guide,</p> <p>(i) if paragraphs (g) and (h) do not apply, the following minimum floor areas—</p> <p>(i) for each dwelling containing 1 bedroom—65m<sup>2</sup>,</p> <p>(ii) for each dwelling containing 2 bedrooms—90m<sup>2</sup>,</p> <p>(iii) for each dwelling containing at least 3 bedrooms—115m<sup>2</sup> plus 12m<sup>2</sup> for each bedroom in addition to 3 bedrooms.</p>	<p>(g) Refer to ADG item 4D below. The minimum internal areas specified in the ADG has been adhered to.</p> <p>(h) N/A</p> <p>(i) N/A</p>
<p>(3) Subsection (2)(c) and (d) do not apply to development to which Chapter 4 applies.</p>	<p><b>Noted</b></p>
<p><b>20 Design requirements</b></p>	
<p>(1) Development consent must not be granted to development for the purposes of dual occupancies, manor houses or multi dwelling housing (terraces) under this division unless the consent authority has considered the Low Rise Housing Diversity Design Guide, to the extent to which the guide is not inconsistent with this policy.</p>	<p><b>N/A</b></p>
<p>(2) Subsection (1) does not apply to development to which Chapter 4 applies.</p>	<p><b>Noted</b></p>
<p>(3) Development consent must not be granted to development under this division unless the consent authority has considered whether the design of the residential development is compatible with—</p> <p>(a) the desirable elements of the character of the local area, or</p> <p>(b) for precincts undergoing transition—the desired</p>	<p><b>Complies</b></p> <p>The amended design remains compatible with the desirable elements for a precinct undergoing transition by reinforcing the emerging pattern of medium density residential development while delivering additional public benefit. The proposal builds upon the existing approved built form, which</p>

future character of the precinct.	has already demonstrated consistency with the desired future character, and introduces a modest increase in height and dwelling yield that is appropriate given the approved townhouse developments on adjoining sites. The inclusion of affordable housing strengthens the social and housing outcomes for the precinct, supporting its planned transition from rural residential uses to a more urban residential environment.
<b>21 Must be used for affordable housing for at least 15 years</b>	
(1) 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—  (a) the development will include the affordable housing component required for the development under section 16, 17 or 18, and  (b) the affordable housing component will be managed by a registered community housing provider.	<b>Complies with Condition</b>  A condition of consent would be imposed to ensure compliance if consent were granted.  An endorsement letter has been provided by Cubic Real Estate, a registered Community Housing Provider.
(2) This section does not apply to development carried out by or on behalf of the Aboriginal Housing Office or the Land and Housing Corporation.	<b>N/A</b>
<b>22 Subdivision permitted with consent</b>	
Land on which development has been carried out under this division may be subdivided with development consent.	<b>N/A</b>

(i) Chapter 4 – Design of Residential Apartment Development

The proposal in part seeks approval for the construction of a 5-storey residential flat building. The provisions of Chapter 4, of the SEPP (Housing) applies to the proposed development, as it has a height greater than 3 storeys and contains more than 4 residential apartments.

The requirements of Chapter 4 are as follows:

<b>Clause</b>	<b>Requirement</b>	<b>Comment</b>
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	<b>Complies</b> The application has been referred to the Liverpool Design Excellence Panel, who were supportive of the proposal. Refer to <b>Attachment B – Tables of Compliance</b> for a

	the quality of the design of the development.	comprehensive assessment of the DEP minutes.
147 – Determination of development applications and modification applications for residential apartment development	<p>Development consent must not be granted to residential apartment development unless the consent authority has considered the following—</p> <p>(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,</p> <p>(b) the Apartment Design Guide,</p> <p>(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.</p>	<p><b>Considered</b></p> <p>(a) The development has been evaluated in accordance with the design principles in Schedule 9. Refer to <b>Attachment B – Tables of Compliance.</b></p> <p>(b) The Apartment Design Guide has been considered in the assessment of the application. Refer to <b>Attachment B – Tables of Compliance.</b></p> <p>(c) As detailed above, the LDEP were supportive of the proposal and their advice has been considered in the assessment of the application.</p>
148 – Non-discretionary development standards for residential apartment development	<p>(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,</p> <p>(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,</p> <p>(c) the ceiling heights for the building must be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.</p>	<p><b>Complies</b></p> <p>(a) The proposal meets the minimum parking specified in Part 3J.</p> <p>(b) The proposal meets the minimum internal area for each apartment specified in Part 4D.</p> <p>(c) The proposal meets the minimum ceiling heights specified in Part 4C.</p> <p><i>Refer to Attachment B – Tables of Compliance for a comprehensive review of the ADG controls.</i></p>
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	<p><b>Noted</b></p> <p><i>Refer to Attachment B – Tables of Compliance for a comprehensive review of the ADG controls.</i></p>

	<p>also specifies a requirement, standard or control in relation to the same matter—</p> <p>(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.</p>	
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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 B – Tables of Compliance**; the below is a summary of non-compliances and/or areas of concern that have been addressed throughout the assessment process.

**3F Visual Privacy**

Adequate building separation is required to achieve visual privacy. The ADG provides clear Design Criteria on the minimum required separation distances:

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

It is noted that under the original court-approved consent (DA-1092/2017) a number of variations were approved. While the subject application is non-compliant with the minimum separation criteria it remains largely consistent with, or improved upon, that of the original approval. The main differences are listed below:

Building A		
Level	ADG Requirement	Min Provided
Ground Floor to Level 3	-6m (Habitable) -3m (Non-Habitable)	<p><u>North:</u> 9.1m (9m court approved) 3.4m (3.4m court approved)</p> <p><u>East:</u> <b>5.1m to balcony</b> 7.1m to unit (Court approved: 5.2m to balcony, 6m to unit)</p> <p><u>South:</u></p>

		<p>5.4m to balcony 7.2m to unit (Court approved 5.3m to balcony, 6.1m to unit)</p> <p><u>West:</u> <b>5.1m to balcony</b> 7m to unit (Court approved L2: 5.3m to balcony, 6m to unit)</p> <p><u>Internal:</u> 12.9m (12m ADG required)</p>
Level 4	-9m (Habitable) -4.5m (Non-Habitable)	<p><u>North:</u> 9m (9m court approved) 3.4m (3.4m court approved)</p> <p><u>East:</u> 6m to balcony 7.1m to unit (Court approved L3: 6m to bay window, 7m to unit)</p> <p><u>South:</u> 6.5m to balcony 7.2m to unit (Court approved L3: 6.1m to bay window, 7.2m to unit)</p> <p><u>West:</u> 6m to balcony <b>7m to unit</b> (Court approved L3: 6m to bay window, 7.1m to unit)</p> <p><u>Internal:</u> 16.5m (no windows) 18m to all other units (18m ADG required)</p>

<b>Building B</b>		
Level	ADG Requirement	Min Provided
Ground Floor to Level 3	-6m (Habitable) -3m (Non-Habitable)	<p><u>North:</u> 5m to balcony 6.2m to unit (Court Approved L2: 4.5m to balcony/unit)</p> <p><u>East:</u> 6.1m to balcony 7.1m to unit (Court approved L2: 6m to balcony/unit)</p> <p><u>South:</u> 18m to unit 17.2m to unit (12m ADG required)</p> <p><u>West:</u> 6m to balcony/unit (Court approved L2: 5.2m to balcony, 6m to unit)</p>

		<u>Internal:</u> 19.3m to balcony 20.8m to unit (12m ADG required)
Level 4	-9m (Habitable) -4.5m (Non-Habitable)	<u>North:</u> 5.2m to balcony 6.2m to unit (Court Approved L2: 4.5m to balcony/unit)  <u>East:</u> 6.1m to balcony 7.1m to unit (Court approved L3: 6m to bay window, 6.7m to unit)  <u>South:</u> 18m to unit <b>17.3m to unit (inc habitable window)</b> (18m ADG required)  <u>West:</u> 9m to balcony/unit (Court approved L2 5.2m to balcony, 6m to unit)  <u>Internal:</u> 20.8m to balcony 22.8m to unit (18m ADG required)

Building C		
Level	ADG Requirement	Min Provided
Ground Floor to Level 3	-6m (Habitable) -3m (Non-Habitable)	<u>North:</u> 18m 17.2m (12m ADG required)  <u>East:</u> 5.3m to balcony 6.1m to unit (Court approved L2: 5.3m to balcony, 6.1m to unit)  <u>South:</u> 5.3m to balcony 6m to unit (Court approved L2: 5.6m to balcony, 6.4m to unit)  <u>West:</u> 5.3m to balcony 6m to unit (Court approved L2: 5.2m to balcony, 6m to unit)  <u>Internal:</u> 12.9m (12m ADG required)
Level 4	-9m (Habitable) -4.5m (Non-Habitable)	<u>North:</u> 18m <b>17.3m</b> (18m ADG required)

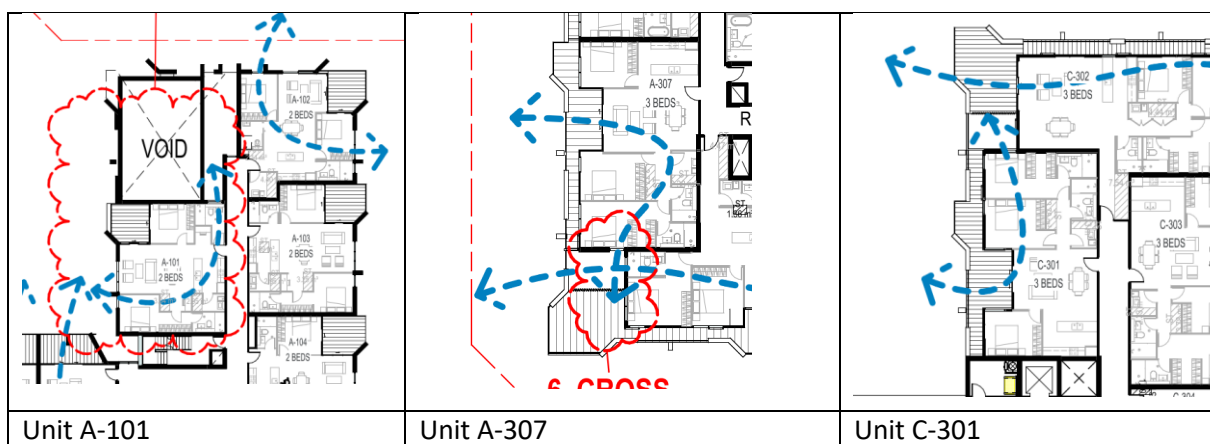
		<p><u>East:</u> 6.1m to balcony 7.1m to unit (Court approved L3: 6m to bay window, 7m to unit)</p> <p><u>South:</u> <b>6m to balcony</b> 7m to unit (Court approved L3: 6.4m to bay window, 7m to unit)</p> <p><u>West:</u> 9m to balcony/unit (Court approved L2: 5.2m to balcony, 6m to unit)</p> <p><u>Internal:</u> 20.8m to balcony 22.8m to unit (18m ADG required)</p>
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It is considered that the Court's original decision effectively means that the non-compliance was already assessed and accepted as reasonable in the site's context because strict compliance was impractical and the design still met the objectives of the control. The proposed amending development does not worsen the degree or nature of that non-compliance and as such is considered to be acceptable.

#### 4B Natural Ventilation

Following consultation with Council several adjustments have been made to increase the number of apartments that achieve cross ventilation. As illustrated on sheets A600 to A602 the applicant states that a total of 116 of the 191 units (61%) are capable of achieving natural cross ventilation.

However, there remains concerns surrounding units A-101, A-307, and C-301 adequately achieving through-air circulation.



Notwithstanding, the above is considered to meet the ADG requirements as:

- If A-101 is removed from building A's equation, the building still complies with over 60% cross ventilation,

- If C-301 and C-307 are removed from Building C's cross ventilation, then Building C no longer complies, at 57.9%,
- However, if all three buildings are combined then the development as a whole still achieves over 60%. This is considered acceptable.

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

The original development application was approved under *State Environmental Planning Policy (Infrastructure) 2007*. This was repealed in 2021 and replaced by SEPP (Transport and Infrastructure) 2021.

(i) Chapter 3 – Educational establishments and child care facilities

a. Education and Care Services National Regulations 2011

Pursuant to Clause 3.23 before determining a development application for development for the purpose of a centre-based child care facility, the consent authority must take into consideration any applicable provisions of the *Child Care Planning Guideline*, in relation to the proposed development.

In accordance with the Child Care Planning Guideline (CCPG) 2021, Chapter 4 of the *Education and Care Services National Regulations 2011* (the Regulations) are to be applied.

The proposal is considered to be generally consistent with the CCPG and the Regulations. A full assessment of the development against the requirements of CCPG and the Regulations is provided in **Attachment B – Tables of Compliance**. A summary of merit-based variations are listed below.

**i. Natural Light & Solar Access**

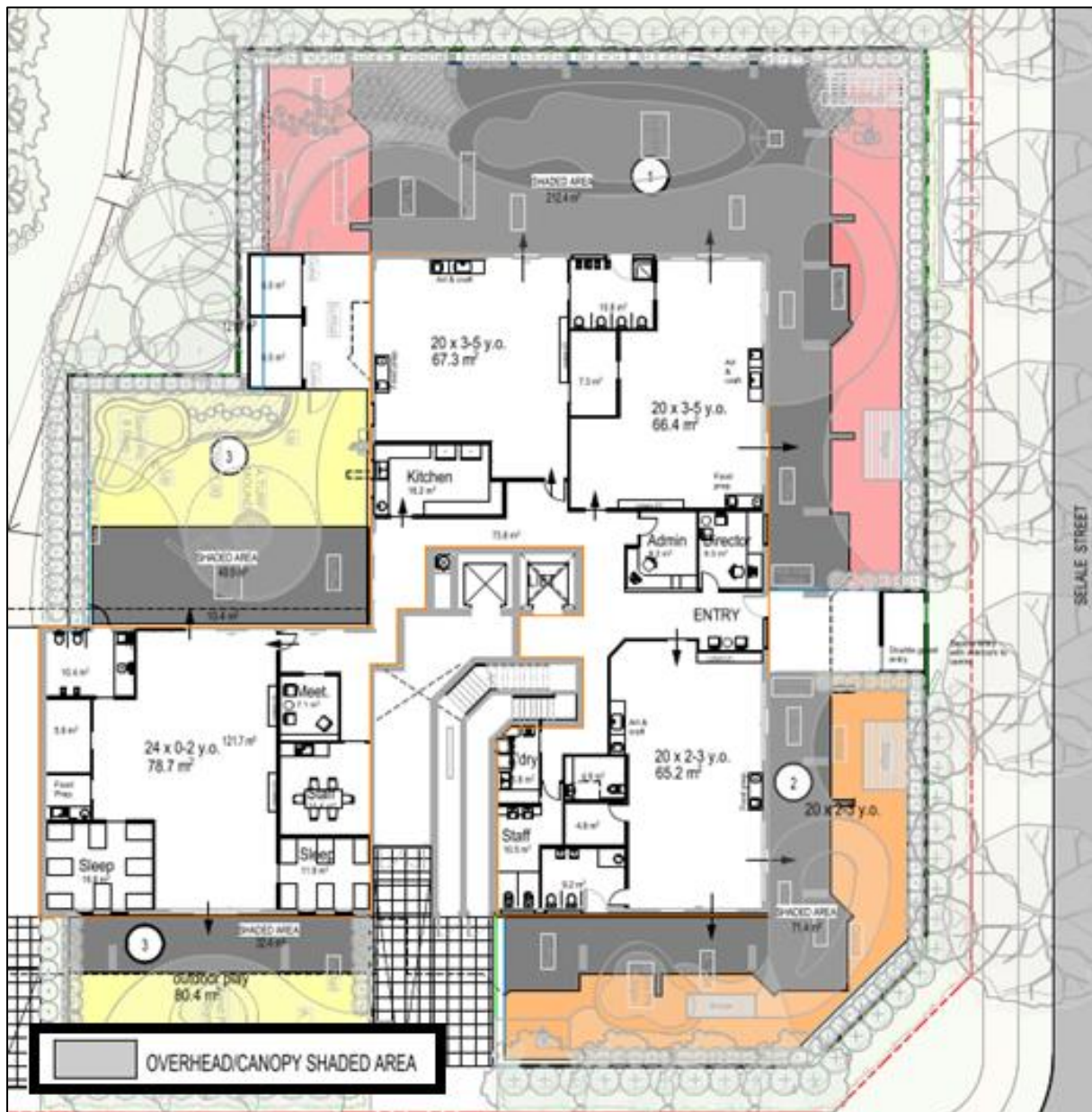
- Pursuant to *Regulation 110 Ventilation and Natural Light* indoor spaces must have adequate natural light.
- Pursuant *Regulation 114 Outdoor Space – Shade* outdoor play areas should have a minimum of 2 hours of solar access for at least 30% of the outdoor space.
- Pursuant to CCPG *Consideration C11* centres should Optimise solar access to internal and external play areas.

The proposal achieves adequate natural light to the outdoor play areas as illustrated on the amended solar access diagrams A405, A405a & A409, in which it is demonstrated that each outdoor space is capable of achieving solar access for a minimum of 2 hours to a minimum of 30% of the outdoor space.

The proposed childcare centre offers access to predominantly indirect natural light to the internal spaces via windows facing differing orientations. However, the Pre-School age (3-5) rooms receive little direct solar access.

The proposed childcare centre is located beneath an approved residential flat building, which inherently restricts access to direct sunlight and natural light penetration. Despite this physical limitation, the internal layout has been designed to maximise the available daylight through the use of multiple glazed openings facing differing orientations and artificial lighting. Given the constraints of the previously approved built form, full compliance with solar access

requirements is not feasible; however, the design achieves a reasonable level of natural light and ensures a safe, comfortable, and stimulating environment for children.



**Figure 10:** Childcare Centre shade diagram illustrating the location of the overhead canopy.

It is further noted that this issue was raised at the first Design Excellence Panel, in which the panel chair raised no objection to the level of solar access provided, noting some concessions may be required to facilitate and support additional housing supply in NSW.

## ii. Setbacks, Siting and fencing

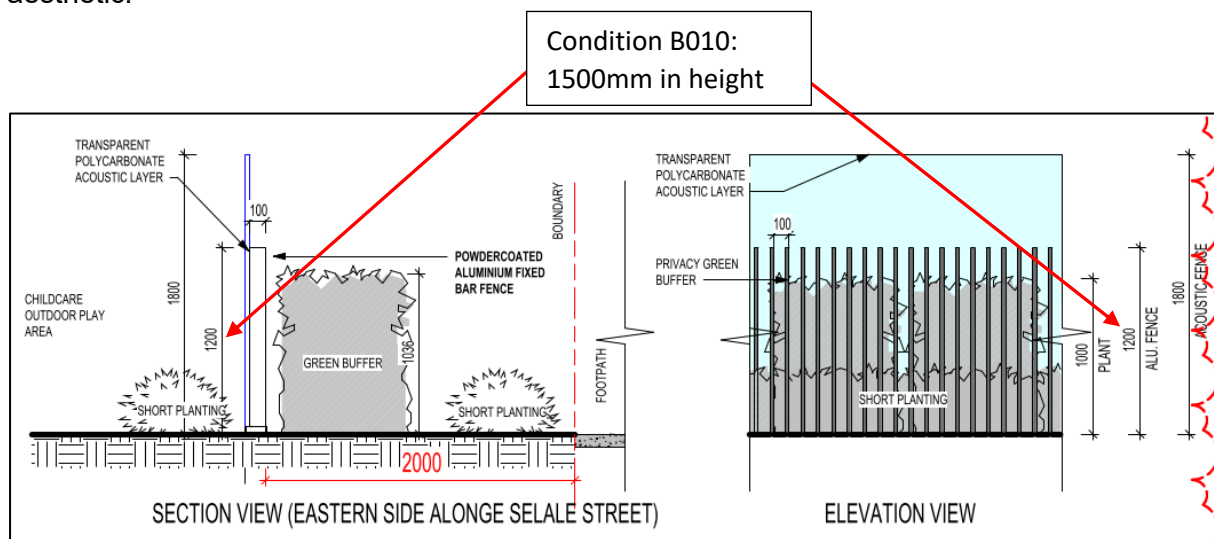
- Pursuant to *Regulation 104 Fencing* any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children cannot go through, over or under it.
- Pursuant to *CCPG Consideration C1* development must consider the setbacks and siting of building within the residential context.

- Pursuant to *CCPG Consideration C15* entry to the facility should be directly visible from the street frontage

The above regulations and considerations present somewhat competing intentions. For safety and acoustic reasons, a 1.8m fence is sought, however, this conflicts with streetscape and aesthetic objectives as the entire childcare centre is dominated by high fencing.

It is noted that this issue was raised at the Design Excellence Panel, in which the panel chair raised no objection to the proposed fencing. While Council considers this results in a less than ideal public domain interface, and one that Council would not typically accept a fence of more than 1.2m in height for any other typology, Council agrees that childcare centres must have a fence height of 1.8m high and be opaque, for child safety reasons.

For this reason, Council, in consultation with the applicant has proposed a condition requiring the external aluminium fence be raised to 1.5m as a compromise between privacy and aesthetic.



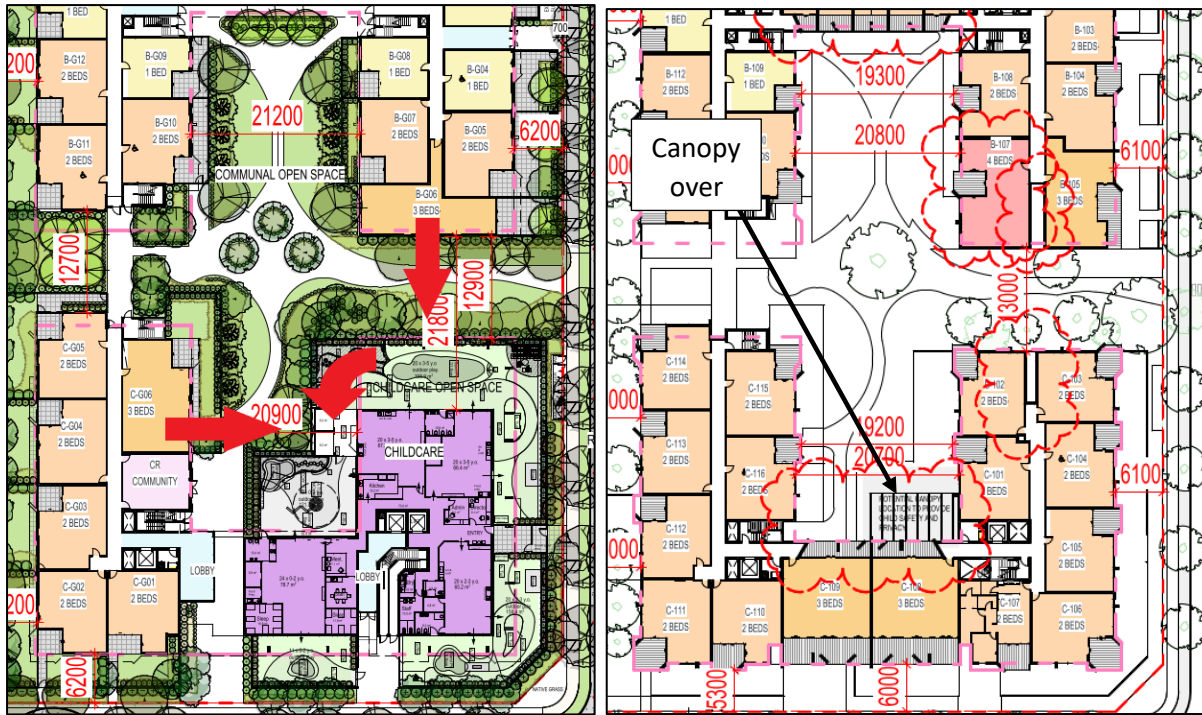
**Figure 11: Childcare Centre street-facing fence.**

Furthermore, the fence is visually integrated with landscaping to ensure the building, rather than the play area, defines the street edge.

### iii. Privacy & Overlooking

- Pursuant to *CCPG Consideration C1* development must consider the setbacks and sitting of building within the residential context.
- Pursuant to *CCPG Consideration C19* development must minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through appropriate site and building layout.

There are several overlooking concerns generated by the proposed development. Both the units to the west of Building C, the units to the north of Building B, and the units directly above in Building C face the outdoor play area.

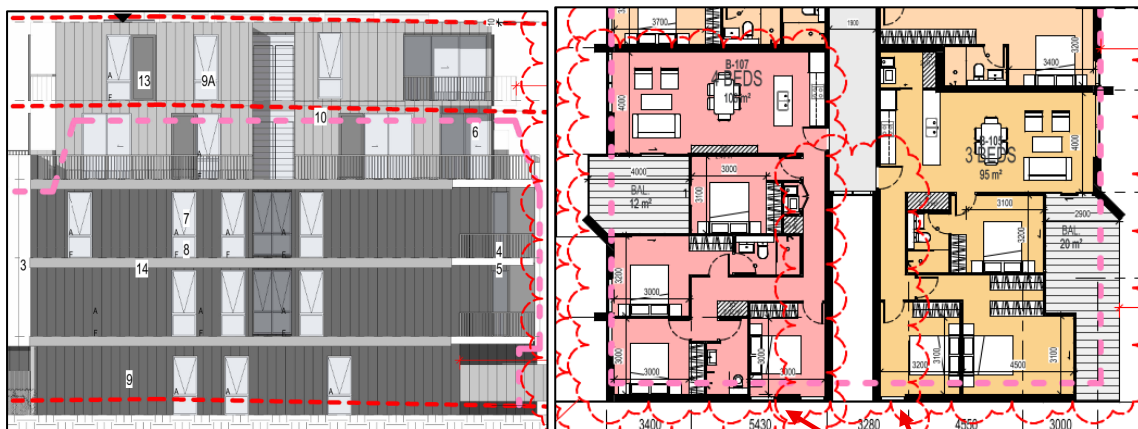


**Figure 10:** Left: Ground Floor Childcare Centre. Right: First Floor above.

Building overhangs, together with the provision of canopy trees within the play areas and along the childcare centre perimeter, as well as the use of shade sails, have been incorporated to minimise overlooking of the childcare play area.

Additional tree planting is also proposed along the northern and western boundaries of the childcare centre, as well as within the north-western corner of the outdoor play area. This enhanced landscaping improves visual separation and privacy for the childcare spaces and reduces overlooking from surrounding residential units.

While the first floor plan does illustrate a ‘canopy location to provide child safety and privacy’ this only protects a small portion of the outdoor play area. Additional privacy measures have been conditioned, including the addition of blade walls (or similar screening element) to the southern side of Building B overlooking the Childcare Centre.



**Figure 10:** Building B – South facing units overlooking the Childcare Centre. Bedrooms to incorporate blade wall for privacy.

Condition B010:  
Blade Walls

#### **iv. Driveway Access / Drop off and pick up zones**

- Pursuant to *CCPG Consideration C2* it must be ensured that there are suitable and safe drop off and pick up areas.
- Pursuant to *CCPG Consideration C36* drop off and pick up zones are to be close to the main entrance.

The basement car parking spaces are located near the lift lobby associated with the Childcare Centre component; however, the car park entry is located almost 200m away from the Centre entry on a separate laneway (Batak Lane) to the northern side of Building B. This poses concerns in terms of the utilisation of the provided drop-off and pick-up zones as patrons may be encouraged to park illegally along Hackney or Selale Street instead to save time.

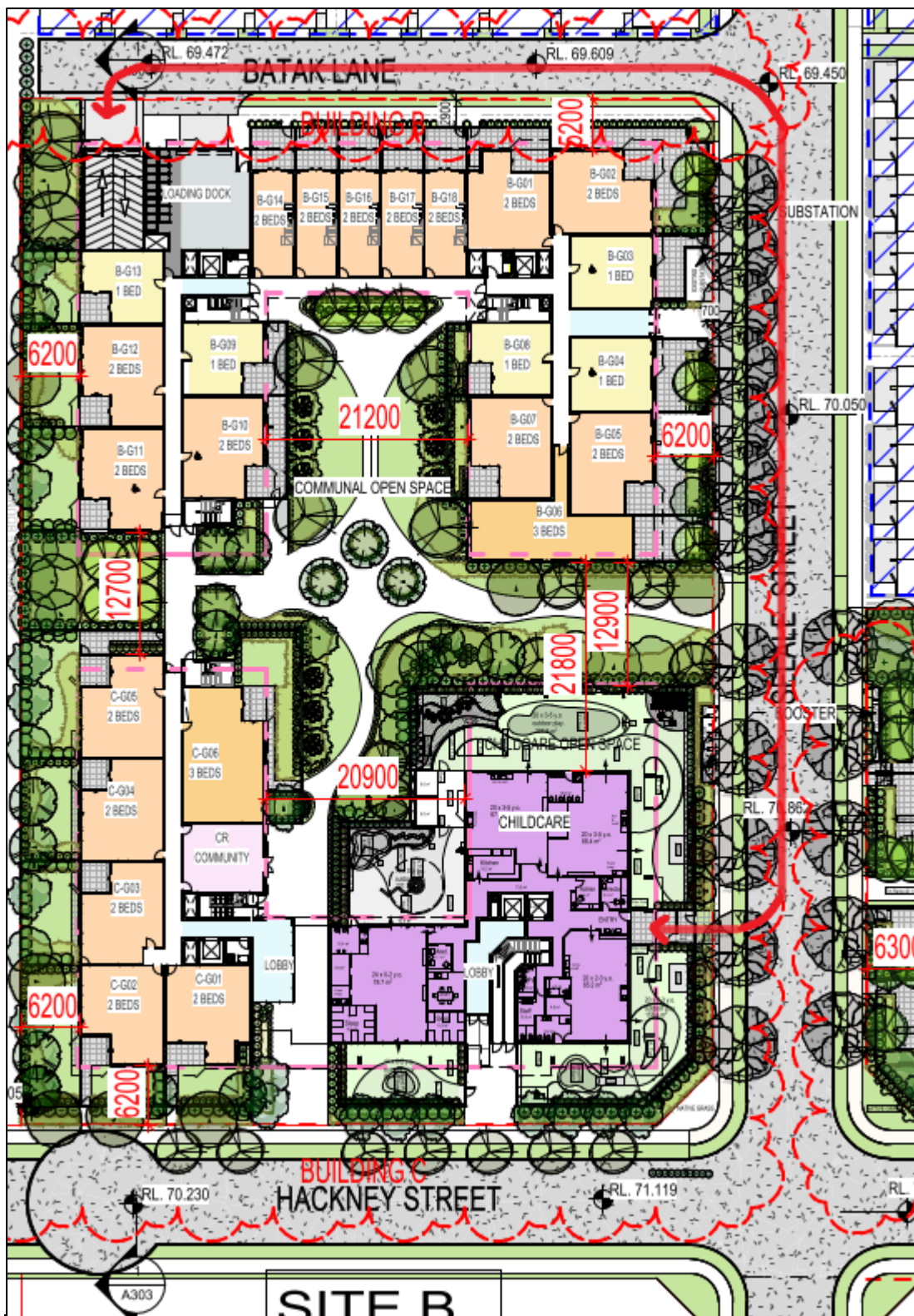


Figure 10: Distance from Basement car park entry to Childcare Centre >200m.

The provided Traffic Response Letter notes that “it is not possible to achieve both, that is, provide parking near the vehicle access and near the lifts. On this basis, to minimise the likelihood of people parking on Hackney or Seale Street, the centre operator will provide an information guide/letter for all parents and guardians, which details on how to get to the site,

where the entrance is located and where to park.” The proposed information guide would form part of an amended Plan of Management required by a condition of consent.

### ***State Environmental Planning Policy (Precincts – Western Parkland City) 2021***

The original development application was approved under *State Environmental Planning Policy (Sydney Region Growth Centres) 2006*. This was repealed in 2021 and replaced by *State Environmental Planning Policy (Precincts – Western Parkland City) 2021*.

Pursuant to Appendix 4 Liverpool Growth Centres Precinct Plan (the Precinct Plan) of SEPP (Precincts – Western Parkland City) 2021 the aims of the Precinct Plan include the following:

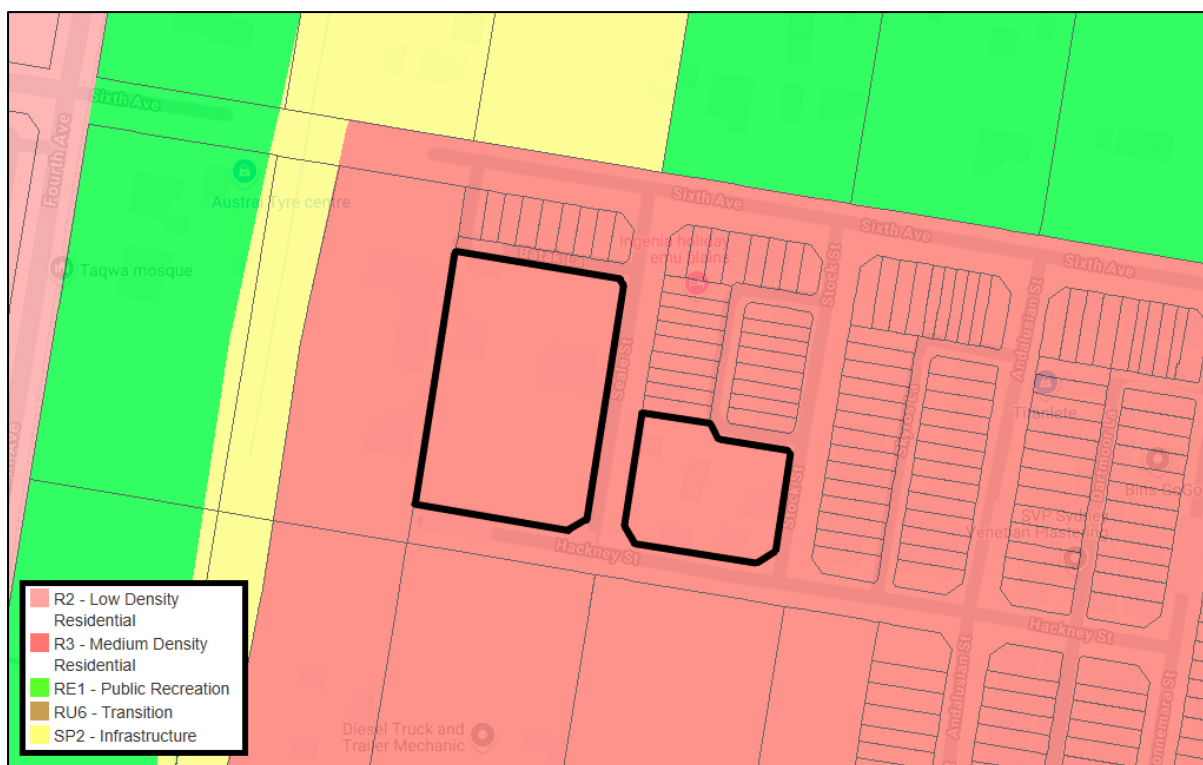
- (a) to make development controls that will ensure the creation of quality environments and good design outcomes,*
- (b) to protect and enhance environmentally sensitive natural areas and cultural heritage,*
- (c) to provide for recreational opportunities,*
- (d) to provide for multifunctional and innovative development that encourages employment and economic growth,*
- (e) to promote housing choice and affordability,*
- (f) to provide for sustainable development,*
- (g) to promote pedestrian and vehicle connectivity.*

The proposal is consistent with these aims as the proposal:

The proposed amendments are consistent with the aims of the Precinct Plan as they support the creation of a high-quality development that contributes to a sustainable community. The inclusion of an additional level and a childcare centre enhances housing choice and local amenity, while increasing residential density in proximity to services promotes affordability and efficient land use. Furthermore, by integrating community-serving uses such as childcare, the development aligns with the Precinct Plan’s objectives for economic growth and quality urban outcomes.

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

The site is located within the R3 – Medium Density Residential zone pursuant to Appendix 4 Liverpool Growth Centres Precinct Plan, Clause 2.2.



**Figure 16: Zoning map**

The proposal satisfies the definitions of “residential flat building” and “centre-based child care” which are permissible uses with consent in the Land Use Table in Clause 2.3.

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

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To support the well-being of the community by enabling educational, recreational, community, religious and other activities where compatible with the amenity of a medium density residential environment.*

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

- The proposal increases housing supply through 83 additional dwellings, helping meet the community’s medium-density housing needs.
- The inclusion of varied apartment layouts, including affordable housing units, across an additional level promoting housing diversity within the development.
- The proposed childcare centre provides a convenient day-to-day service for residents and the surrounding community.
- The childcare centre supports family needs and community interaction, contributing positively to social well-being within a residential setting.

*Principal development standards, Miscellaneous provisions and Additional local provisions (Part 4, 5 and 6)*

The controls relevant to the proposal are considered in **Table 6** below. The proposal does not comply with the development standard/s in Part 4.3 of Appendix 4 Liverpool Growth Centres Precinct Plan and accordingly, a Clause 4.6 request has been provided with the application for the exceedance of the minimum building separation.

**Table 6: Consideration of the LEP Controls**

Clause	Provision	Proposed
<b>Part 4 Principal development standards</b>		
<b>4.1 Minimum subdivision lot size</b>	The site is not identified as having a minimum lot size requirement within the South West Growth Centre Lot Size Map 07.	<b>N/A</b>
<b>4.1B Residential Density</b>	<p>The density of any residential development to which this section applies is <u>not to be less than</u> the density shown on the Residential Density Map in relation to that land.</p> <p>The site is subject to a minimum dwelling density of 25dw/ha</p>	<p><b>Complies</b></p> <p>Minimum residential density of 25 dwellings (per hectare).</p> <p><u>Site Area (RFB component only): 1.1027 ha (11,027m<sup>2</sup>)</u></p> <p><u>Dwellings (RFB component only): 191 units</u></p> <p>Given that the land has a minimum density of 25dw/Ha, the development is required to provide a 61 dwellings.</p> <p>The proposed development includes 191 dwellings, representing a dwelling density of <b>211</b> dw/ha.</p>
	<p><b>Note 1*</b>  <i>While the originally approved development (DA-1092/2017) includes both RFB's and townhouses, the subject Amending DA relates specifically to the RFB component.</i></p> <p>Notwithstanding, if Stage 1 was to be included (33 townhouses) the proposal would continue to comply with the minimum density requirement:</p> <p><u>Site Area (inc Stage 1 and half road construction): 2.4311 ha (24,311m<sup>2</sup>)</u></p> <p><u>Dwellings (inc Stage 1 as modified): 224 dwellings in total</u></p> <p>Given that the land has a minimum density of 25dw/Ha, the development including Stage 1 would be required to provide a 68 dwellings.</p>	

	Including Stage 1 the proposed development includes 224 dwellings, representing a dwelling density of <b>92</b> dw/ha.													
<b>4.3 Height of Buildings</b>	Maximum height of buildings is 12m.	<p><b>Non-Compliance</b></p> <p>Maximum height limit of 12m.</p> <p>The maximum proposed building height is approximately <b>17.7m</b></p> <p>A breakdown of the maximum height by building is detailed below:</p> <table border="1"> <thead> <tr> <th><b>Building A (west tower)</b></th> <th><b>Building A (east tower)</b></th> </tr> </thead> <tbody> <tr> <td>Roof Height: 16.92m Lift Overrun Height: <b>17.70m</b></td> <td>Roof Height: 16.20m Lift Overrun Height: 17.11m</td> </tr> <tr> <th><b>Building B (west tower)</b></th> <th><b>Building B (east tower)</b></th> </tr> <tr> <td>Roof Height: 16.25m Lift Overrun Height: 17.58m</td> <td>Roof Height: 16.10m Lift Overrun Height: 17.48m</td> </tr> <tr> <th><b>Building C (west tower)</b></th> <th><b>Building C (east tower)</b></th> </tr> <tr> <td>Roof Height: 16.2m Lift Overrun Height: 17.61m</td> <td>Roof Height: 16.10m Lift Overrun Height: 17.18m</td> </tr> </tbody> </table>	<b>Building A (west tower)</b>	<b>Building A (east tower)</b>	Roof Height: 16.92m Lift Overrun Height: <b>17.70m</b>	Roof Height: 16.20m Lift Overrun Height: 17.11m	<b>Building B (west tower)</b>	<b>Building B (east tower)</b>	Roof Height: 16.25m Lift Overrun Height: 17.58m	Roof Height: 16.10m Lift Overrun Height: 17.48m	<b>Building C (west tower)</b>	<b>Building C (east tower)</b>	Roof Height: 16.2m Lift Overrun Height: 17.61m	Roof Height: 16.10m Lift Overrun Height: 17.18m
<b>Building A (west tower)</b>	<b>Building A (east tower)</b>													
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Roof Height: 16.25m Lift Overrun Height: 17.58m	Roof Height: 16.10m Lift Overrun Height: 17.48m													
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Roof Height: 16.2m Lift Overrun Height: 17.61m	Roof Height: 16.10m Lift Overrun Height: 17.18m													
<b>4.6 Exceptions to Development Standards</b>	To allow an appropriate degree of flexibility in applying certain development standards.	<p><b>Considered Acceptable</b></p> <p>The proposal seeks to vary Section 4.3 Building Height. A 4.6 Exception to development standards variation request has been provided.</p> <p>It is noted that a Clause 4.6 Variation was accepted under DA-1092/2017 allowing the proposal to exceed the 12m height limit by approximately 1.5m given that it is a Greenfield site that is entirely undeveloped without any material site constraints to affect the design and construction to fully comply.</p> <p>As noted above, under affordable housing provision 18(2) of SEPP (Housing) a maximum building height of 15.6m is permitted. The proposed maximum building height of 17.7m equates to a 2.1m breach, or 13.46% variation. It is considered that the proposed variation aligns with the broader planning objectives of the Precinct Plan, Housing SEPP and the Apartment Design Guide (ADG), particularly with respect to</p>												

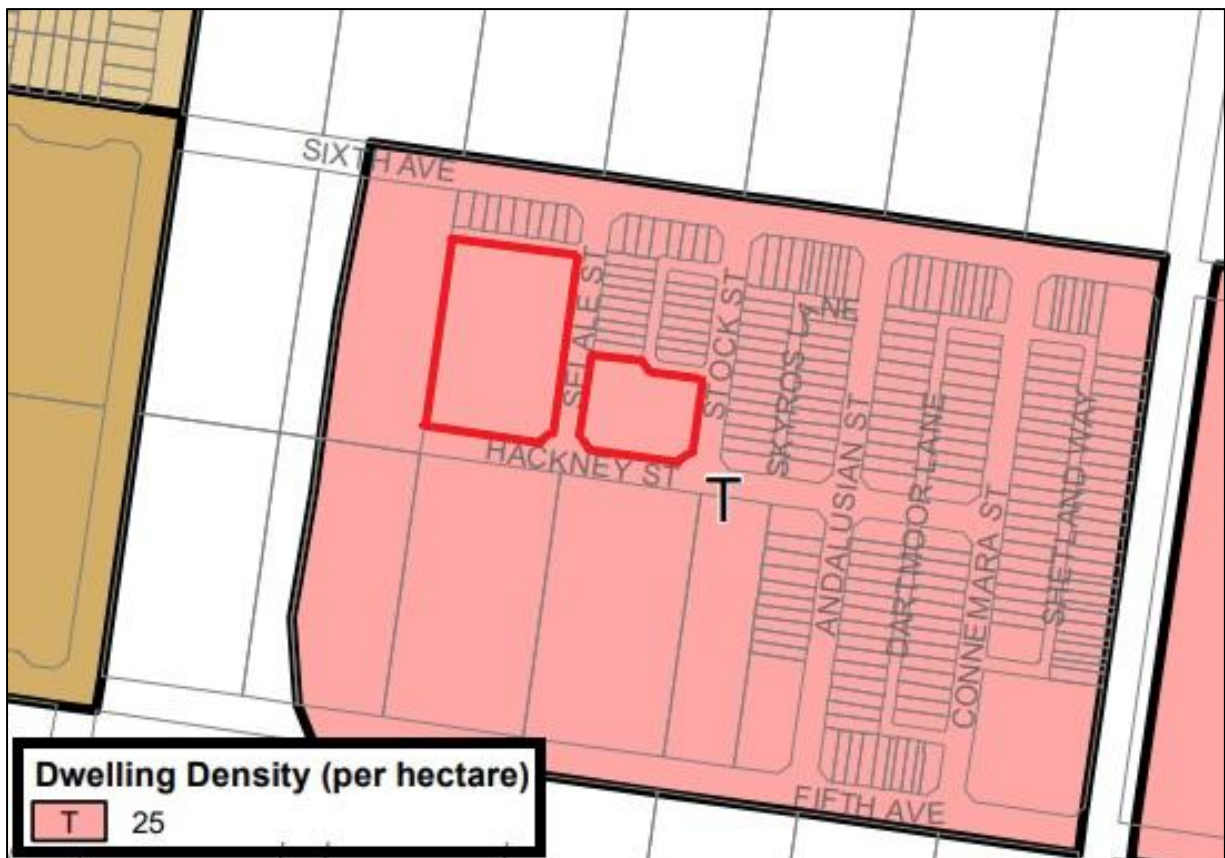
		<p>urban densification and efficient land use in the locality.</p> <p><b>Please refer to the main report for further detail*</b></p>
<b>Part 5 Miscellaneous provisions</b>		
<b>5.1 Relevant Acquisition Authority</b>	Land to be acquired as identified on the Land Reservation Acquisition Map	<p><b>N/A</b></p> <p>No land acquisition is mapped over the subject site.</p>
<b>5.9 Preservation of trees and vegetation</b>	The objective of this section is to preserve the amenity of the area through the preservation of trees and other vegetation.	<p><b>Complies</b></p> <p>Site clearing has been approved under DA-1092/2017.</p>
<b>5.10 Heritage conservation</b>	Conservation of environmental heritage and consent requirements	<p><b>Complies</b></p> <p>No aboriginal sites or areas of archaeological potential were identified within the subject site.</p> <p>The Project Area has been subject to extensive disturbance associated with previous construction and is therefore considered to be of low Aboriginal archaeological potential.</p>
<b>Part 6 Additional local provisions</b>		
<b>6.1 Public Utility Infrastructure</b>	The consent authority must not grant development consent to development on land to which this Precinct Plan applies unless it is satisfied that any public utility infrastructure (supply of water, electricity and disposal/management of sewage) that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when required	<p><b>Complies with Condition</b></p> <p>The capacity for the site to be adequately serviced by water, sewer, electricity and telecommunication services has been established under approved DA-1092/2017.</p> <p>Any further requirements of the utility providers would be made as conditions of consent. All remaining infrastructure would be conditioned to comply with the relevant energy providers.</p>
<b>6.3 Development Controls –</b>	The consent authority must not grant development consent to	<b>Complies</b>

<p><b>Existing Native Vegetation</b></p>	<p>development on land to which this clause applies unless it is satisfied that the proposed development will not result in the clearing of any existing native vegetation (within the meaning of the relevant biodiversity measures under Part 7 of Schedule 7 to the Threatened Species Conservation Act 1995)</p>	<p>Site clearing has been approved under DA-1092/2017.</p>
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The proposal is considered to be generally consistent with Appendix 4 of SEPP (Precincts – Western Parkland City) 2021. A full assessment of the development against the requirements of the Appendix 4 is provided in **Attachment B – Tables of Compliance**; merit-based variations are detailed below.

**i. Residential Density**

Pursuant to Clause 4.1B Residential Density the density of any residential development to which this section applies is not to be less than the density shown on the Residential Density Map in relation to that land. The site is subject to a minimum dwelling density of 25dw/ha.



**Figure 17:** Excerpt from South West Growth Centre Residential Density Map (RDN\_007).

*Density Calculations*

Site Area (RFB component only): 1.1027 ha (11,027m<sup>2</sup>)

Site Area (inc Stage 1 townhouses): 2.4311 ha (24,311m<sup>2</sup>)

Minimum required Dwellings at 25dw/Ha (RFB component only): 28 units

Minimum required Dwellings at 25dw/Ha (inc Stage 1 townhouses): 61 dwellings total

Approved Dwellings DA-1072/2017 (RFB component only): 113 units (103 dw/Ha)

Approved Dwellings DA-1072/2017 (inc Stage 1 townhouses): 146 dwellings in total (61 dw/Ha)

**Proposed Dwellings (RFB component only): 191 units (173 dw/Ha)**

**Proposed Dwellings (inc Stage 1 townhouses): 223 dwellings in total (92 dw/Ha)**

The subject amending development application applies strictly to the RFB component, as such the proposed dwelling density is 173 dw/Ha. Although this is a significant increase from the minimum 25 dw/Ha (592% increase), and a significant increase from the 103 dw/Ha approved under DA-1072/2017 (68% increase) it is noted that this Clause prescribes a minimum value, rather than a maximum density, and as such the proposal complies with the density control.

The proposal aligns with the objectives of the density standard by delivering additional housing in a planned growth area, consistent with the intended urban character and supported by an appropriate built form, height, and design that maintain residential amenity and environmental quality

## **ii. Clause 4.6 Request**

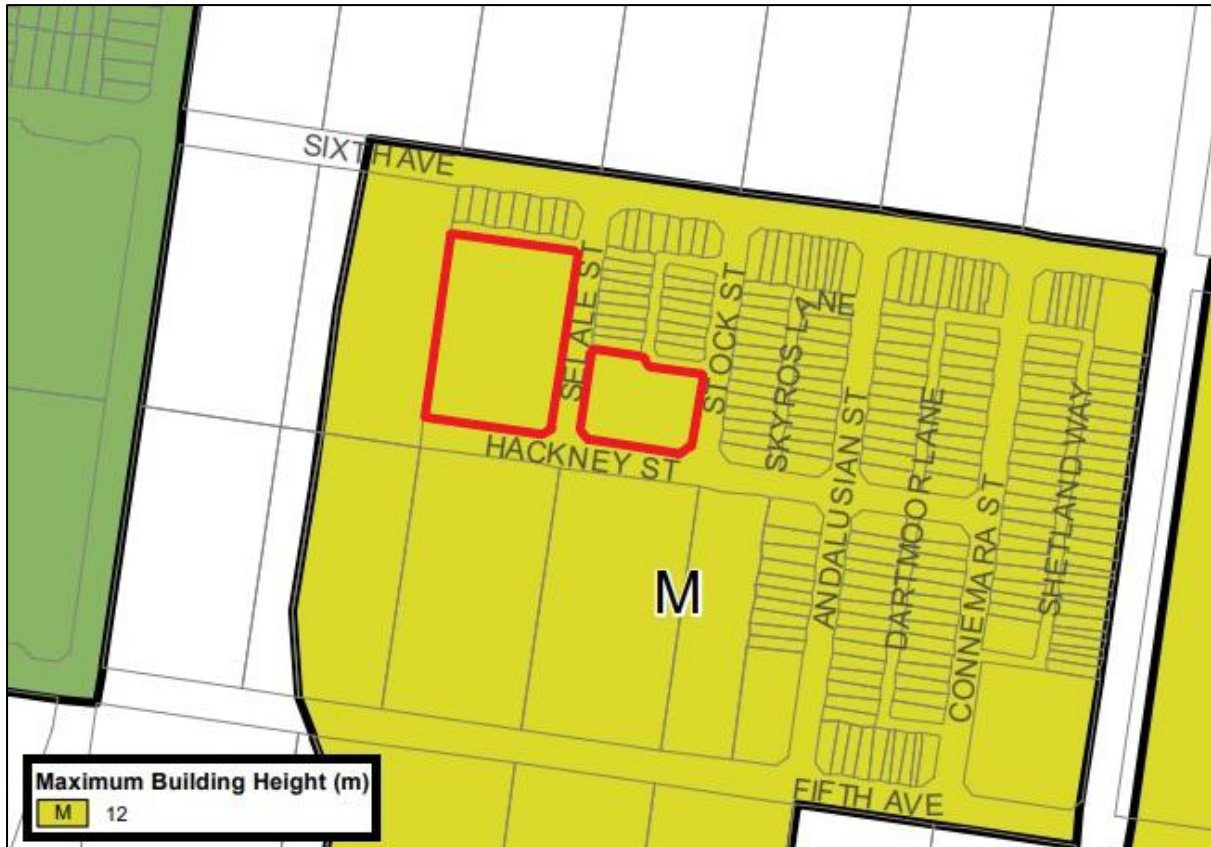
*The Development Standard to be varied and extent of the variation*

The development standard to be varied is Clause 4.3 Height of Buildings of Appendix 4 Liverpool Growth Centres Precinct Plan, which reads as follows:

### **4.3 Height of buildings**

- (1) *The objectives of this section are as follows—*
  - (a) *to establish the maximum height of buildings,*
  - (b) *to minimise visual impact and protect the amenity of adjoining development and land in terms of solar access to buildings and open space,*
  - (c) *to facilitate higher density development in and around commercial centres and major transport routes.*
  
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The Height of Buildings map applicable to Section 4.3 of Appendix 4 Liverpool Growth Centres Precinct Plan prescribes a maximum height of 12m



**Figure 17:** Excerpt from South West Growth Centre Height of Buildings Map (HOB\_007).

#### *Affordable Housing Height Bonus*

The provisions of SEPP (Housing) 2021; Chapter 2 Affordable Housing; Division 1 In-fill affordable housing, Clause 18 allows for up to a 30% additional height bonus above the local planning Development Standard, subject to the provision of 15% affordable housing component. As detailed in Table 6 above, the proposed development satisfies the requirement by providing 15% affordable housing so is eligible to receive the additional 30% height bonus making the maximum height allowable **15.6m**.

#### *Proposed Height Exceedance*

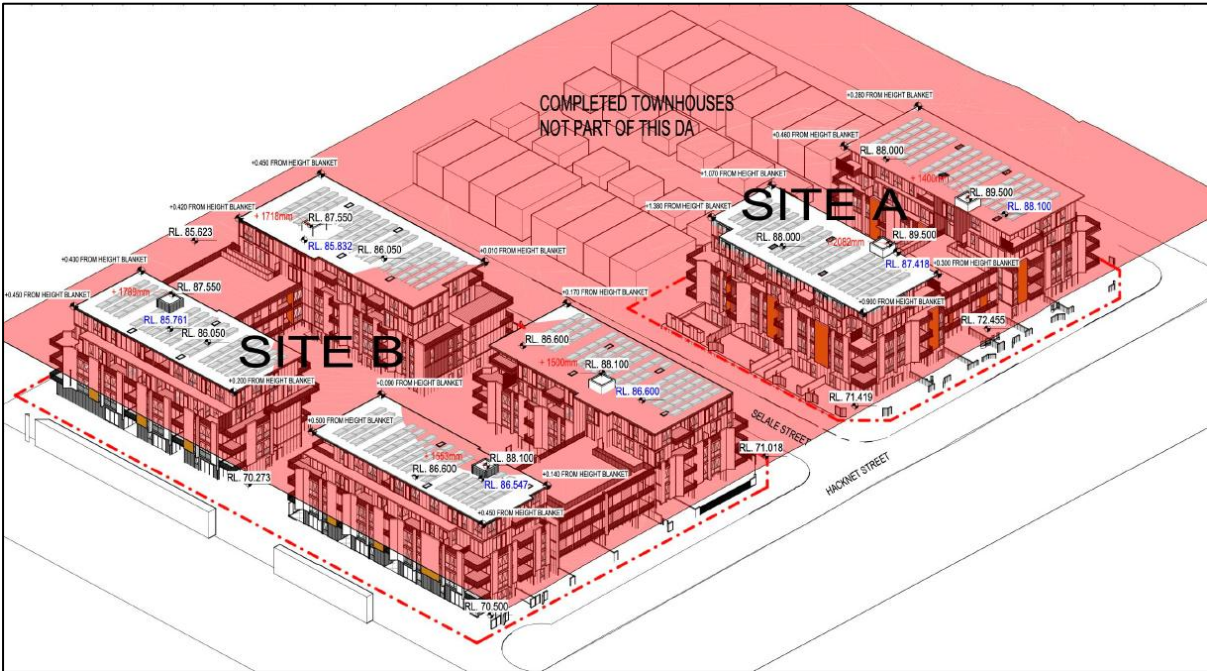
Council has calculated the maximum proposed building height to be approximately **17.70m**. This equates to:

- A 5.70m height exceedance (or 47.5% variation) from the maximum height limit prescribed under Section 4.3 of Appendix 4 Liverpool Growth Centres Precinct Plan.
- A **2.10m height exceedance (or 13.46% variation)** from the maximum height limit with the additional height bonus afforded under Clause 18 of SEPP (Housing) 2021.

A breakdown of the maximum height by building is detailed below:

	Lift Overrun	Reduced Level	Height Above Ground Level (Existing)	Height Exceedance	% Exceedance
Building A	Lift 1 (East)	RL 89.5m	17m	1.4m	9%
	Lift 2 (West)	RL 89.5m	17.68m	2.08m	13.3%
Building B	Lift 1 (East)	RL 88.1m	17.1m	1.5m	9.6%
	Lift 2 (West)	RL 88.1m	17.15m	1.55m	9.9%
Building C	Lift 1 (East)	RL 87.55m	17.32m	1.72m	11%
	Lift 2 (West)	RL 87.55m	17.39m	1.79m	11.5%

**Figure 18:** Excerpt from submitted Clause 4.6 Document.



**Figure 19:** Height Plane Envelope at 15.6m.

**Preconditions to be satisfied**

Clause 4.6(3) of the Appendix 4 Liverpool Growth Centres Precinct Plan establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard is subject to conditions.

The preconditions include:

(3) *Development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant for development consent has demonstrated that—*

- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances, and*
- (b) *there are sufficient environmental planning grounds to justify the contravention of the development standard.*

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

(a) Compliance with the development standard is unreasonable or unnecessary in the circumstances

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

- *The elements exceeding the 15.6 metre height standard include the six (6) lift overruns, which are centrally located and are generally recessed from the building's edges. As a result, they are not readily visible from the public domain and do not contribute to additional bulk when viewed externally. The leading edge of the roof form of Building A is between 300 – 900mm above the prescribed maximum height standard.*

**Council Comment:**

Strict compliance with the building height control is unreasonable and unnecessary in this instance as it results in a suboptimal building form. As noted by the Design Excellence Panel (DEP):

*“The Panel has concerns that the 3100mm floor to floor is not adequate or in line with current industry practices and recommends all floor-to-floor heights be increased to 3.2m in response to the requirements of the Design & Building Practitioners Act.*

*There is a step in the form of Building A as a result of avoiding a breach of the height limit, creating a suboptimal functional and form design outcome. The Panel suggests the step is reconsidered and the height difference is averaged over the east and west to reduce noncompliance with height limit. This assumes that ground plane levels are able to satisfy DDA requirements. Should this not be possible the stepped form could be retained.”*

The applicant has accordingly reduced the step at ground floor resulting in a continuous roof level across the form of Building A, and the floor-to-floor levels have been increased by 100mm. While this has resulted in a further height breach, eliminating the step enables seamless movement of residents between the eastern and western lift cores on Site A, improving circulation efficiency and ensuring continued accessibility in the event of a lift outage





**Figure 21:** Building A: Amended in accordance with DEP recommendations.

- *When viewed from the intersection of Selale and Hackney Streets, the portion of the building that exceeds the height limit appears visually consistent with the compliant sections (at the corner of Selale Street and Hackney Street – Site B).*

**Council Comment:**

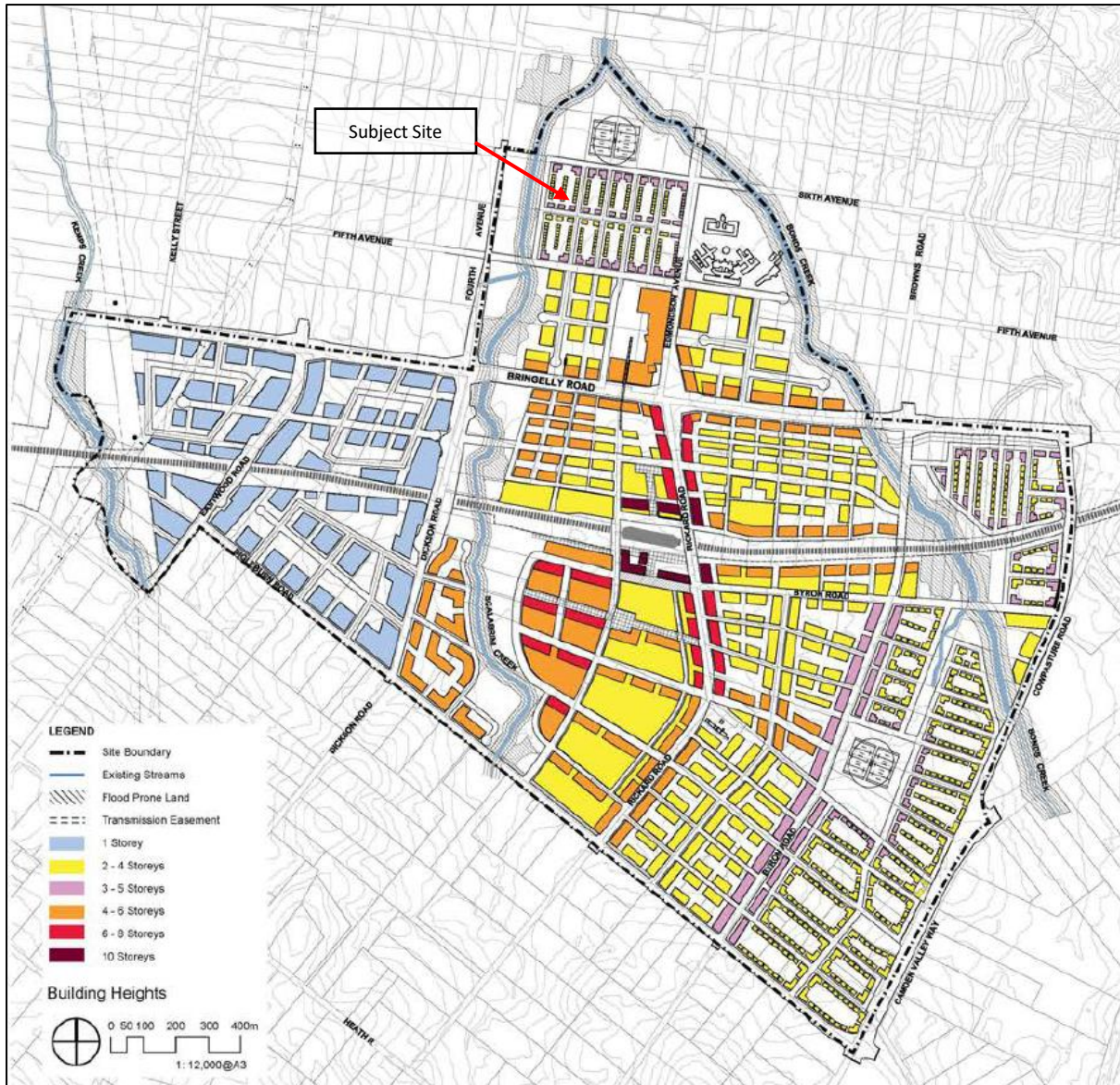
The greatest breach of the height control occurs at Building C; however, because of the site’s natural fall, the highest point in AHD terms is actually located at Building A (eastern lift overrun). The natural fall of the land from the southeast to the northwest creates differences in the perceived building height, even though the overall built form remains uniform.

It is accepted that when viewed from the intersection of Selale and Hackney Streets, the portion of the building that exceeds the height limit appears visually consistent with the compliant sections.

- *It is suggested the impacts of the lift overruns are inconsequential, and have no impact at all on the visual quality of the built environment.*

**Council Comment:**

The proposal aligns with the intended bulk, scale, and character envisioned by the planning controls, which allow for 3-5 storey development in the area. In addition, the ‘bonus’ height provisions under SEPP (Housing) 2021 enables increased building height where affordable housing is delivered, supporting the proposal’s consistency with the planning and housing objectives for the location.



**Figure 22:** Excerpt from Liverpool Growth Centre Precincts DCP - Schedule 2 – Leppington Major Centres (Figure 5-3), indicating building heights of 2-4 and 3-5 storeys envisioned for the site.

The assertion that the visual impact will be minimal is further supported as on each primary street frontage, buildings range from compliant with the maximum prescribed height limit, to a maximum noncompliance of less than 9% variation. As noted by the applicant:

- Stock Street: 0 – 280mm (maximum 1.8% variation)
- Batak Lane: 420 – 450mm (maximum 2.9% variation)
- Selale Street: 0 – 1,380mm (maximum 8.8% variation)
- Hackney Street: 0 – 900mm (maximum 5.8% variation)

- *The overshadowing impact of the six (6) lift overruns and minor non-compliance of the roof forms is minimal. Any shadowing falls principally on the roofs of the respective buildings (lift overruns) or upon the surrounding streets.*

**Council Comment:**

The provided Shadow Diagrams (A664-A671) demonstrate that shadow is cast predominantly upon adjoining streets. It is further illustrated, that at least two hours would be maintained to the living room windows of any north-facing dwellings of future neighbouring development.

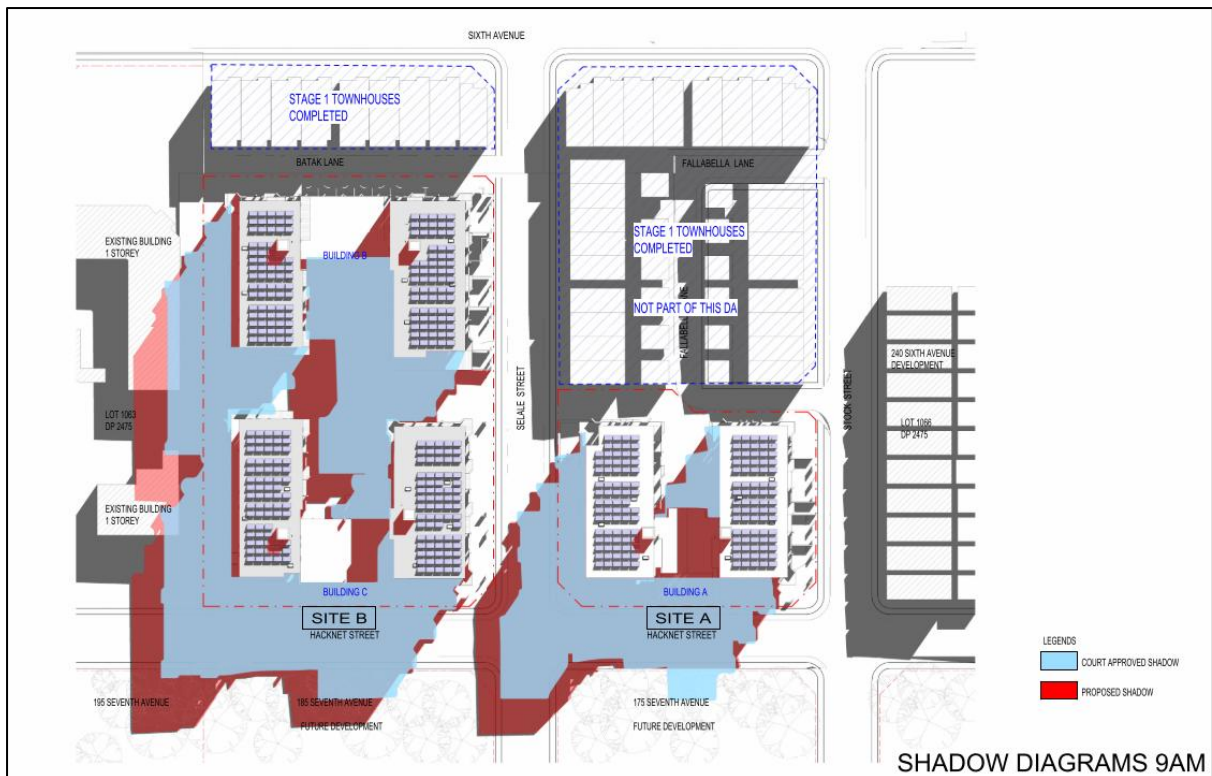


Figure 23: Shadow Diagram – 9am.

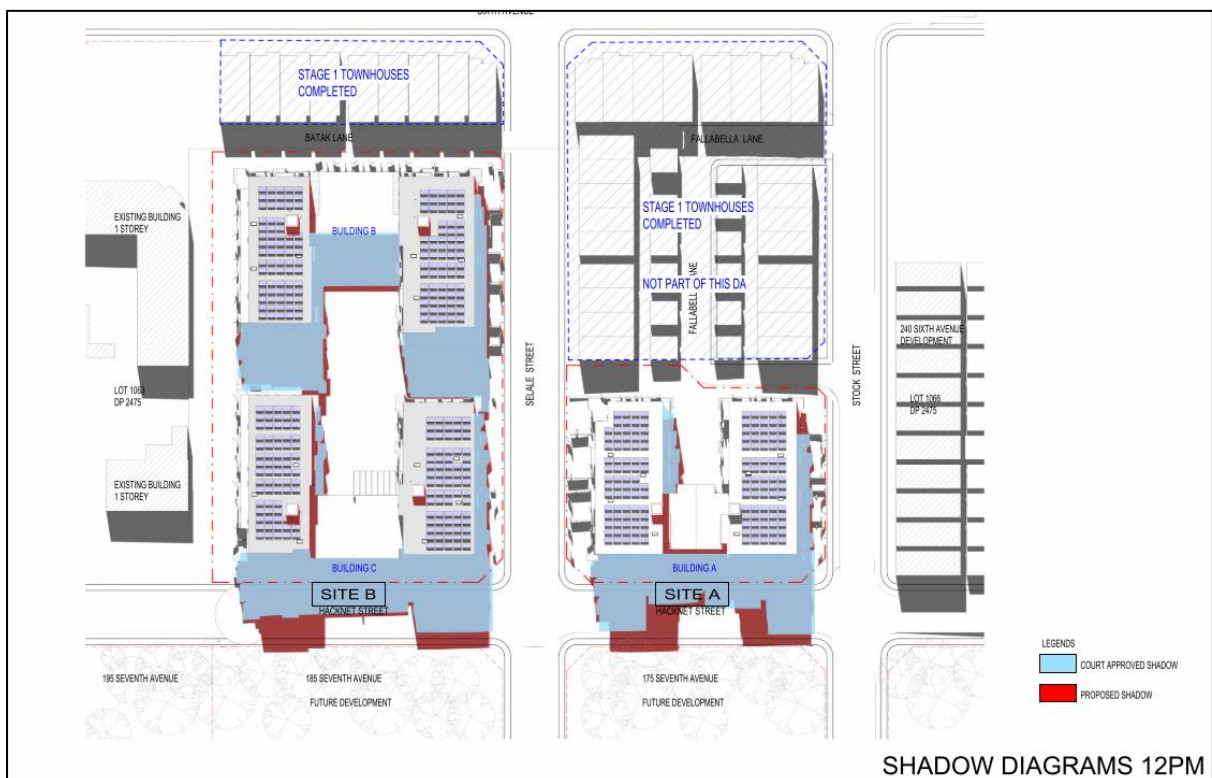
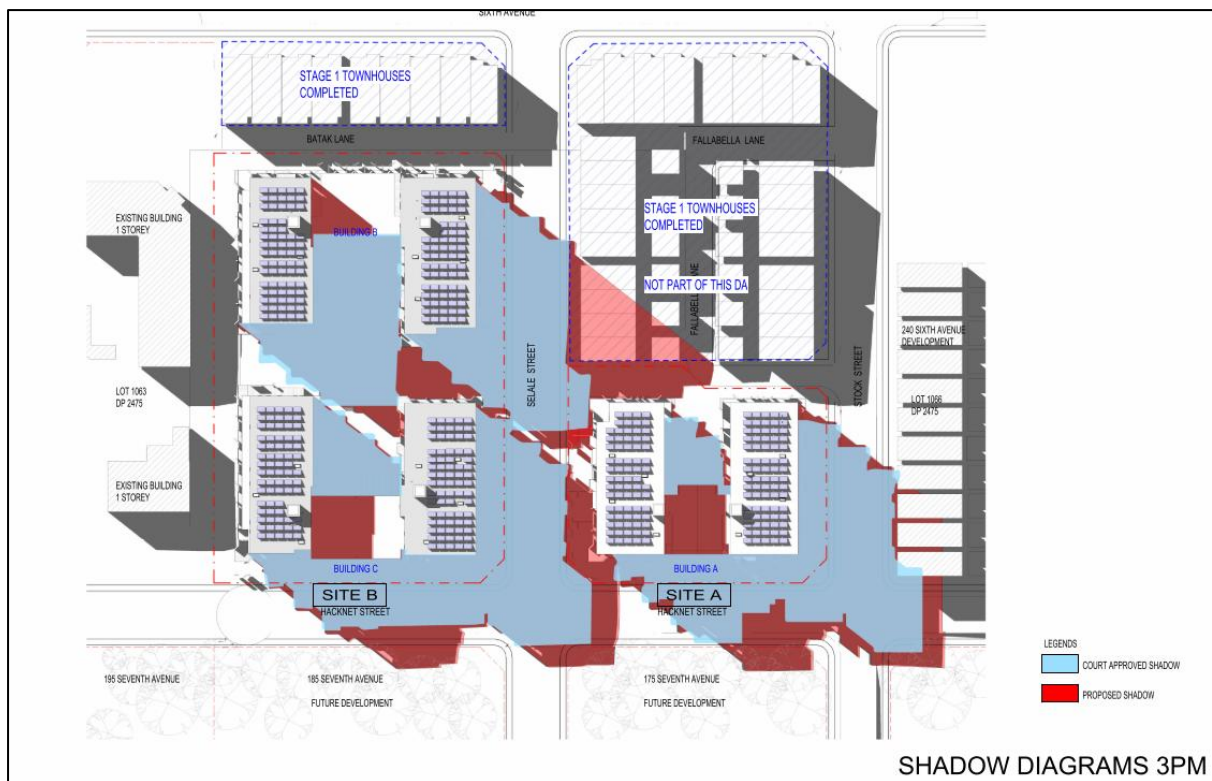


Figure 24: Shadow Diagram – 12pm.



**Figure 25: Shadow Diagram – 3pm.**

- *The additional height enhances housing supply and diversity in a location that benefits from close access to the future Leppington Civic Precinct, future parkland and the existing Leppington Railway Station and high frequency bus services within the local transport network. The resulting increase in density is consistent with the planning vision for the area and does not compromise development potential of adjacent sites.*

**Council Comment:**

As previously noted in Figure 22 above, the Liverpool Growth Centre Precincts DCP - Schedule 2 – Leppington Major Centres; contains controls to regulate the height, bulk and scale of buildings to be consistent with the Leppington Major Centre Vision and Planning Principles. The subject site is mapped to contain buildings of 3-5 storeys in height which is consistent with the proposed development.

Based on the minimum floor-to-ceiling heights the envisioned 5-storey buildings require a height of 16.8m. The proposed 5-storey building is actually lower than what is permitted at 16.55m.

As there is no floor space ratio (FSR) control applying to the site, the building height standard serves as the main mechanism for managing the development’s bulk and scale. This ensures that the built form remains consistent with the intended character and urban design outcomes for the area

- (b) There are sufficient environmental planning grounds to justify the contravention of the development standard

The applicant has provided the following comments addressing how there are sufficient environmental planning grounds to justify the contravention of the development standard in this case, as summarised:

- *Minimal Visual Impact: The height exceedance is limited to six (6) lift overruns and portions of the roof form. The lift overruns are centrally located on the roof and not visible from the public domain or surrounding properties. This height exceedance is not discernible from the streetscape meaning the building presents as being compliant in terms of height. The less than 10% exceedance of the roof forms is a direct and appropriate response from inputs by the Design Excellence Panel.*

**Council Comment:**

As previously noted, the assertion that the visual impact will be minimal is supported as on each primary street frontage, buildings range from compliant with the maximum prescribed height limit, to a maximum noncompliance of less than 9% variation.

Stock Street: 0 – 280mm (maximum 1.8% variation)

Batak Lane: 420 – 450mm (maximum 2.9% variation)

Selale Street: 0 – 1,380mm (maximum 8.8% variation)

Hackney Street: 0 – 900mm (maximum 5.8% variation)

- *Additional height does not increase the building bulk and scale: The components of the building that exceed the height limit are consistent with the bulk and scale intended by the building controls, allowing for undulations in the land form, increases to floor to floor heights to achieve design excellence and compliance with the requirements of the Design & Building Practitioners Act, and by removing the stepped form upon Site A, suggesting the visual impacts of development are acceptable.*

**Council Comment:**

It is agreed that the components that exceed the height limit remain are partially a result of design optimisations recommended by the Design Excellence Panel. These optimisations results in an improved amenity outcomes that outweigh the heights exceedances that are not considered discernible from street level.

It is noted that the relocation of AC condensers to the rooftop was a recommendation by the Design Excellence Panel, stating that “design excellence cannot permit AC condensers on balconies”.

- *No Significant Overshadowing: Shadow diagrams confirm that additional overshadowing is negligible and primarily falls on the building’s own roof areas or adjoining streets, ensuring no loss of solar access to neighbouring properties.*

**Council Comment:**

As previously noted, the provided Shadow Diagrams (A664-A671) demonstrate that shadow is cast predominantly upon adjoining streets. It is further illustrated, that at least two hours of sunlight would be maintained to the living room windows of any north-facing dwellings of future neighbouring development.

- *No Privacy Concerns: The elements exceeding the 15.6 metre height control are not habitable spaces, meaning they do not create overlooking issues or compromise the privacy of neighbouring properties.*

**Council Comment:**

It is agreed that the height non-compliance does not create additional privacy concerns. Setbacks and separation are consistent with, or improved upon, that which was originally court approved.

- *High-Quality Urban Design: The development is architecturally well-designed, incorporating articulation, material variation and appropriate setbacks to integrate seamlessly with surrounding streetscape. The contextually responsive development is consistent with the zone objectives and the objectives of the Height of Building development standard prescribed by the Plan, despite the minor variation proposed.*

**Council Comment:**

It is agreed that a high quality urban design is achieved. This is evidenced by the Design Excellence Panels support of the proposal.

- *Alignment with Strategic Planning Goals: The proposal supports increased residential density near a major centre and public transport hub, aligning with the Liverpool Growth Centres Precinct Plan 2013 and broader strategic planning objectives.*

**Council Comment:**

As previously noted, the proposal is consistent with residential growth envisioned under the Liverpool Growth Centre Precincts DCP - Schedule 2 – Leppington Major Centres.

- *Optimising Housing Supply: The height variation enables 79 additional dwellings, including 30 in-fill affordable apartments, contributing to diverse and accessible housing options in a well-connected area.*

**Council Comment:**

It is agreed that the proposal contributed to diverse and accessible housing options consistent with the objectives of the R3 Medium Density Residential zone.

- *The proposed variation will not result in an unacceptable environmental or amenity impacts: As discussed above, the building elements above the height control will not result in any unacceptable visual impact, view impact, loss of privacy or loss of solar access. The elements will also not give rise to any known environmental impacts in the locality. Notwithstanding the proposed height exceedance, the design provides a built form offering compliant levels of solar access to nearby residential development and there will not be significant impacts beyond a compliant building envelope.*

**Council Comment:**

It is agreed that the proposed height exceedance is not likely to result in any significant visual impact.

- *Efficient Use of Land: Given the site's proximity to transport and services, the variation facilitates a more sustainable and efficient use of urban land, reducing reliance on car travel and promoting public transport use, consistent with the objectives of the Environmental Planning and Assessment Act 1979.*

**Council Comment:**

It is agreed that the proposal results in a more sustainable and efficient use of land consistent with the objectives of the R3 Medium Density Residential zone.

- *Accessibility Benefits: The additional height is partially due to lift overruns, which are essential for providing appropriate levels of amenity for residents on higher floors and ensuring compliance with the Building Code of Australia.*

**Council Comment:**

It is agreed that lift overruns are necessary to provide essential services and ensure adequate amenity for residents on the upper levels.

- *No Adverse Precedent: The site's topography and strategic location justify the variation, and approval would not create an undesirable precedent for excessive building height elsewhere.*

**Council Comment:**

As previously noted, the topography of the site dictates the built form including that of the height. The greatest breach of the height control occurs at Building C; however, because of the site's natural fall, the highest point in AHD terms is actually located at Building A (eastern lift overrun). The natural fall of the land from the southeast to the northwest creates differences in the perceived building height, even though the overall built form remains uniform.

It is accepted that when viewed from the intersection of Selale and Hackney Streets, the portion of the building that exceeds the height limit appears visually consistent with the compliant sections.

- *Retaining the Uppermost Floor Provides a Better Planning Outcome: Removing the uppermost floors of the buildings to ensure compliance with the height of building standard would not improve privacy, solar access or view loss outcomes. Instead, the additional floor contributes positively to housing variety, density and residential amenity without causing material impacts.*

**Council Comment:**

While it is not accepted that removal of the uppermost floor would not improve solar access or view loss outcome, it is accepted that the impact is largely discernible. It is accepted that the additional floor would provide a positive impact on housing delivery and diversity.

- *Extent of Variation is Minor: The proposed variation is minor, with a maximum exceedance of 8.8% created by the leading edge of the building forms. Approval of this variation would not set an undesirable precedent for excessive building height in other developments.*

**Council Comment:**

While it is not accepted that the extent of the variation is minor, being a **2.10m height exceedance (or 13.45% variation)** from the maximum height limit afforded under SEPP (Housing) 2021, it is accepted that the extent of the variation visible from the street level is minor being no greater than 1.38m (or 8.8%). It is considered that granting this variation would not establish an undesirable precedent for excessive building heights in future developments.

### *Conclusion Clause 4.6 Variation*

The proposed variation aligns with the broader planning objectives of the Precinct Plan, Housing SEPP and the Apartment Design Guide (ADG), particularly with respect to urban densification and efficient land use in the locality. The proposed building height variation is consistent with the future character of the precinct and will contribute to a coherent streetscape appearance. As noted by the applicant, these are established in the LEC case *Wehbe v Pittwater Council [2007] NSWLEC 827* which confirmed that flexibility in development standards may be permitted where variations result in no significant adverse impacts and meet broader planning objectives.

The proposal offers superior environmental planning outcomes through enhanced communal spaces, improved pedestrian connectivity, and high-quality architectural design. A detailed environmental assessment confirms that the variation does not result in adverse impacts on neighbouring properties or public spaces.

This Clause 4.6 variation request demonstrates that strict compliance with the building height standard is unnecessary and unreasonable in this case. The proposed design achieves the objectives of the control through alternative solutions, aligns with relevant planning principles, and delivers superior outcomes for the community and urban environment.

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

There are no proposed instruments which have been the subject of public consultation under the EP&A Act and are relevant to the proposal.

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

The following Development Control Plan is relevant to this application:

- ***Liverpool Development Growth Centre Precincts Development Control Plan 2021 ('the DCP')***

The following sections are applicable to the development:

#### Liverpool Growth Centre Precincts DCP 2021:

- Part 2.0 - Precinct Planning Outcomes
- Part 3.0 - Neighbourhood and Subdivision Design
- Part 4.0 - Residential Development
  - -4.4.3 Child Care Centres

#### Schedule 2 – Leppington Major Centre:

- Part 3 - Town Centre Structure
- Part 5 - Building Controls

A full assessment of the development against the requirements of the DCP is provided in **Attachment B – Tables of Compliance**; a summary of merit-based variations are detailed below.

#### **iii. Residential Density**

The typical characteristics of residential development located on sites within the 25 – 30 dw/Ha range are characterised by the corresponding Density Band (see Figure 26 below). These

sites predominantly consist of small lot housing with residential flat buildings closer to local centres and public transport. Given that the proposal is not in walking distance to either a local centre of train station, under the court approved DA-1092/2017 it was originally suggested by Council that the dwelling yield should be reduced and an alternative and more responsive built form be further explored. Despite this initial recommendation, following conciliation it was agreed that the proposed density was acceptable and an agreement under s 34(3) of the LEC Act was reached.

Net Residential Density dw/Ha	Typical Characteristics
25 - 30 dw/Ha	<ul style="list-style-type: none"> <li>m. Generally located within the walking catchment of centres, corridors and / or rail based public transport.</li> <li>n. Consists of predominantly small lot housing forms with some multi-dwelling housing, manor homes and residential flat buildings located close to the local centre and public transport.</li> <li>o. Generally single and double storey dwellings with some 3 storey buildings.</li> <li>p. Incorporates some laneways and shared driveways.</li> <li>q. Be designed to provide for activation of the public domain, including streets and public open space through the orientation and design of buildings and communal spaces.</li> <li>r. Mainly urban streetscapes, some suburban streetscapes. (See Figure 3-2).</li> </ul>
40+ dw/Ha	<ul style="list-style-type: none"> <li>s. Generally located immediately adjacent centres and / or rail based public transport</li> <li>t. Consists of predominantly residential flat buildings, shop top housing, manor homes, attached or abutting dwellings and multi-dwelling housing</li> <li>u. Generally double and multi-storey buildings</li> <li>v. Predominantly urban streetscapes with minimal front setback; incorporates laneways and shared driveways. (See Figure 3-2).</li> </ul>

**Figure 26: DCP Extract Table 3-1.**

Given, the previously deemed compliance it is considered that the proposal more accurately reflects the 40+ dw/Ha band and as such the development is consistent with the housing type, height, and streetscape envisioned for the precinct.

#### **iv. Building Height and envelope controls**

As there is no floor space ratio (FSR) control applying to the site, the building height standard serves as a the mechanism for managing the development’s bulk and scale. This ensures that the built form remains consistent with the intended character and urban design outcomes for the area

It is, however, noted that there is inconsistency between the envisioned height of 3-5 storeys (DCP), prescribed maximum height of 12m / 3-4 storeys (SEPP – Precincts Western Parkland City), and the maximum height of 15.6m / 4-5 storeys allowed under affordable housing height bonus (SEPP Housing).

The proposal involves one additional storey, resulting in a 5-storey development which is at the upper limit of what is permissible under both the DCP and Housing SEPP. As detailed within the Clause 4.6 section of this report the proposed height increase is considered to align with the broader planning objectives of the Precinct Plan, Housing SEPP and the Apartment Design Guide (ADG), particularly with respect to urban densification and efficient land use in the locality.

- **Liverpool Contributions Plan 2021 – Austral and Leppington North Precincts**

The original development application was approved with Contributions calculated in accordance with the Liverpool Contributions Plan 2014. This was repealed on 23 November 2023 and replaced by the Liverpool Contributions Plan 2021 – Austral and Leppington North Precinct.

Amended contributions under the 2021 Plan have been considered and included within the recommended draft consent conditions.

**(d) 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.

**(e) 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).

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

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPP and DCP controls outlined above and the Key Issues section below.

The consideration of impacts on the natural and built environments includes the following:

- Context and setting – The proposed amending DA responds appropriately to its surrounding environment by maintaining a built form, scale, and design character consistent with the existing approval and the intended urban vision for the precinct. The additional level and refined building envelopes have been designed to integrate with the approved facade, ensuring the development remains visually cohesive and respectful of the surrounding medium-density residential context.
- Access and traffic – The proposed amending DA appropriately manages vehicle and pedestrian movement to ensure safe and efficient circulation within and around the site. The additional basement parking level provides sufficient on-site parking to accommodate the increased number of dwellings and the childcare centre, minimising reliance on street parking. Vehicular access points are retained in their approved locations, maintaining safe entry and exit.
- Public Domain – The proposal maintains a strong relationship with the public realm by providing clear sightlines, accessible entries, and retaining the approved landscaped setbacks that soften the built form. The inclusion of a childcare centre at ground level adds activity and surveillance to the street frontage, promoting safety.
- Utilities – The site is appropriately serviced and has been supported by all relevant agencies subject to conditions of consent.
- Heritage – The site does not adjoin any heritage item and would not have any impacts on heritage within the area.
- Natural environment – The proposal includes additional planting and deep soil zones to offset the increased density. No additional tree clearing or impact upon the natural environment is anticipated as a result of the amendments proposed.

- Noise and vibration – Existing conditions of consent aimed at mitigating any potential noise and vibration impacts to the vicinity would be retained.
- Natural hazards – The site is mapped as being within a flood-affected area; however, flooding impacts were comprehensively assessed and addressed under the original approved DA. The proposed amendments do not significantly alter the approved building footprint, ground levels, or flood mitigation measures.
- Safety, security and crime prevention – CPTED principles have been appropriately considered and addressed under the original approved DA. Overall, the proposal contributes positively to safety and crime prevention through thoughtful design and activation of the site
- Social impact – The proposed amending DA is expected to have a positive effect on the local community by increasing housing supply, providing affordable housing, and providing a mix of dwelling types to support diverse household needs. The inclusion of a childcare centre provides for a vital community service.
- Economic impact – The proposed amending DA would assist in creating additional employment opportunities during both construction and ongoing operation, including jobs associated with the childcare centre.
- Site design and internal design – The proposal is situated appropriately on the site to minimise privacy, noise and overshadowing impacts to adjoining lots while maximising economic use of land.
- Construction – Existing conditions of consent were imposed and would be retained to mitigate impacts from construction. In particular, conditions around pollution, noise and hours of work.
- Cumulative impacts – The proposal is generally consistent with the planning controls and therefore would not result in an adverse cumulative impact.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

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

Leppington Town Centre is planned to be the major town centre in the South West Growth Centre, providing employment, retail, entertainment, community services and facilities to meet the needs of a population estimated to ultimately reach 300,000.

The site is highly suitable for the proposed residential flat building development due to its strategic location, accessibility, and context within a precinct planned for medium-density housing. As such, it is considered that the site is suitable for the proposal.

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

These submissions are considered in Section 5 of this report.

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

The proposal is generally consistent with the relevant planning controls, as well as generally consistent with the previously approved DA. It appropriately mitigates potential impacts and would provide economic and social benefits through the provision of residential accommodation and childcare services. It is consistent with the relevant strategic planning documents and the principles of ecologically sustainable development. On balance, it is considered that the proposal is consistent with the public interest.

## 5. REFERRALS AND SUBMISSIONS

### 5.1 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 7.

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

**Table 7: 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>			
Endeavour Energy	Section 2.48 – <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> Development near electrical infrastructure	Endeavour Energy raise no objection subject to conditions of consent.	Y
Sydney Water Corporation	Section 78 – <i>Sydney Water Act 1994</i>	Sydney Water raise no objection subject to conditions of consent.	Y
Design Review Panel	Section 145 – <i>State Environmental Planning Policy (Housing) 2021</i> 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 Attachment B – Tables of Compliance.	Y
<b>Integrated Development (S 4.46 of the EP&amp;A Act) – N/A</b>			

### 5.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 8**.

**Table 8: Consideration of Council Referrals**

<b>Officer</b>	<b>Comments</b>	<b>Resolved</b>
Building	No objection, subject to conditions of consent.	Y
Community Planning	No objection.	Y
Land Development Engineering	No objection, subject to conditions of consent.	Y
Environmental Health	No objection, subject to conditions of consent.	Y
Fire Safety	No objection, subject to conditions of consent.	Y
Flood Engineering	No objection, subject to conditions of consent.	Y
Natural Environment - Landscape	No objection, subject to conditions of consent.	Y
Public Art	No objection, subject to conditions of consent.	Y
Traffic & Transport	No objection, subject to conditions of consent.	Y
Urban Design & Public Domain	No objection, subject to conditions of consent.	Y
Waste Management	No objection, subject to conditions of consent.	Y

### 5.3 Community Consultation

The proposal was notified in accordance with Council’s Community Participation Plan from 30 April 2024 until 16 May 2024.

The Council received a total of 2 submissions, comprising Two (2) submissions were received comprising of just one (1) unique submission objecting to the proposed development. The issues raised in this submissions is considered in **Table 9**.

**Table 9: Community Submissions**

<b>Issue</b>	<b>No of submissions</b>	<b>Council Comments</b>
<b>Overshadowing &amp; Solar Access to neighbouring properties</b>	1	While some overshadowing of neighbouring sites to the south is inevitable due to the lot orientation, it is considered that the Court’s original decision effectively means that overshadowing was already assessed and accepted as reasonable in the site’s context because strict compliance was impractical

		<p>and the design still met the objectives of the relevant control.</p> <p>While the proposed amending development slightly exacerbates this overshadowing due to the height increase, the increase is considered to be minimal. The provided Shadow Diagrams (A664-A671) demonstrate that shadow is still cast predominantly upon adjoining streets. It is further illustrated, that at least two hours of sunlight would be maintained to the living room windows of any north-facing dwellings of neighbouring development.</p>
<b>Visual Impact on the area</b>	1	<p>The physical and visual impact of the proposed amendments are considered to be minimal, ensuring the overall form remains largely consistent with that of the approved development.</p> <p>Despite the additional storey, as noted within this report the increase in building height is largely discernible when viewed from the street level (ranging from 1.8-8.8% variation). The proposal remains consistent with the bulk, scale and character envisioned for the Austral area.</p> <p>The design incorporates a mix of articulation, architectural detailing, and varied external finishes to minimise the building's apparent scale and bulk, achieving a well-integrated appearance within the envisioned streetscape.</p>
<b>Privacy on neighbouring properties</b>	1	<p>The site currently has neighbouring properties directly to the north and east, which form part of the parent court-approved development application. It is considered that privacy was assessed and accepted as reasonable in the Court's original decision.</p> <p>The proposed increase from four to five storeys as part of the amending development application is not expected to give rise to additional privacy impacts on the adjoining two-storey residential properties, as adequate setbacks and separation distances are maintained.</p>
<b>Noise Impact on neighbouring properties</b>	1	<p>While the proposal includes an additional 77 units, the development is not anticipated to generate any significant increase in noise beyond what has been approved.</p> <p>While the proposal introduces a childcare centre at ground level, any associated noise is expected to remain within acceptable limits and would not result in a significant increase in noise impacts on neighbouring dwellings. A noise Management Policy is to be prepared as part of the Childcare Centre Plan</p>

		<p>of Management. As part of this policy noise levels are to be monitored and kept within reasonable limits.</p> <p>Existing conditions of consent relating to construction and mechanical noise mitigation are to be retained.</p>
<b>Traffic Congestion</b>	1	<p>A Traffic Impact Assessment (TIA) has been submitted in support of the proposed amendments. The assessment examines existing traffic and parking conditions, taking into account surrounding road characteristics, nearby developments, vehicle volumes, access points, parking arrangements, pedestrian infrastructure, and sight lines. The report concludes that the development is expected to generate a net increase of 54 and 24 vehicle trips during the weekday AM and PM peak hours, respectively when compared with the approved traffic generation. This level of traffic is expected to be minor.</p> <p>Additionally, Council's Traffic section raised no objections in relation to traffic impacts, subject to conditions of consent – concerns were raised around parking provision being insufficient.</p>

## 6. DEVELOPMENT CONTRIBUTIONS

Development contributions are applicable to the subject modification application as outlined **Table 10**.

**Table 10: Development Contributions**

<b>Contribution</b>	<b>Comments</b>
7.11 Contributions	<p>The original development application was approved with Contributions calculated in accordance with the Liverpool Contributions Plan 2014. This was repealed on 23 November 2023 and replaced by the Liverpool Contributions Plan 2021 – Austral and Leppington North Precinct.</p> <p>The original application applied contributions to the Residential Flat Building component during Stages 7 (Building A), 8 (Building B) &amp; 9 (Building C) under Condition No. 16:</p>

	<p><b>SECTION 7.11 PAYMENT (Liverpool Contributions Plan 2014 Austral and Leppington)</b></p> <p>16. As a consequence of this development, Council has identified an increased demand for public amenities and public services. The following payments are imposed in accordance with Liverpool Contributions Plan 2014 Austral and Leppington North as amended.</p> <p>The total contribution for each stage is provided below and will be adjusted at the time of payment in accordance with the contributions plan:</p> <p><b>Stage 7 = \$945,734</b></p> <p><b>Stage 8 = \$959,956</b></p> <p><b>Stage 9 = \$1,007,218</b></p> <p>A breakdown of the contributions payable is provided in the attached payment form. The Contributions Plan may be inspected at Council's Administration Centre, 33 Moore Street, Liverpool or at <a href="http://www.liverpool.nsw.gov.au">www.liverpool.nsw.gov.au</a>.</p> <p>Amended contributions under the 2021 Plan have been considered and include the proposed residential uplift. As per the draft conditions of consent, contributions are to be paid prior to the issue of an Occupation Certificate.</p>
<p>Special Infrastructure Contribution (SIC)</p>	<p>The site is located within the Western Sydney Growth Area and as such a SIC is applicable. The existing Special Infrastructure Contribution Condition No 132. is to be retained.</p> <div style="border: 1px solid black; padding: 5px;"> <p>The following conditions are to be complied with or addressed prior to issue of a Subdivision Certificate by Council:</p> <p><b>Special Infrastructure Contribution</b></p> <p>132. The applicant is to make a special infrastructure contribution in accordance with any determination made by the Minister administering the Environmental Planning and Assessment Act 1979 under Section 94EE of that Act and is in force on the date of this consent, and must obtain a certificate to that effect from the Department of Planning (Growth Centres Commission) before a subdivision certificate, is issued in relation to any part of the development to which this consent relates.</p> </div>
<p>Housing Productivity Contribution (HPC)</p>	<p>The land falls within the excluded area – Western Sydney Growth Area and Aerotropolis SCAs, therefore a HPC does not apply.</p>

## 7. 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:

- 7.1.1 **Building Height** – A height variation of 2.10m (or 13.45%) is proposed. The application is supported by a Clause 4.6 variation. It is considered that the proposed variation aligns with the broader planning objectives of the Precinct Plan, Housing SEPP and the Apartment Design Guide (ADG), particularly with respect to urban densification and efficient land use in the locality. The proposed building height variation is consistent with the future character of the precinct and will contribute to a coherent streetscape appearance.

- 7.1.2 **Building Density** – While the proposal meets the minimum numerical density requirements, it markedly exceeds this benchmark. Notwithstanding, it is considered that the proposal aligns with the objectives of the zone by delivering additional housing in a planned growth area, consistent with the intended urban character and supported by an appropriate built form, height, and design that maintain residential amenity and environmental quality.
- 7.1.3 **Building Separation** –It is noted that under the original court-approved consent (DA-1092/2017) a number of building separation variations were approved. While the subject application is non-compliant with the minimum separation criteria in some areas it remains largely consistent with, or improved upon, that of the original approval.
- 7.1.4 **Amending DA** – The Amending DA seeks consent for changes to the approved building design of the residential flat building component and the addition of a childcare centre. No change is proposed to the approved townhouses (Stage 1). As the application is being lodged as an amending DA it will allow the current consent (DA-1072/2017) to be retained, while amending a component of the approved development through this approval as a separate consent.

## 8. 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.

Leppington Town Centre is planned to be the major town centre in the South West Growth Centre, providing employment, retail, entertainment, community services and facilities to meet the needs of a population estimated to ultimately reach 300,000. Based on the assessment against the relevant planning considerations, it is deemed that the site is suitable for the proposed amending development. The proposal is considered to be compatible with the locality as it is of an envisioned bulk and scale, provides a mix of housing, affordable housing, commercial childcare facilities, and improves 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 7 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

## 9. RECOMMENDATION

That the Amending Development Application DA-199/2025 seeking approval for alterations and additions to the consent issued to Development Application No. 1092/2017/A, which includes an additional 78 units, of which 30 units (15% of the total floor area) will be dedicated as affordable housing, and an 84 place centre-based childcare facility, at Lot 35 Stock Street and Lot 36 Selale Street, Austral 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
- Attachment B: Tables of Compliance (SEPP, DCP, ADG and DEP minutes)
- Attachment C: Architectural Plans – 018678.2026
- Attachment D: Landscape Plan – 407058.2025
- Attachment E: Approved Plans DA-1092/2017 Architectural Plans (approved) – 073224.2026
- Attachment F: LEC Conditions of Consent DA-1092/2017 – 018530.2020
- Attachment G: DEP Minutes 9 October 2025 – 385711.2025
- Attachment H: DEP Minutes 12 June 2025 – 216088.2025
- Attachment I: Statement of Environmental Effects – 407072.2025
- Attachment J: Clause 4.6 Request (Building Height) – 407064.2025
- Attachment K: Access Assessment Report – 138703.2025
- Attachment L: Affordable Housing Endorsement – 138732.2025
- Attachment M: BCA Performance Report – 138718.2025
- Attachment N: Design Verification Statement – 138724.2025
- Attachment O: Environmental Noise Assessment – 315463.2025
- Attachment P: Plan of Management (Childcare Centre) – 315470.2025
- Attachment Q: Stage 1 Contamination Assessment – 315466.2025
- Attachment R: Stormwater Drainage Plan – 407060.2025
- Attachment S: Stormwater Management Report – 138738.2025
- Attachment T: Traffic Impact Assessment – 138740.2025
- Attachment U: Waste Management Plan – 138741.2025