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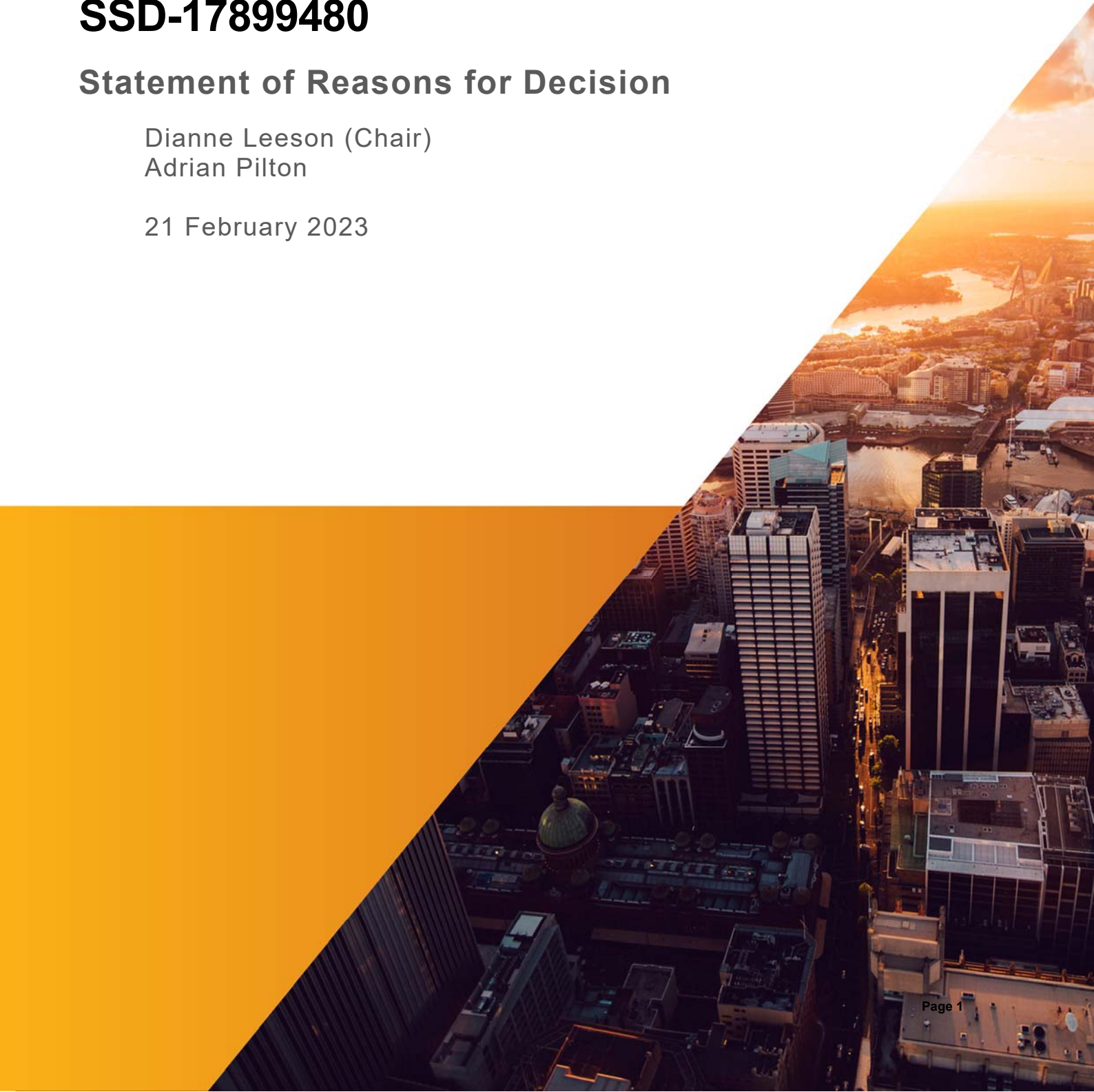
Wentworthville Northside West Clinic Expansion

SSD-17899480

Statement of Reasons for Decision

Dianne Leeson (Chair)
Adrian Pilton

21 February 2023



Executive Summary

Ramsay Health Care Limited is the Applicant for a State significant development application (SSD-17899480) for the *Wentworthville Northside West Clinic* project in the Cumberland local government area. Development consent is sought for the construction and operation of a four-storey extension as part of alterations and additions to the existing Stage 1 clinic building, and associated landscaping, tree removal, car parking and infrastructure improvements.

The Independent Planning Commission is the consent authority for the Application as Cumberland City Council objected to the development.

The site at 23-27 Lytton Street is located in a high density residential zone close to Wentworthville Railway Station. The site is suitable for an extension to the existing health facility and the provision of additional mental health services is a positive social benefit to the Central Sydney District.

The Commission undertook a site inspection. Meetings were held by the Commission with the Department of Planning and Environment, the Applicant and the Council.

Key issues the subject of the findings in this Statement of Reasons are built form and urban design, compliance with the Building Code of Australia (BCA), tree removal, landscaping, flooding, traffic, transport, parking, noise and vibration.

The Council's objection as at January 2023 centred on the Application's non-compliances with the building height and floor space ratio controls under Cumberland LEP 2021. The Commission has considered the Applicant's amended Application and submission under clause 4.6 of the LEP and is satisfied that the statutory requirements to vary the development standards have been satisfied and, on merit, the height and density are acceptable.

The Commission has determined to approve the Application as a Deferred Commencement Consent, subject to conditions. The Commission finds that the Applicant has not provided sufficient information to demonstrate that future design amendments would not be necessary to ensure the building complies with the requirements of the BCA. The Commission has therefore issued a Deferred Commencement Consent to ensure that the requirements of the BCA are met by the Applicant.

A range of detailed conditions will apply to the development. The conditions have been imposed by the Commission to manage and mitigate noise, visual, traffic, flooding and other adverse impacts during construction and operation to minimise impacts on the amenity of residents, users of the Council Reserve and the general public.

The Commission's reasons for approval of the Application are set out in this Statement of Reasons for Decision.

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Defined Terms

ABBREVIATION	DEFINITION
Applicant	Ramsay Health Care Limited
Application	SSD-17899480
AR	Department's Assessment Report, dated December 2022
CDCP	Cumberland Development Control Plan 2021
CLEP	<i>Cumberland Local Environmental Plan 2021</i>
Commission	Independent Planning Commission of NSW
Council	Cumberland City Council
DCNG	Draft Construction Noise Guideline, 2020
DCP	Development Control Plan
Department	Department of Planning and Environment
EHG	Department's Environment and Heritage Group
EIS	Environmental Impact Statement
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EPI	Environmental Planning Instrument
ESD	Ecologically Sustainable Development, as defined in s 1.4 of the EP&A Act
FSR	Floor space ratio
GFA	Gross floor area
HOB	Height of building
ICNG	<i>Interim Construction Noise Guideline, 2009</i>
LEP	Local Environment Plan
LGA	Local Government Area
NPfi	<i>Noise Policy for Industry, 2017</i>
Mandatory Considerations	Relevant mandatory considerations, as provided in s 4.15(1) of the EP&A Act
Material	The material set out in Section 3.1
NVIA	Noise and Vibration Impact Assessment
PMF	Probable Maximum Flood
PNTL	Project noise trigger levels
Project	Wentworthville Northside West Clinic Expansion Project
Regulation	Environmental Planning and Assessment Regulation 2000
RMS Guide	<i>RMS Guide to Traffic Generating Developments, 2022</i>
RtS	Response to Submissions
SEPP	State Environmental Planning Policy
Site	Lot 1 DP 787784, known as 23-27 Lytton Street Wentworthville
SSD	State Significant Development
Stage 1	the existing contemporary two-storey building with a northern undercroft fronting Lytton Street, constructed in 2015
Supplementary RtS	Supplementary Response to Submissions
TAIA	Traffic and Accessibility Impact Assessment
TfNSW	Transport for New South Wales
Variation Request	the Applicants Clause 4.6 Variation Request to Clauses 4.3 and 4.4 of CLEP 2021, dated 10 November 2022
WNWC	Wentworthville Northside West Clinic

1. Introduction

1. On 20 December 2022, the Department of Planning and Environment (**Department**) referred State significant development (**SSD**) application SSD-17899480 (**Application**) from Ramsay Health Care Limited (**Applicant**) to the NSW Independent Planning Commission (**Commission**) for determination.
2. The Application seeks approval under section 4.38 of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) for the Wentworthville Northside West Clinic Expansion (the **Project**) located in Cumberland Local Government Area (**LGA**).
3. In accordance with section 4.5(a) of the *Environmental Planning and Assessment Act 1979* (**EP&A Act**) and section 2.7 of the *State Environmental Planning Policy (Planning Systems) 2021* (**SEPP Planning Systems**), the Commission is the consent authority as Cumberland City Council (**Council**) objected to the Application.
4. Professor Mary O’Kane AC, Chair of the Commission, determined that Dianne Leeson (Chair) and Adrian Pilton would constitute the Commission for the purpose of exercising its functions with respect to the determination of the Application.

2. The Application

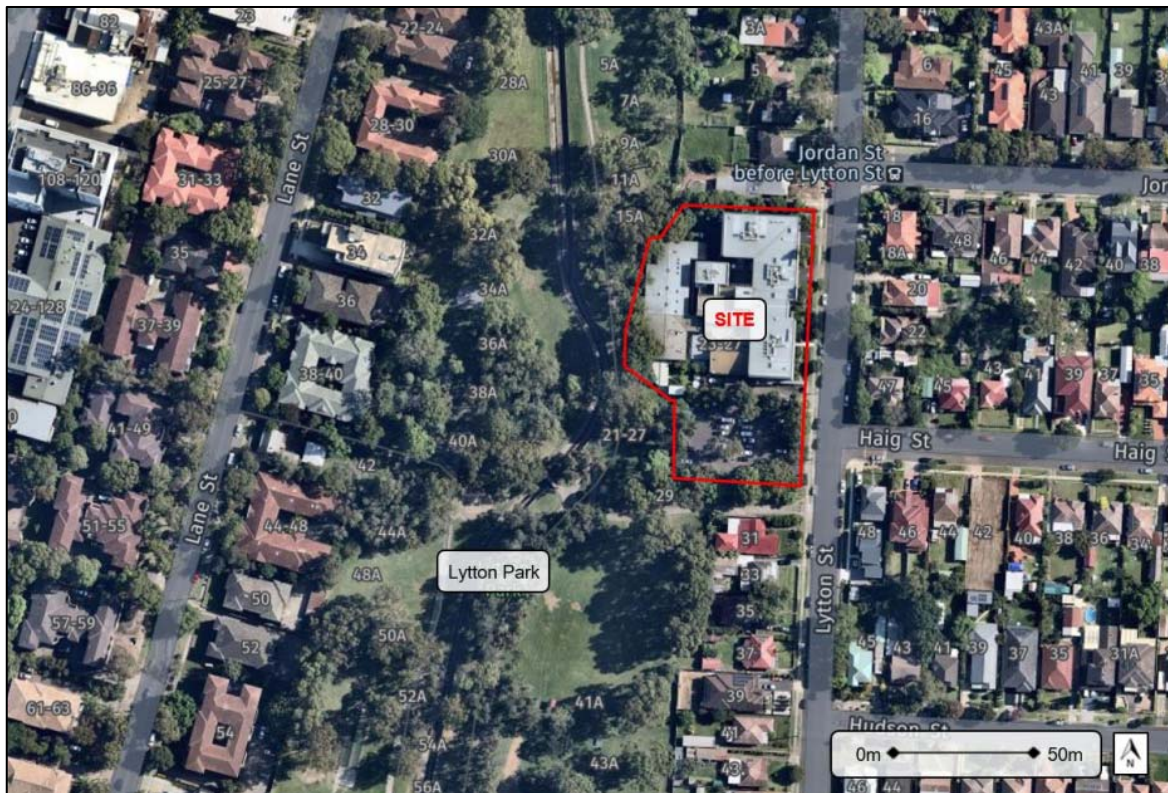
2.1 Site and Locality

5. The Department’s Assessment Report (**AR**) dated December 2022 states that the site is located at 23-27 Lytton Street, Wentworthville (Lot 1 DP 787784) (the **Site**).
6. The Site has a 107m frontage to Lytton Street to the east and is bound by a Council Reserve to the west and a low density residential property to the north. Immediately to the south is a pedestrian access laneway which provides access between Lytton Street and the Council Reserve, beyond which is a low density residential property (AR para 1.2.2).
7. The location and local context of the Site is illustrated in Figure 1 below.

2.2 Existing Development

8. The Site contains an existing mental health services facility known as Wentworthville Northside West Clinic (**WNWC**). The WNWC is a private health services facility that has been in operation since the 1970s and provides mental health care services and in-patient residential care. The Department’s AR states that the Site contains a contemporary two-storey building (plus basement) with a northern undercroft fronting Lytton Street, constructed in 2015 (**Stage 1**). At the rear of the site, fronting the Council Reserve, stands an older two-storey building known as the ‘west wing’. The Site also contains two parking areas both of which are accessed via Lytton Street (AR para 1.2.3).

Figure 1 – Site Location (Source: Department's AR pg 2)



2.3 The Application

9. The Applicant is seeking consent for the construction and operation of a four storey extension to the WNWC, including alterations and additions to the existing Stage 1 building, landscaping, tree removal, new car parking and infrastructure improvements. Consent is also sought for the demolition of an existing two-storey structure adjoining the rear of the existing Stage 1 building.
10. The key components of the Application (as refined in the Response to Submissions and Supplementary Response to Submissions) are set out in Table 2 of the Department's AR.

3. The Commission's Consideration

3.1 Material Considered by the Commission

11. In making its determination, the Commission has considered the following information (**Material**):
- the Secretary's Environmental Assessment Requirements issued by the Department, dated 13 May 2021;
 - the Applicant's Environmental Impact Statement (**EIS**) and supplementary information including the Applicant's Response to Submissions (**RtS**) and the Applicant's Supplementary Response to Submissions (**Supplementary RtS**);
 - all Government Agency advice to the Department;
 - all public submissions on the EIS made to the Department during public exhibition;
 - the Department's AR, dated December 2022;
 - the Department's recommended conditions of consent, dated December 2022;
 - all comments and presentation material at meetings with the Department, Council and the Applicant, as referenced in Table 2;
 - the Applicant's response to the Commission, dated 27 January 2023;
 - Council's response to the Commission, dated 27 January 2023; and
 - all written comments received by the Commission up until 5pm AEDT 10 February 2023.

3.2 Strategic Context

12. Paragraph 3.1.1 of the Department's AR states that the purpose of the proposed development is to:
- *increase the operational capacity of the existing WNWC.*
 - *provide a well-resolved health services facility.*
 - *generate employment opportunities near the Wentworthville town centre and the nearby residential area.*
 - *promote the 30-minute city concept as identified in the Cumberland 2030 Local Strategy Planning Statement.*
13. The Project would also provide direct investment in the region of \$32,480,465 and support 60 construction jobs and 23 new operational jobs (AR para 3.1.3)
14. The Department states (AR paras 3.1.3 and 3.1.4):
- Overall, the Department agrees with the Applicant's justification of the proposal to develop the site. The Department considers there are broader social benefits to the proposal, including the provision of new and enhanced health facilities, the delivery of increased patient capacity to help meet unmet growing demand, upgraded parking and improved flood mitigation, as well as construction and operation jobs.*
15. The Department has given consideration to the relevant State and Council strategic documents in section 3 of the Department's AR. The Commission agrees with the Department and finds that the Project contributes positively to the implementation of these strategies as it provides investment in health infrastructure, delivers social infrastructure, provides employment opportunities and is accessible via public transport and active travel options.

3.3 Statutory Context

3.3.1 Permissibility

16. The Application is consistent with the definition of a health service facility. The Site is zoned R4 High Density Residential under the *Cumberland Local Environmental Plan 2021 (CLEP)*. Under clause 2.60 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021 (Transport and Infrastructure SEPP)*, health services are permissible with consent in this zone (AR para 4.2.1).

3.3.2 Other Approvals

17. As per section 4.3 of the Department's AR, the Commission notes the Department has consulted with the relevant government authorities. The Commission acknowledges that the Applicant may also require other approvals which are not integrated into the SSD process as referenced by the Department in AR paragraph 4.3.2.

3.3.3 Variation to building height and FSR development standards

18. The Project exceeds the maximum Height of Building (**HOB**) and Floor Space Ratio (**FSR**) development standards in the CLEP, hence the requirements under cl 4.6 of the CLEP must be met in order to grant consent (AR para 6.2.18). The Applicant provided the Department with a Variation Request Report, dated 10 November 2022 (**Variation Request**).

19. The maximum building height under cl 4.3 of the CLEP is 15m, and the Project has a maximum height of 18.5m measured from the existing driveway (+3.85m). The exceedance is less on the Lytton Street frontage (Variation Request, pg 4 and 5). The proposed maximum height is clarified by the Department in AR para 6.2.24:

To address the concerns raised by Council and the public at EIS stage, the Applicant revised the proposed development to reduce the overall height of the building as part of the RtS from 19.6m to 18.67m. However, in the SRtS the Applicant provided additional information demonstrating that the exceedance would be up to 3.85m (0.18m higher than indicated at RtS stage). The Department notes the confirmation of the increase is a matter of correction and not a result of any design changes.

and further, in AR para 6.2.26:

An updated variation request under clause 4.6 of the CLEP was provided as part of the RtS. The proposal (as refined by the SRtS) seeks a variation to the 15m height limit in relation to the proposed development and would exceed the height limit by between 0.31m and 3.85m (a variation of up to 25.7%). The non-compliance is largely confined to the northern portion of the southern wing of the extension.

20. The Commission accepts the Department's advice (above) that the building height exceedance is at most 3.85m (25.7%).
21. The maximum FSR is 1:1 under cl 4.4 of the CLEP and the Project has a gross floor area (**GFA**) of 7,284m² which, for the site area of 6,655m², is an FSR of 1.09:1. The exceedance is 629m² or 9% (based on the information on pg 14 of the Variation Request).
22. The Applicant's Variation Request has been assessed by the Department as being acceptable in terms of the justifications for the exceedances, in accordance with the requirements of cl 4.6 of CLEP. The Department's assessment of the Building Height exceedance is at AR paras 6.2.27 - 6.2.56 and the assessment of the FSR exceedance is at AR paras 6.2.57 to 6.2.68.

23. The Department in AR para 6.2.67 states:
- The Department concludes that compliance with the HOB and FSR development standards is unnecessary and unreasonable in this instance, and there are sufficient environmental planning grounds to justify contravening the development standards by 25.7% and 9%, respectively. Overall, the Department is satisfied that the proposed height and FSR variations are consistent with the objectives of clauses 4.3 and 4.4 of the CLEP.*
24. The Commission is satisfied, based on the Department's advice above, that the Applicant's Variation Request demonstrates that compliance with the development standards is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravening the development standards; and with regard to cl 4.6(4); that the Applicant has adequately addressed the matters required to be demonstrated in cl 4.6(3); and that the Application will be in the public interest because it is consistent with the objectives of height of buildings and FSR development standards and the objectives of the R4 High Density Residential Zone.
25. The merits and justification for the proposed height and FSR, and the associated impacts are discussed further in Sections 5.1.2 and 5.1.3, below.

3.3.4 Other Requirements of EPIs

26. The Commission agrees with the Department and is satisfied that the Application is consistent with the requirements of all the relevant Environmental Planning Instruments (EPI) (AR para 4.4.2).

3.4 Mandatory Considerations

27. In determining this Application, the Commission is required by section 4.15(1) of the EP&A Act to take into consideration such of the listed matters as are of relevance to the development the subject of the Application (**Mandatory Considerations**). The mandatory considerations are not an exhaustive statement of the matters the Commission is permitted to consider in determining the Application. To the extent that any of the Material does not fall within the mandatory considerations, the Commission has considered that Material where it is permitted to do so, having regard to the subject matter, scope and purpose of the EP&A Act.

Table 1 – Mandatory Considerations

Mandatory Considerations	Commission's Comments
Relevant EPIs	<p>Appendix B of the Department's AR identifies relevant EPIs for consideration. The key EPIs (in their present, consolidated form) include:</p> <ul style="list-style-type: none"> • SEPP Planning Systems; • Transport and Infrastructure SEPP; • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i>; • <i>State Environmental Planning Policy (Industry and Employment) 2021</i>; and • CLEP

	<p>The Commission agrees with the Department's assessment of EPIs set out in Appendix B of the AR. The Commission therefore adopts the Department's assessment.</p>
Relevant DCPs	<p>Section 2.10 of the SEPP Planning Systems states that development control plans do not apply to SSD. Nevertheless, the Department has considered the Cumberland DCP 2021 (CDCP) in its assessment. Part F4 of CDCP has site specific controls for setbacks; controls for solar access for the adjoining property; and parking requirements.</p> <p>The Applicant also referred to the superseded Holroyd DCP 2013 for justification of the proposed parking provision. The Commission has given consideration to these controls in section 5 of this Statement of Reasons.</p>
Likely impacts of the development	<p>The likely impacts of the Application have been considered in section 5 of this Statement of Reasons.</p>
Suitability of the site for development	<p>The Commission has considered the suitability of the Site and finds that the Site is suitable for the following reasons:</p> <ul style="list-style-type: none"> • the Application is permissible with consent; • the Application would enable the extension of an existing health service facility and would provide a social and economic benefit; • environmental impacts have been minimised as far as practicable and are capable of being managed through conditions of consent; and • impacts on adjoining residents have been adequately addressed due to the setbacks proposed and the location adjoining a public reserve;
Objects of the EP&A Act	<p>In this determination, the Commission has carefully considered the Objects of the EP&A Act and is satisfied that the Application is consistent with the Objects of the EP&A Act. The Commission concurs with the Department's considerations in this regard (AR para 4.4.5).</p>
Ecologically Sustainable Development	<p>The EP&A Act adopts the definition of ESD found in the <i>Protection of the Environment Administration Act 1991</i>, as follows:</p> <p><i>ecological sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:</i></p> <ul style="list-style-type: none"> ○ <i>the precautionary principle;</i> ○ <i>inter-generational equity;</i> ○ <i>conservation of biological diversity and ecological integrity; and</i> ○ <i>improved valuation, pricing and incentive mechanisms.</i> <p>The Commission has considered the principles of ESD in its determination as set out below.</p> <p>a) The precautionary principle</p> <p>The Commission finds that the precautionary principle has not been triggered.</p> <p>b) inter-generational equity</p> <p>The Commission has considered inter-generational equity in its assessment of the potential environmental, social and economic impacts of the Application.</p> <p>c) conservation of biological diversity and ecological integrity</p>

The biological and ecological impacts of the Application are limited to consideration of the proposed tree removal and appropriate replacement trees and landscaping, which has been addressed by the Department in para 6.3 of the AR, and considered by the Commission in Section 5 of this Statement of Reasons.

As required by s 7.9(2) of the *Biodiversity Conservation Act 2016*, a SSD application needs to be accompanied by a Biodiversity Development Assessment Report . A Biodiversity Development Assessment Report was submitted with the Application and “...species credits are not required to offset impacts to the planted native vegetation...” (AR para 4.4.17).

d) improved valuation, pricing and incentive mechanisms

The Commission finds that the scope of the Application and its assessment of costs and benefits satisfactorily addresses these matters in the context of the current policy framework.

The Public Interest

In considering this Application, the Commission has weighed the predicted benefits of the Application against its predicted negative impacts. The Commission has given consideration to the principles of ESD in its assessment of each of the key issues, as set out in section 5 below.

The Commission finds that, on balance, the Application is consistent with ESD principles, that the development will achieve an appropriate balance between relevant environmental, economic and social considerations, and that the likely benefits of the Project warrant the conclusion that an appropriately conditioned approval is in the public interest.

The application of the BCA and the consequences if future changes to the design are required is an appropriate matter of consideration in the public interest, and the Commission notes that this is addressed by the Department (AR paras 6.2.69 - 6.2.78) and is discussed in section 5. The Commission has imposed deferred commencement condition to address the potential consequences of BCA compliance.

3.5 Additional Considerations

28. In determining the Application, the Commission has also considered:

- Planning Proposal PP-2020-2448, Proposal to rezone land at 23-27 Lytton Street Wentworthville (Amendment 9) from R2 Low Density Residential to R4 High Density Residential
- *Interim Construction Noise Guideline, 2009 (ICNG)*;
- *Noise Policy for Industry, 2017 (NPfi)*
- *RMS Guide to Traffic Generating Developments, 2022 (RMS Guide)*
- *Cumberland Local Infrastructure Contributions Plan 2020*
- *Draft Construction Noise Guideline, 2020 (DCNG)*

3.6 The Commission's Meetings

29. As part of the determination process, the Commission met with various persons as set out in Table 2. All meeting and site inspection notes were made available on the Commission's website.

Table 2 – Commission's Meetings

Meeting	Date	Transcript/Notes Available on
Department	24 January 2023	31 January 2023
Applicant	23 January 2023	30 January 2023
Council	24 January 2023	31 January 2023
Site Inspection	16 January 2023	20 January 2023

3.7 The Site Inspection

30. On 16 January 2023, Commissioners Dianne Leeson (Chair) and Adrian Pilton conducted a Site Inspection. Notes of the Site Inspection were made publicly available on the Commission's website.

3.8 The Department's Assessment Report

31. The Department's AR was prepared to set out the Planning Secretary's whole-of-government assessment of the Application. As part of this assessment the Planning Secretary, through the Department, considered the amendments to the Application with regard to the relevant statutory obligations, supplementary information provided by the Applicant, public submissions and advice from Government agencies.

4. Community Participation & Public Submissions

4.1 Public Submissions

32. As part of the Commission's consideration of the Application, all persons were offered the opportunity to make written submissions to the Commission from 21 December 2022 until 5pm AEDT, 10 February 2023. The Commission received two written submissions on the Application:
- one submission in support on economic grounds citing employment as a key factor; and
 - one objection raising concerns about: traffic impacts; site suitability; flood and site drainage; public safety; access; and amenity.

5. Key Issues

5.1 Built Form and Urban Design

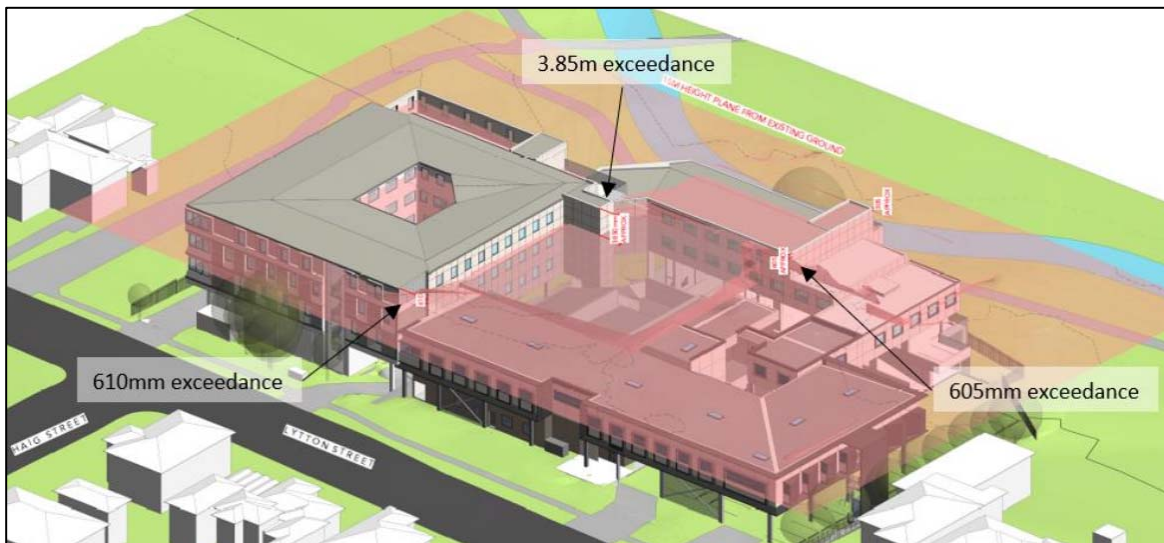
5.1.1 Building Bulk and Mass

33. The overall bulk and mass of the Project is a key consideration for the Commission. The undercroft building form in Stage 1 is proposed to be replicated, with the Applicant stating that this building form is necessary to facilitate “*level internal access from the proposed extension through to the first floor of the existing Stage 1 building*” (AR para 6.2.16).
34. The Applicant advised that the inclusion of basement parking was not pursued in order to reduce flooding risks, reduce site disturbance and obtain efficiencies in connectivity of the buildings (Applicant’s Meeting with the Commission, pg 3 and 4). In relation to the inclusion of ramps between the two building stages, the Applicant advised that they were not included due to the need for flexibility in moving beds between the two stages, that there are frail patients and ramps and stairs would not be desirable, and floor space would be lost (Applicant’s Meeting with the Commission, pg 5 and 6).
35. The Commission notes that the Site was rezoned in May 2017 to have a maximum height of 15m and maximum FSR of 1:1 under planning proposal PP-2020-2448. The concept scheme that accompanied the planning proposal and informed the building height control (now under the CLEP) was three storeys and had three levels of basement car parking, as shown in the AR in paragraph 2.5, and in AR Figures 21 and 22.
36. In response to the point that this concept scheme had a basement, (and complied with the height control), the Applicant’s Project Manager stated that (Applicant’s Meeting with the Commission, pg 5):
- So that scheme that was part of the planning proposal was actually for a different type of facility, so that was a co-located but it was a medical rehabilitation facility, so that would - it was not a mental health facility. When, in our current scheme, it is an extension and a full integration of the existing mental health facility, so we need that direct link between those existing wards, which the other scheme did not need. So that was one of the reasons that we stuck with those floor-to-floors remaining the same as the existing building.*
37. The Commission notes that there is a tension between the need for efficient floor space and functional design to provide mental health services, car parking which Council maintains is under-provided (see discussion in section 5.3 below), and avoidance or minimisation of flooding impacts which collectively contribute to height and bulk outcomes. It is noted that basement car parking would also impose additional costs on the Applicant.
38. The Department’s consideration of this issue is covered in AR para 6.2.17:
- The Department acknowledges the SDRP’s request that the undercroft be removed to allow for the redistribution of GFA and useable space to ground level, reducing the height and bulk of the building. It is agreed that removal of the undercroft would result in an improved public interface to both Lytton Street and the Council reserve. However, this would result in additional flooding impacts, as addressed in Section 6.4. It is also noted that the existing Stage 1 building, which was granted consent by Council, sits above a ground level undercroft carpark and therefore sets a precedent for this style of development at the site.*
39. The Commission accepts that the overall form and massing of the proposed building is acceptable for the reasons indicated by the Department.

5.1.2 Building Height

40. The Department noted that the Application was amended in the RtS to reduce the proposed height of the building in response to Council's objection and a concern raised in a public submission (AR paras 6.2.20 – 6.2.24). The merits of the proposed building height (and the justification for variation under cl 4.6 of CLEP) is set out in section 3.3.3 above. The height variation is illustrated in Figures 28 to 32 in the AR. Figure 28 from the AR is shown below as Figure 2:

Figure 2 – Compliant height plane shown in pink and areas of exceedance shown in white/grey, (Source: AR Figure 28)



41. Although the exceedance is almost a whole storey towards the rear of the Site, it is minimal on the Lytton Street frontage. As required by cl 4.6 of CLEP, the Department has undertaken a detailed analysis of the justification for the proposed height and the impacts that result. This covers matters of the reasons for the form of the building, compatibility with the character of the locality, the visual impact based on the Applicant's Visual Assessment, and the impacts on solar access to neighbours.
42. The Commission agrees with the Department that the proposed height is acceptable for the reasons set out below (AR para 6.2.55):
- *the site is constrained due to the impact of flooding on the site removing the ability to locate parking below ground*
 - *the functional needs of the development are constrained by the retention of the existing building and the need to maintain existing floor levels.*
 - *these constraints restrict the built form and result in less flexibility for the distribution of building mass across the floor levels*
 - *the building envelope locations, height and scale are appropriate for the site, consistent with the ongoing use of the site and would not have significant adverse visual impacts.*
 - *the development is considered to satisfy the objectives of the HOB development standard.*
 - *the development would not have any significant amenity impacts arising from overshadowing, visual impact and loss of privacy*

5.1.3 FSR

43. The FSR of the total proposed development (including the existing Stage 1) of 1.09:1 exceeds the CLEP control of 1:1. The justification for the proposed GFA (and FSR) is summarised in AR para 6.2.58, including the need 'to accommodate the unmet demand for mental health services', that it supports the economic development of Wentworthville, and the proposed development 'is considered contextually appropriate in the site'.
44. Council objected to both the proposed FSR (and height) in the EIS and RtS stages, for reasons in AR para 6.2.59:
- Council raised concerns that the proposed variation in FSR control indicates bulk and scale that is inappropriate for the existing locality, setting an undesirable precedent in the existing streetscape. Council noted the building is imposing and results in an inappropriate balance between the built and natural forms, and concluded the development is not in the public interest.*
45. The Department in its consideration of cl 4.6 to vary the maximum FSR development standard has addressed the need for the density to provide a suitably sized mental health facility and the intensity of development in the locality, noting that the Project is separated from lower density development by the street and the Reserve 'laneway' to the south (AR paras 6.2.61 – 6.2.64).
46. The Department concluded (AR para 6.2.66):
- Overall, the Department considers that the height and bulk of the proposed extension would not appear excessive within the locality, given that:*
- the proposal generally reflects the scale and bulk of existing buildings and proposed future character of sites to the north, north-east and west*
 - the structure has been designed to reduce impacts of the height and bulk exceedances on the low-scale residential properties to the south and east.*
 - the site is bordered by a Council reserve to the west and a public pedestrian laneway to the south, allowing for adequate separation from adjacent properties.*
47. The Commission supports the social and economic benefits of extending the mental health facility on the Site. The Commission agrees with the Department's conclusions above and is of the view that the proposed FSR is acceptable and justified notwithstanding Council's objection.
48. The Department also refers in AR para 6.2.66 to the initial advice from the SDRP that the design should be amended to reduce the height, and concern with the limited setback from the rear boundary. The Department's assessment, notes that "*the site specific characteristics and the Applicant's design approach, ... has sought to reduce the impacts of the HOB and FSR contraventions at surrounding properties*" (AR para 6.2.66).
49. On balance, the Commission's decision to approve the development is based on the benefits of the provision of the expanded health facility and the minimal impacts arising from the Project.

5.1.4 Setbacks

50. The CDCP contains site specific setback controls. Council objected to the non-compliance with all setbacks. The Department stated the following (AR para 6.2.10):

Council raised concern regarding failure of the development to comply with the setback controls outlined in the CDCP 2021, in particular Part F4-1 which requires setbacks of 6m (or aligned with an existing building) to the front boundary, 6m from the rear boundary and 3m from the side boundaries. The objectives of the setback controls listed under F4-1 are as follows:

- *Objective 1: Ensure that any future development on the site provides adequate separation to adjacent properties and the low density development is consistent with that allowed under the R2 zone of Cumberland LEP 2021.*
- *Objective 2: Protect the amenity of nearby properties and the use of those properties.*

51. The front setback aligns with the existing Stage 1 and is therefore compliant with the CDCP. The Commission notes that side and rear setbacks are exceeded. In relation to the rear setback which is required to be 6m, the Department notes “Due to the irregular alignment of the western boundary, the extension would be set back by between 0.05m and 3m at the Lower Ground and Ground level carpark, and 1m and 4.5m at the floors above” (AR para 6.2.8). The Department accepted this as the proposed car park and building backs onto the Council Reserve, is separated from any development to the west and meets the objectives quoted above (AR para 6.2.11).
52. The Commission agrees with this assessment, but notes that the proposed western car park is screened only at the lower level and its layout does not respond to the configuration of the western boundary. The Commission also notes Council’s concerns regarding visual amenity and screening of the car park when viewed from the west. There is very little space remaining for the planting of trees to mitigate the visual impact of the car park. The trees relied upon for canopy cover include those located in the Council Reserve (T48 and T49), the future of which is dependent upon survival during construction; and Tree 41, the health of which is uncertain and is to be the subject of further testing (discussed in Section 5.3.1 below).
53. The Commission accepts that the setback along the western boundary of the Site does not comply with the CDCP but agrees with the Department that this is satisfactory given that the adjoining land is a Council reserve and is removed from residences. However, the Commission notes that should redesign of the external building be required for BCA compliance (discussed in Section 5.1.6 below) there is opportunity to improve the setback and landscape treatment of the western boundary provided the BCA requirements can be met.
54. In relation to the interface of the car park and the Council Reserve to the west, Council in its meeting with the Commission, submitted that a condition be imposed that:
- Privacy screens shall be installed on the entire openings and along the western elevation of the upper level car parking at the rear of the subject development*
Reason: To minimise the visual impact of the car parking area facing Council’s Lytton Street Park.
55. The Commission agrees with the substance of Council’s submission and finds that the installation of privacy screening as described by Council would assist in minimising visual impact on the Council Reserve. The Commission has therefore imposed condition C11 and C12 which gives effect to this requirement.

5.1.5 Materials and Finishes

56. The Department's AR notes that the proposed materials and finishes vary with a mixture of glazing, fibre cement cladding, solid aluminium panelling, perforated metal screening and standing-seam metal cladding (AR para 6.2.6). According to the Department the materials and finishes of the extension complement the existing Stage 1 building (AR para 2.2.5).
57. The Commission agrees with the Department and is of the view that the proposed materials and finishes are materials and colour palette are contextually appropriate.

5.1.6 Compliance with the BCA

58. The Department cites the Applicant's BCA Report (Appendix 25 of the EIS) as identifying issues with fire safety and emergency egress through the building and that the Report recommends "a number of design solutions to address the concerns and advises that plans are required to demonstrate a compliant path of travel from each exit". The Department states "The report ... notes that the building has not been provided with spandrels or other means of separation of openings in external walls, and therefore assumes that a sprinkler system will be installed" (AR para 6.2.70).
59. The Department's assessment report notes at AR 6.2.72 that it requested a revised BCA assessment at the Supplementary RtS stage, but the Applicant refuted the need for this, for reasons summarised in AR para 6.2.73. The Applicant's response to the Department's RFI request on 30 November 2022 did not clearly address the questions raised.
60. The Commission agrees with the Department's assessment and has imposed deferred commencement conditions A1, A2, A3 and A4 requiring the Applicant demonstrate that compliance with the BCA can be achieved without amendment to the building as proposed and throughout all operational stages, including while construction is underway (AR pg. 26). The issue is not as indicated by the Applicant in the Supplementary RtS response, that the matters will be fully resolved "otherwise a Construction Certificate will not be achieved". The reason a BCA report is required at the development application stage is to ensure that changes to meet the BCA that affect the design will not be needed at the construction stage.
61. The Commission further notes that the Applicant's Supplementary RtS response implies emergency access will be sought via Council's Reserve to the west of the Site (Supplementary RtS page 3) as part of its BCA compliance approach. The Commission at the Meeting with the Council asked for clarification as to whether access would be given to Council's Reserve. Council confirmed that it is its position to not grant access to the park from the Site in an emergency situation (Transcript Meeting with Council, page 8).
62. The Department further noted that egress through the Reserve could result in "a large number of people who are compromised walking into a Council Reserve at night where there's an open drainage channel" (Transcript Meeting with the Department, page 13).
63. The Applicant advised the Commission on 27 January 2023 that they had reviewed the matter further and "wish to make no further changes to the conditions as drafted".

5.2 Tree Removal, Landscaping and Biodiversity

5.2.1 Tree Removal and Protection

64. The Application includes the removal of 35 trees and the planting of 13 replacement trees. One tree (Tree 41) which is to remain within the Site may be affected by the building works. There are also two trees which are located in the Reserve (outside the Site) but which are close to the western Site boundary that may be affected by the Project (Trees 48 and 49) (AR paras 6.3.1 – 6.3.4).
65. Council did not raise concern regarding the proposed tree, but recommended conditions requiring further investigations to be required for Tree 41 and to ensure tree protection measures are implemented during construction for those trees being retained (AR para 6.3.5). The Department's Environment and Heritage Group (**EHG**) advised that Trees 41, 48 and 49 "*would be subject to major encroachment from the proposed development and requested root investigations to determine that the trees will remain viable, in accordance with Australian Standard 4970:2009*". This was not submitted by the Applicant and EHG recommended conditions to be satisfied during construction, post-construction and for the on-going monitoring of Trees 48 and 49, and conditions requiring testing to confirm the health of Tree 41 (AR para 6.39).
66. The Commission agrees with the Department that the proposed tree removal and protection of trees to be retained is acceptable (AR para 6.3.10). The Commission has imposed condition D27 and D28 which require the Applicant to establish tree protection measures and to ensure that these are in place prior to construction commencing. The Commission has also imposed condition B29 which requires the Applicant to undertake further testing on Tree 41 and if required, replace it with an advanced tree of the same species.

5.2.2 Landscaping

67. The proposed landscaping is described in AR para 6.3.11, and includes the replacement planting of 11 trees on the western side boundary and two trees on the Lytton Street frontage.
68. The Department states that the *NSW Government's draft Greener Places Design Guide 2020* suggests a tree coverage target of 40% in low density areas. The Department noted that Application includes a site canopy coverage of 27%, or 30% if canopy from existing trees outside the boundary are included (AR para 6.3.15). Notwithstanding, the Department is satisfied the proposed hard and soft landscaping is of a high quality and is acceptable (AR para 6.3.16).
69. The Commission agrees with the Department and is satisfied that the Applicant has supplied adequate justification for the removal of trees across the Site and that the proposed replacement planting within the site can suitably offset the localised impact of tree removal on Site (AR para 6.3.18). The Commission has imposed condition F32 which requires the Applicant to prepare an Operational Landscape Management Plan to manage the revegetation and landscaping on-site.

5.3 Flooding

70. The Application addressed flooding, including events up to the Probable Maximum Flood (PMF). The Department describes the extent of flood affectation in AR para 6.4.3:

The revised Flood Impact Study demonstrates that the site is subject to 1%, 0.5% and 0.2% AEP and PMF flood events. Specifically, the site is impacted by overland flows which drain westward from Lytton Street towards the Council drainage reserve at the rear centred around Finlayson Creek. Peak floodwater levels show that the site is not impacted by mainstream flooding during these events.

71. The Department concluded (AR para 6.4.21):

The Department is satisfied the proposed development would not increase flooding or flood hazards at neighbouring properties and considers the Applicant has demonstrated that operation of the facility can be managed during flood events. The intention to shelter in place in this instance is considered acceptable given the identified short flood duration and the low-risk hazard of the relevant over land flood events in terms of flood depth and velocity. SES raises no objection to the shelter in place arrangements. The Department recommends conditions to ensure the safety of staff and patients and the management of site operations during flood events, including a requirement for the preparation of an EMP prior to commencement of operations. The design of the development, including at grade car parking, would ensure minimal disruption to the operation of the facility during flood events.

72. The Commission agrees with the Department's assessment and is satisfied that the flood impacts have been suitably addressed in the design and operational plans for the facility, subject to the conditions of consent. The Commission has imposed condition F33 which requires to the Applicant to prepare an Operation Flood Emergency Management Plan to ensure the safety of staff and patients and the management of site operations during flood events. The Applicant will also be required to give consideration to flood risk during construction as part of Construction Environmental Management Plan imposed by the Commission (see condition D12 and D16).

5.4 Traffic, Transport and Parking

5.4.1 Traffic and Transport

73. The Application will increase the number of beds in the hospital by 55 and include nine additional consulting suites. There will be 23 additional full time staff with peak periods being 8am to 9am and 3pm to 4pm (ARA para 6.5.5). The Department has assessed traffic impacts with reference to the Applicant's Traffic and Accessibility Impact Assessment (TAIA), the Applicant's Traffic Statements (dated 28 June 2022, 27 July 2022 and 11 August 2022) and advice from TfNSW.

74. The Department noted that the Applicant used 2016 Census data to identify the modal split for the calculation of staff traffic (AR para 6.5.7). The TAIA also relied on a survey undertaken on 24 March 2021. The Department states that, based on the number of vehicle trips per bed per hour, predicted traffic generation for the proposed net increase of 55 beds is as follows:

- +11 vehicle trips between 8am and 9am;
- +28 vehicle trips between 3pm and 4pm.

75. SIDRA modelling was used to predict the traffic generation at key intersections. The Department states in AR para 6.5.15 that "*The post development traffic assessment found that the development would not reduce the LoS for either intersection in both the 2021 and 2031 Base Case + Development scenarios. No major additional queueing or delays are expected*". The Department noted that TfNSW and Council did not raise any concern.

76. The Commission agrees with the Department and is of the view that the traffic generated by the Application is acceptable and that the traffic impacts of the Project on surrounding streets and pedestrian safety are capable of being managed and mitigated. The Commission has imposed conditions to ensure that construction and operational traffic impacts generated by the Project are appropriately managed (see conditions D12, D14, D25 and F12).

5.4.2 Parking

77. The Commission notes that the parking proposed for both Stage 1 and the new Stage 2 will be 77 spaces. The Commission further notes that overall, there will be a reduction in parking per number of beds provided on the Site (currently 64 spaces for 70 beds and 9 consulting suites; proposed 77 spaces for 125 beds and 18 consulting suites). At the Site Inspection, the Commission observed that the car parks were not at capacity.

78. The Council objected to the Application on grounds of insufficient parking in their submission on the EIS, dated 3 March 2022 and advised that parking should be provided in accordance with the RMS Guide which would require 102 spaces. The CDCP refers to the RMS Guide as being the basis for the parking requirement.

79. It is noted that the RMS Guide, under the requirements for Health and Community Services, does not specify a rate but in the table where rates are provided for various land uses, states: "*Comparisons should be drawn with similar developments...*" (page 5-28) and there is also guidance on page 5-34. Traffic generation rates are provided that refer to data from 1994 surveys (pages 5-33 to 5.34).

80. The Applicant relied on the provisions in the now superseded Holroyd DCP 2013 which specified parking rates for hospitals (AR para 6.5.19). The Applicant in the RtS stated that:

- *Cumberland DCP 2021 is unsuitable to determine parking rates for the expanded facility, given that it does not provide car parking rates for rehabilitation centres or public hospitals.*
- *Guide to Traffic Generating Development is unsuitable to determine parking rates for the expanded facility, given that it provides generic state-wide rates derived from 1994 data, that does not consider the unique operational requirements for individual developments*

81. In the RtS, as explained in AR para 6.5.22, parking was assessed using a 'first principles approach', based on an assumed modal split for staff and visitors. This resulted in an estimated shortfall of four car spaces (AR para 6.5.23). The Applicant also conducted an on-street parking survey (on Monday 8 August 2022) and identified that on average there were 124 spaces available in the study zone throughout the day (AR para 6.2.25).

82. Council in the meeting with the Commission indicated that "*largely our engineers have looked at the shortfall, and we are satisfied, because the traffic management plan that's been provided, we've reviewed and we're satisfied with that.*" (Meeting with Commission, page 7).

83. The Commission agrees with the Department and for the reasons set out below the Commission is satisfied that the approach undertaken by the Applicant is adequate:

- Cumberland DCP does not outline minimum parking provision requirements;
- the number of proposed on-site parking spaces (77) exceeds the number required in accordance with the former Holroyd DCP, which applied to the site up until November 2021.
- the Site is near the Wentworthville town centre, Wentworthville Railway Station and bus stops, enabling good access to public transport;

- the Applicant's parking survey demonstrates that there is sufficient on-street parking capacity to accommodate the proposed shortfall of four off-street spaces;
- the Application includes a Green Travel Plan which has potential to reduce car parking requirements in the future.

84. As stated above in paragraph 76 above, the Commission has imposed conditions to ensure that construction and operational traffic impacts generated by the Project are appropriately managed.

5.5 Noise and Vibration

5.5.1 Noise and Vibration during Construction

85. The Applicant's EIS was accompanied by a Noise and Vibration Impact Assessment (NVIA) which assessed potential noise impacts during construction and operation.

86. In relation to construction noise, the Department notes that with noise mitigation in the form of a 2.4m high hoarding around the construction, activities occurring at distances of between 5m and 40m would not exceed the highly noise affected management level at any receivers (AR para 6.6.5).

87. The Department holds strong concerns regarding the continued operation of the existing Stage 1 mental health facility during demolition and construction. The Department was particularly concerned regarding noise levels for sensitive receivers within the Stage 1 facility noting that they will exceed the highly noise affected management level of 75dB(A).

88. The Commission shares the Department's concerns raised above and has imposed condition D15 which requires the preparation of a Construction Noise and Vibration Management Sub-Plan to ensure that the acoustic impact of construction works at the existing Stage 1 clinic are in accordance with the ICNG (AR para 6.6.11). Subject to the imposed conditions, the Commission agrees with the Department and is satisfied that the construction noise and vibration impacts can be appropriately managed (AR para 6.6.17).

5.5.2 Operational Noise

89. Operational noise will potentially arise from mechanical plant, the loading bay, from traffic and the car park and from the use of the outdoor terraces and courtyards (AR para 6.6.18). Council in its submission on the EIS raised concern with noise impacts from the upper courtyards. Concern with traffic noise was raised in a submission by a resident.

90. The Department has assessed the NVIA with respect to these noise sources. The Department has recommended attenuation measures including acoustic glazing on the eastern façade, a restriction of 30 users on the Level 3 outdoor terrace and no evening use of the Level 2 and Level 3 terraces. Traffic and loading dock noise is predicted to be compliant with the required project noise trigger levels (PNTL), including at night (6pm to 7am). (AR paras 6.6.18 – 6.6.25)

91. The Commission agrees with the Department's conclusions that the:

... operational noise impacts generated by the final development can be adequately managed and mitigated, subject to the verification of noise attenuation measures during the detailed design stage and verification of operating conditions upon commencement of operations. The Department has recommended conditions requiring the proposals comply with the PNTLs set out in the NVIA and that post-occupation monitoring be conducted. (AR para 6.6.26)

92. The Commission has therefore imposed condition C3 which requires the Applicant to undertake a detailed assessment of mechanical plant and equipment to ensure compliance with the relevant project noise trigger levels. Condition F14 imposed by the Commission requires the Applicant to submit evidence to the Certifier that the noise mitigation recommendations in the assessment undertaken under condition C3 have been incorporated into the design of mechanical plant and equipment to ensure that the development will not exceed the recommended project noise trigger levels.

5.6 Other Issues

Safety and Public Amenity

93. A public submission raised concern with the impact of the Project on park users. The Commission notes the assessment under 'Environmental Amenity' that 'the Project would provide a good level of amenity for patients and staff and not cause harm to the level of amenity experienced by occupiers of neighbouring properties or users of the Council reserve' (AR page 78). The assessment further concluded that 'the proposal would adequately address Crime Prevention Through Environmental Design principles, resulting in the provision of a safe and secure facility for patients and staff, and ensuring public safety around the site'. The Commission is satisfied safety and public amenity has been adequately addressed.

Stormwater Infrastructure

94. The Commission is satisfied that Council's concerns regarding the relocation of a stormwater drainage pipe and easement and meeting Council's engineering requirements have been addressed.
95. The Commission has imposed condition F9 requiring the registration of an easement which provides for re-alignment of the existing Council pipeline easement on title of Lot 1 DP 787784.

Electricity Substation

96. Council, in its meeting with the Commission raised the potential need for a blast wall to the required pad mount electricity substation, located at the southern end of the Site, close to the street. Council requested "*further consideration of the proposed substation location within the front setback as any future blast wall that may be required to encase the substation which will be a dominant structure that does not positively contribute to the existing locality*" (Council Response to Commission, 27 January 2023).
97. Endeavour Energy advised in its Submission on the RtS that it would be preferable for the substation be relocated to the front boundary to avoid the need for any fire rated construction and avoid the need for an easement for the associated underground cables (AR Table 7, pg 35).
98. The submission from Endeavour Energy, dated 26 August 2022 also identifies that "*it appears that there are opening windows within the fire restriction area for the new pad mount station*" and that "*in Endeavour Energy's experience any form of glazing (in particular opening windows) cannot achieve the required [fire] rating*". The Applicant's Supplementary RtS (21 October 2022) addressed this by indicating that no windows would be operable due to the Australian Health Facility Guidelines" (Pg 6).

99. The Commission shares the concern that a blast wall would not be appropriate on this main frontage, notwithstanding the Level 1 drawing (DA0102 Rev 10) does show a notation "*fire rating within 3m of substation*". The Commission has imposed deferred commencement condition A1(a) which states that the Applicant must demonstrate to the satisfaction of the Certifier that no external design amendments to the approved development are necessary to meet the requirements of the BCA, particularly with regard to fire safety. The Commission notes that a blast wall has not been proposed by the Applicant and for the reasons set out above has not granted consent for the construction of a blast wall as part of this Application.

6. The Commission's Findings and Determination

100. The views of the community were expressed through public submissions and comments received (as part of the Department's exhibition and as part of the Commission's determination process), as well as in the presentations made in the meetings with the Commission. The Commission considered all of these views as part of making its decision.
101. The Commission has carefully considered the Material before it as set out in section 3.1 of this Statement of Reasons. Based on its consideration of the Material, the Commission finds that:
- the Project is permissible in the R4 High Density zone under the CLEP and meets the objectives of the zone;
 - the height, bulk and density of the Project is generally acceptable, and residual impacts are capable of being managed and mitigated through conditions of consent;
 - the Applicant's written requests under cl 4.6 of the CLEP to vary the height of building and FSR development standards in the CLEP have been considered and meet the tests in cl 4.6 in order for consent to be granted
 - the Project complies with the strategic planning directions of State and Local planning policies;
 - the Project will deliver improve and extended mental health care facilities in a location that is well served by public transport and existing infrastructure;
 - the removal of existing trees is acceptable and necessary to construct the building. Remaining trees will be protected;
 - the provision of car parking is acceptable, subject to the implementation of a Green Travel Plan;
 - the potential impacts on nearby residents during construction are capable of being managed and mitigated through conditions of consent;
 - the Project is an orderly and economic use of the Site;
 - the Project is in accordance with the Objects of the EP&A Act; and
 - the Project is in the public interest.
102. The Commission has issued a deferred commencement consent as the Applicant has not provided sufficient information to demonstrate that future design amendments would not be necessary to ensure the building complies with the requirements of the BCA; and
103. For the reasons set out in paragraph 101 above, the Commission has determined that consent should be granted, subject to conditions. These conditions are imposed to:
- prevent, minimise and/or offset adverse environmental impacts
 - set standards and performance measures for acceptable environmental performance
 - require regular monitoring and reporting
 - provide for the on-going environmental management of the development.
104. The reasons for the Decision are given in the Statement of Reasons for Decision dated 21 February 2023.



Dianne Leeson (Chair)
Member of the Commission



Adrian Pilton
Member of the Commission



New South Wales Government
Independent Planning Commission

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