

ITEM 9.3 PLANNING PROPOSAL - 79-81 QUEENS ROAD AND 2-12 SPENCER STREET, FIVE DOCK**Reporting Manager** Manager Strategic Planning

Senior Strategic Planner

- Attachments:**
1. Planning Proposal - 79-81 Queens Road and 2-12 Spencer Street, Five Dock - Beam Planning (*Provided in Attachment Booklet*)
 2. Urban Design Review (for Council) - Studio GL (*Provided in Attachment Booklet*)
 3. Proposed alternative scheme (by Council) (*Provided in Attachment Booklet*)
 4. Feasibility Assessment (for Council) - Atlas Economics (*Provided in Attachment Booklet*)
 5. Appendix A - Indicative Design Concept - Projected Design Management Pty Ltd (*Provided in Attachment Booklet*)
 6. Appendix B - ADG Assessment - Projected Design Management Pty Ltd (*Provided in Attachment Booklet*)
 7. Appendix C - Urban Design Analysis - Audax Urban (*Provided in Attachment Booklet*)
 8. Appendix D - BCA Statement - Philip Chun Building Compliance (*Provided in Attachment Booklet*)
 9. Appendix E - Valuation Statement - Titan Advisory Group (*Provided in Attachment Booklet*)
 10. Appendix F - Evidence of Negotiation - Bell Property Commercial (*Provided in Attachment Booklet*)
 11. Appendix G - Amendments to the CBDCP - Beam Planning (*Provided in Attachment Booklet*)
 12. Local Planning Panel - Minutes (*Provided in Attachment Booklet*)
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RECOMMENDATION OF DIRECTOR ENVIRONMENT AND PLANNING

That:

1. The Planning Proposal for land at 79-81 Queens Road and 2-12 Spencer Street, Five Dock (PP2025/0001) be progressed to Gateway determination subject to the following amendments:
 - a) identify 10-12 Spencer Street as 'Key Site 17A' to incentivise the delivery of the 3m wide embellished public domain along Spencer Street;
 - b) retain the PRCUTS recommended maximum Floor Space Ratio of 3.0:1 across both sites, resulting in a maximum Incentive Floor Space Ratios of 3.3:1 to 79-81 Queens Road/2-8 Spencer Street and 1.8:1 to 10-12 Spencer Street;
 - c) apply a maximum Incentive Height of Building of 67m to 79-81 Queens Road / 2-8 Spencer Street and 19m to 10-12 Spencer Street;
 - d) remove the amendments relating to site specific provisions, with the exception of a local clause that requires a single vehicle access via a consolidated driveway and basement.
 2. The following additional information be provided prior to the Planning Proposal being submitted to the Department of Planning, Industry and Environment for a Gateway Determination:
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- a) demonstrate the capacity of the site to provide landscaped area and deep soil in accordance with the Apartment Design Guide;
 - b) a flood risk assessment that demonstrates flooding is able to be managed within the subject site and does not adversely impact any other properties.
 3. A draft amendment to the *Canada Bay Development Control Plan* be prepared by Council to provide detailed development controls for the site and include:
 - a) 3.0m upper level setback to the western boundary and to the eastern podium edge of 79-81 Queens Road / 2-8 Spencer Street;
 - b) enable a shared pedestrian link between Spencer Street and Queens Road; and
 - c) include a single shared driveway and internal access ramp on 79-81 Queens Road / 2-8 Spencer Street and require future development to provide a 'right of access' easement on the land title.
 4. Delegation be requested from the Department of Planning, Housing and Infrastructure to manage the plan making process.
 5. Authority be delegated to the General Manager to make minor variations to the Planning Proposal to correct any drafting errors or to ensure that it is consistent with the Gateway Determination.
 6. The Planning Proposal and draft Development Control Plan be endorsed for public exhibition in accordance with relevant conditions imposed under the Gateway Determination.
 7. If, as a result of public exhibition of the Planning Proposal, the landowners of 10-12 Spencer Street provide a commitment to sell the land or work with the proponent to deliver a joint Development Application (removing the necessity for a planning proposal), the Proposal not proceed to finalisation.
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PURPOSE

To provide the outcome of the assessment of a proponent-initiated Planning Proposal for land at 79-81 Queens Road and 2-12 Spencer Street, Five Dock (PP2025/0001).

EXECUTIVE SUMMARY

Council has received a Planning Proposal (the Proposal) for land within Stage 1 of the Kings Bay Precinct of the *Parramatta Road Corridor Urban Transformation Strategy* (PRCUTS), comprising land bounded by William Street, Queens Road and the eastern end of Spencer Street, Five Dock. The Proposal has been prepared by Beam Planning for the proponent, DPG Project 37 Pty Ltd.

The Proposal is seeking an amendment to the *Canada Bay Local Environmental Plan 2013* to enable the land at 79-81 Queens Road/2-8 Spencer Street, Five Dock to be developed independently of 10-12 Spencer Street, Five Dock. At present, both sites are required to be amalgamated to realise the maximum building height and Floor Space Ratio. The Planning Proposal states that the fragmentation of the site is necessary due to the lack of success the landowners have had with either purchasing 10-12 Spencer Street or entering into a joint Development Application with the landowners of that site.

It is possible that each site could be developed independently, however the Proposal raises issues in relation to the planning standards and development controls that should be applied to each lot and the built form legacy that would be created by fragmenting a 'Key Site' into two development parcels. In particular, the Floor Space Ratio for each site must be no greater than the current combined Floor Space Ratio and the future tower must be set back a minimum of 3.0m from the eastern podium and western boundary. If these planning standards and controls are not implemented, the proposal would

not be supported as it would not achieve a development with an appropriate urban form and an acceptable level of amenity.

It is recommended that the Planning Proposal be submitted to the Department of Planning, Housing and Infrastructure for a Gateway determination subject to the amendments outlined in this report.

STRATEGIC DIRECTION

This report supports Our Future 2036 outcome area:

Direction 3: Vibrant Urban Living

Goal VUL 1: Creative vibrant local village centres and community hubs

BACKGROUND/DISCUSSION

Site details

The land at 79-81 Queens Road and 2-12 Spencer Street, Five Dock (Key Site 17) comprises 8 land parcels under two ownerships: 79-81 Queens Road / 2-8 Spencer Street comprises 6 lots owned by the Proponent (Proponent's site) and 10-12 Spencer Street comprises 2 lots that the proposal is seeking to remove from the Key Site 17 area. The Proponent's site is currently used for vehicle workshops and warehouses and 10-12 Spencer is currently used for vehicle workshops and a microbrewery. The total area of Key Site 17 is 4,113sqm, comprising 3,151sqm for the Proponent's site and 962sqm for 10-12 Spencer Street.

Key Site 17 has three road frontages, Queens Road to the north, William Street to the east and Spencer Street to the south. Adjoining the site on the west and on the opposite side of William street and Spencer Street (local roads) are light industrial sites. The site to the east is subject to a significant State Significant mixed-use development by Deicorp. To the north of the site, on the opposite side of Queens Road (a State road) is the Five Dock Leisure centre.

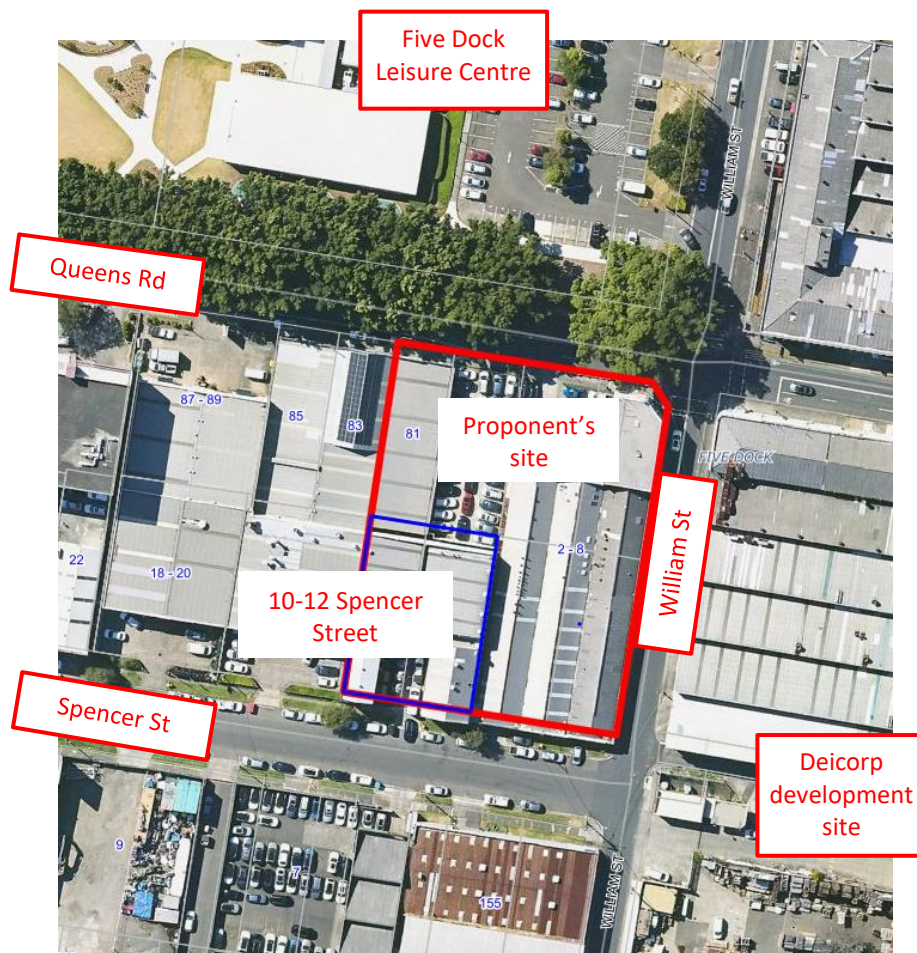


Figure 1: 79-81 Queens Road and 2-12 Spencer Street, Five Dock (Key Site 17)

Strategic and urban context

The existing local character of the area within which Key Site 17 is located features light industries, apart from land to the north which is characterised by open space and the Five Dock Leisure Centre. However, the land to the north is separated by a busy road and, visually at ground level, by significant mature fig trees along the northern side of Queens Road.

Key Site 17 is located within the Kings Bay Precinct of the *Parramatta Road Corridor Urban Transformation Strategy* (PRCUTS), a State Government strategy published in 2016. Local Planning Direction 1.5 *Parramatta Road Corridor Urban Transformation Strategy* issued by the Minister for Planning under of the *Environmental Planning and Assessment Act 1979* gives the Strategy and Implementation Tool Kit statutory weight and Councils are required to ensure that planning proposals are consistent with the Strategy. In December 2022, land within Stage 1 of PRCUTS, that includes Key Site 17, was rezoned consistent with PRCUTS, but with some refinements to produce improved urban design outcomes.

Stage 1 of the Precinct is now in transition towards realising the PRCUTS vision:

Kings Bay will be a commercial mixed use centre in the heart of the precinct, centred on Spencer Street (including new extensions to the east and west) and extending along the Parramatta Road frontage. The [Spencer Street] centre will provide fine-grained ground floor retail and urban services, with offices and commercial space in the podium levels above, to support and service the local community. The commercial centre will be surrounded by new high-rise residential tower development, stepping down towards the existing low-scale low-density residential areas.

Development capacity of Key Site 17 under Council's PRCUTS Stage 1 Masterplan was estimated to be approximately 123 dwellings.

Current Planning Controls

The key planning requirements that apply to Key Site 17 under the *Canada Bay Local Environmental Plan 2013* include:

- a) MU1 Mixed Use;
- b) Maximum Building height of 12m;
- c) Maximum Floor Space Ratio (FSR) of 1.0:1;
- d) Maximum Incentive Building Height of up to 67m;
- e) Maximum Incentive FSR of 3.0:1;
- f) Affordable Housing Contribution of 4%;
- g) Design Excellence requirements;
- h) Key Sites minimum site area requirements to activate incentive Height of Building and FSR of 4,096sqm;
- i) Specified infrastructure delivery to activate Incentive Height and FSR, comprising:
 - i. an 8m wide setback on land that fronts William Street, Five Dock, and
 - ii. a 3m wide setback on land that fronts Queens Road, Five Dock and land that fronts Spencer Street, Five Dock (note. These are reflected in the 2.5m maximum building height on the Incentive Building Height Map);
- j) Active Frontages to Queens Road, William Street and Spencer Street.

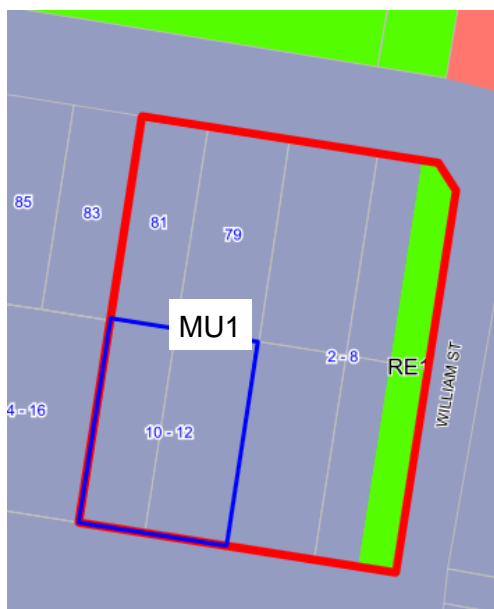


Figure 2: Current Land Zoning Map

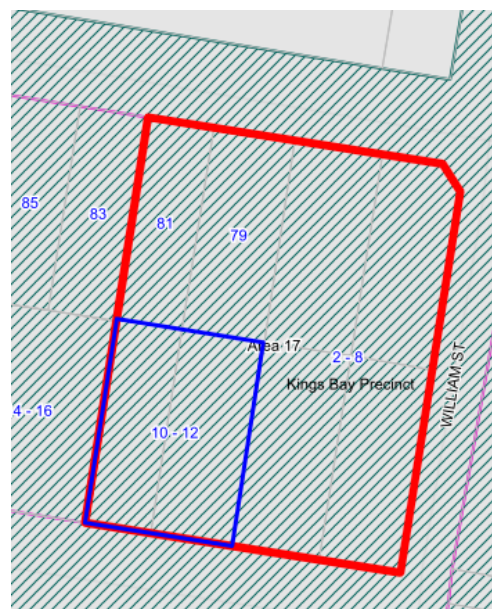


Figure 3: Current Key Sites Map

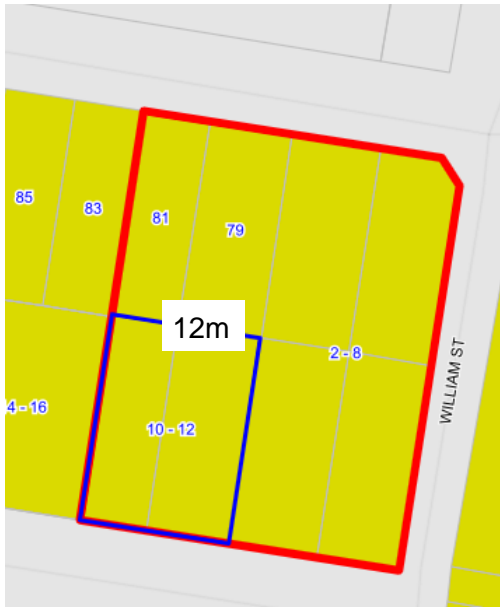


Figure 4: Current Building Height Map

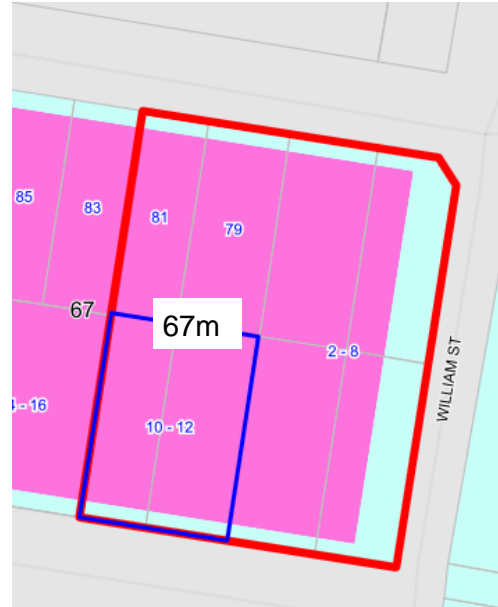


Figure 5: Current Incentive Building

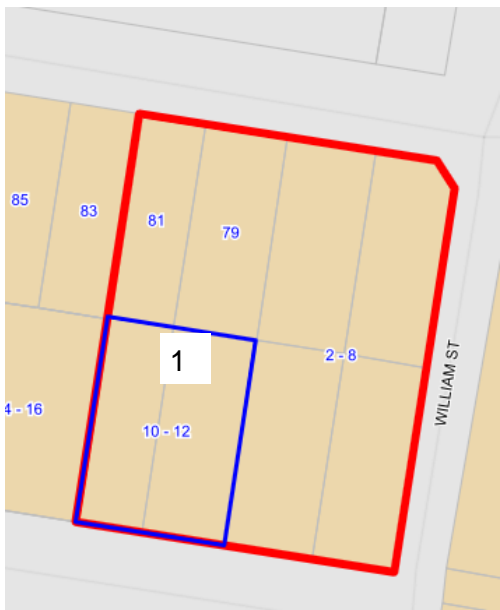


Figure 6: Current FSR Map

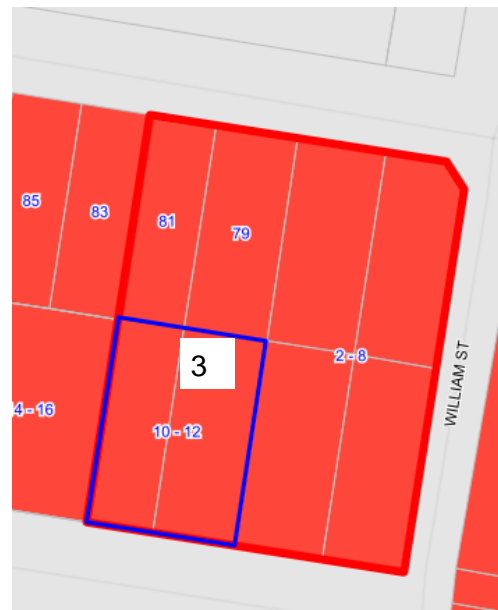


Figure 7: Current Incentive FSR Map Height Map

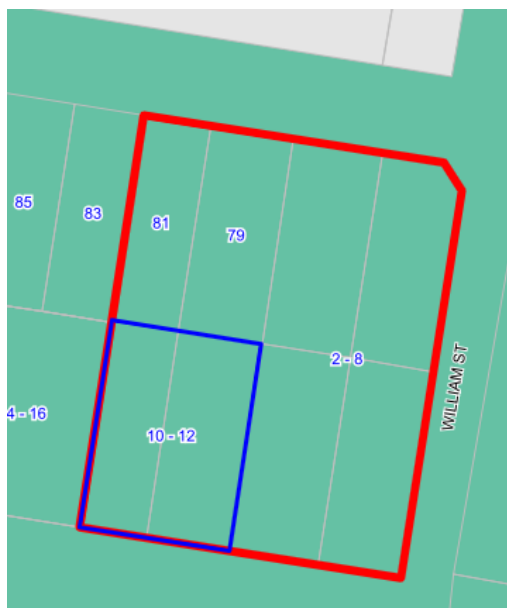


Figure 8: Current Design Excellence Map



Figure 9: Current Affordable Housing Contribution Map (site is wholly within)



Figure 10: Current Active Frontages Map

PLANNING PROPOSAL

The Planning Proposal states that “the objective of the Planning Proposal is to exclude 10-12 Spencer Street from Area 17 of the Kings Bay Precinct and prescribe new planning controls for both sites, whilst ensuring that they are aligned with and achieve the desired built form and public domain outcomes for the site as identified within Section K20 Kings Bay (PRCUTS) of the Canada Bay DCP.”

It is seeking to achieve this outcome by amending the *Canada Bay Local Environmental Plan 2013* to:

- Remove 10-12 Spencer Street from Key Site 17 on the Key Sites Map. This will have the effect of removing the Minimum Site Area Requirement and the Incentive Height and FSR for that site;
- Reduce the Minimum Site Area Requirement for Key Site 17 to 3,151sqm;

- No change is proposed to the Incentive Height (67m) and Incentive FSR (3.0:1) for the Proponent's site;
- Apply a Maximum Building Height of 19m and a Maximum FSR of 2.17:1 to 10-12 Spencer Street.
- Amend Part 6 of the LEP to add a new site-specific provision for 10-12 Spencer Street such that, despite the maximum height and FSR controls that would apply to that land:
"Development consent may be granted to development involving the erection of a building on the subject land with a height not greater than 19m and a floor space ratio not greater than 2.17:1, if the consent authority is satisfied that—
 - a. *the development is for the purposes of shop top housing.*
 - b. *a 3m wide setback to Spencer Street is provided.*
 - c. *a 6m wide setback to the western boundary is provided to facilitate a through site link that connects Spencer Street and Queens Road.*
 - d. *vehicular access is consolidated with the adjoining development at Area 17 of the Kings Bay Precinct."*
- Amend Part 8 of the LEP to require that, in applying Incentive Height and FSR within PRCUTS Key Sites:
"the consent authority must be satisfied the development:
 - i. *does not prevent the future redevelopment of 10-12 Spencer Street, Five Dock in accordance with this plan; and*
 - ii. *provides the potential for a single vehicle access to allow a consolidated driveway and basement with the future development at 10-12 Spencer Street."*

The proposal also suggests the following changes to the DCP:

- Block Configuration – Amend *Figure K20.7 Site Amalgamation Plan* to be updated to exclude adjoining land at 10-12 Spencer Street from Key Site 17.
- Public Domain Experience - New control - Area 17, despite being redeveloped in stages must have a consolidated basement with one singular access driveway along Spencer Street.
- Street Wall Heights and Setbacks - Amend *Figure K20.12 Building Envelopes Plan-western part* to be updated to amend upper-level setback distance from podium edge on William Street to 1m instead of 3m and on the western boundary to 1m instead of 21m.
- Street Wall Heights and Setbacks - Amend *Figure K20.21 Built Form Envelope – Section G (east)* to be updated to shift the tower further east to illustrate a 1m upper level setback. That is, from the podium edge on William Street.
- Massing and Articulation - New Control - *Development within Area 17 must provide high quality treatments to the common boundary between 2-8 Spencer Street and 10-12 Spencer Street, Five Dock.*
- Access and Parking - New control - *Both stages of development within Area 17 must be designed accordingly to accommodate a consolidated basement with a shared access point.*

The proposal states that it is seeking these amendments to Key Site Area 17 *"because the proposed development cannot achieve the minimum site area of 4,096m² required under Clause 8.4 [of the LEP] because of the inability to acquire the adjoining land at 10-12 Spencer Street even after multiple attempts of negotiation"*.

The proposed amendments and the justification are discussed below.



Figure 11: Proposed Key Sites Map



Figure 12: Proposed Building Height Map



Figure 13: Proposed Incentive Building Height Map (ie. does not apply to 10-12 Spencer Street)

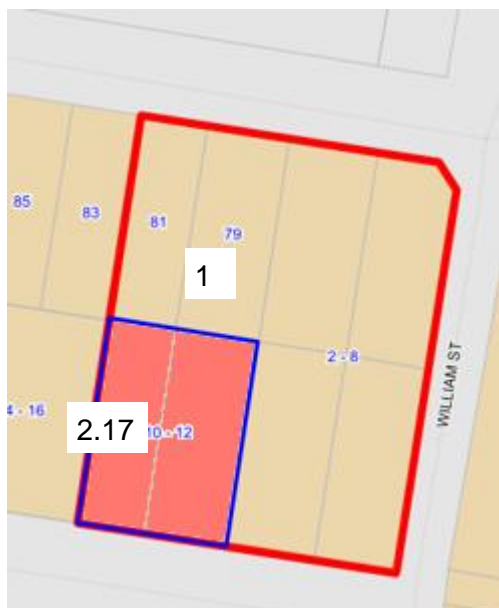


Figure 14: Proposed FSR Map



Figure 15: Proposed Incentive FSR Map (ie. does not apply to 10-12 Spencer Street)

Independent reviews

To assist with the assessment of the Planning Proposal, two independent reviews were commissioned:

- Urban Design Review by Studio GL to determine the developmental capacity of the two sites independently and the visual and amenity impacts of the proposed built form on the surrounding area (**Attachment 2 - Urban Design Review (for Council)**).
- Feasibility and Valuation Assessment by Atlas Economics to assess the methodology applied in the Valuation Statement (**Attachment 4 – Feasibility Assessment (for Council)**).

The findings and recommendations of these reports are incorporated into the assessment on the following pages.

STRATEGIC MERIT

Planning Proposals are required to be assessed for strategic merit against plans and strategies prepared by the NSW Government and Council. Relevant strategies and Local Planning Directions are addressed below.

Greater Sydney Metropolitan Plan – A Metropolis of Three Cities and the Eastern City District Plan

The *Greater Sydney Region Plan* (Region Plan) and *Eastern City District Plan* (District Plan) prepared by the former Greater Cities Commission shape strategic planning and infrastructure across metropolitan Sydney and align planning at the broad regional scale, down to the local area.

The proposal will enable the redevelopment of part of the site, thereby facilitating housing supply in a location that has been identified for an increase in density.

The proposal is generally consistent with the District Plan, subject to the continued delivery of relevant infrastructure identified in the LEP. The proposal should be required to retain the mechanism that incentivises the delivery of social infrastructure (public domain enhancements) on 10-12 Spencer Street. This is discussed below.

Canada Bay Local Strategic Planning Statement

Under clause 3.33(2)(c) of the *Environmental Planning and Assessment Act 1979* (the Act), a planning proposal is required to include justification, “including whether the proposed instrument will

give effect to the local strategic planning statement of the council of the area and will comply with relevant directions under section 9.1.” The *Canada Bay Local Strategic Planning Statement* (LSPS) was endorsed by the former Greater Cities Commission and is the primary land use planning document for the City of Canada Bay. The *Canada Bay Local Housing Strategy* (LHS) was endorsed by DPHI and informs the LSPS and is therefore also relevant.

The Planning Proposal is consistent with the LSPS.

Local Planning Directions

The Planning Proposal is required to be consistent with Local Planning Directions issued under Section 9.1 of the *Environmental Planning & Assessment Act 1979*.

Local Planning Direction 1.1 Implementation of Regional Plans

The Direction requires that planning proposals must be consistent with the relevant Regional Plan. A planning proposal may be inconsistent with the Direction if the inconsistency is insignificant or achieves the overall intent of the Regional Plan’s vision, land use strategy, goals, directions and actions.

The Planning Proposal is consistent with the Direction, subject to the current LEP mechanism that incentivises the delivery of social infrastructure (public domain enhancements) being retained on 10-12 Spencer Street. This is discussed below.

Direction 1.5 Parramatta Road corridor Urban Transformation Strategy

The Direction requires that Planning Proposals within the Parramatta Road Corridor must:

- give effect to the objectives of the direction by facilitating development that is consistent with the PRCUTS, providing a diversity of jobs and housing, and occur in line with infrastructure delivery;
- be consistent with the PRCUTS Strategic Actions; *Planning and Design Guidelines*; and *Implementation Plan and Implementation Update 2021*; and
- be adequately serviced, or have arrangements in place, satisfactory to the relevant planning authority, consistent with PRCUTS.

The Planning Proposal is consistent with the Direction, where upper level setbacks continue to be provided in accordance with the requirements of the PRCUTS Planning and Design Guidelines.

Direction 4.1 Flooding

The Direction applies where a planning proposal is seeking to create, remove, or alter a zone or provision for land that is flood prone.

Flooding on the site was assessed under the PRCUTS Stage 1 Flood Risk Assessment, which found that Key Site 17 is subject to PMF events and was therefore identified as within a Flood Planning Area.

In a PMF event, the site is classified as Hydraulic Hazard H3 (Unsafe of vehicles, children and the elderly) to H5 (Unsafe for people and vehicles. All buildings vulnerable to structural damage. Some less robust building types vulnerable to failure). In a 1% AEP event, the site is classified as Hydraulic Hazard H1 (Generally safe for people, vehicles and buildings) to H3. It is also classified as Flood Storage in a PMF event and Flood Fringe in a 1% AEP event. It has a Medium Flood Risk rating overall.

In a PMF event, the three surrounding streets (Queens, William and Spencer) are classified as Floodway and, in a 1% AEP event, William and Spencer are classified as Floodway and Queens is classified as Flood Storage. William and Spencer have a Medium to High Flood Risk rating overall and Queens has a Medium Flood Risk rating.

To reduce flood impacts, the PRCUTS Flood Impact Assessment recommended a slightly modified building layout to the layout in the PRCUTS Masterplan. Whilst this modified/recommended layout

does not resolve flood impacts within the Precinct itself, it was recommended as a means to manage flood impacts on down-slop sites. The subject Proposal is somewhat consistent with the recommended layout.

It is the responsibility of all proposed development to manage stormwater within its site, such that the development does not increase flooding on other properties. Given the high risk of flooding in the immediate vicinity of the subject site, particularly along Spencer Street, it is recommended that a flood risk assessment be undertaken that demonstrates flooding is able to be managed within the site and does not adversely impact any other properties. An area of concern is the effect on flooding as a result of the desired through-site link along the western boundary. It will also be necessary to demonstrate that emergency evacuation will not be impeded.

To demonstrate consistency with the Direction, it is recommended that a flood risk assessment be undertaken that demonstrates flooding is able to be managed within Key Site 17 and will not adversely impact any other properties.

Direction 4.4 Remediation of Contaminated Land

The Direction requires a planning proposal authority to obtain and have regard to a report specifying the findings of a preliminary investigation of land subject to a planning proposal that may be contaminated.

The site has been used for industrial and hazardous uses, including vehicle repair workshops.

The site was the subject of a Preliminary Site Investigation (PSI) that was completed to support the PRCUTS Planning Proposal. The main purpose of the PSI was to investigate potential contamination issues, and also Acid Sulfate Soils. The PSI gave the site a Preliminary Potential Contamination Risk Level of Moderate to High, stating that a *“A moderate to high risk ranking has been applied to automotive industrial premises based on potential USTs and the potential storage of hazardous chemicals. Additionally, some areas in the north eastern portion of Area 2 fall within an area of disturbed terrain..”*

The PSI recommended that *“project-specific preliminary and/or detailed site investigations be undertaken upon submission of DA for redevelopment of any land within the Precinct areas with a low to moderate or higher preliminary contamination risk ranking, to assess the suitability of that land for the use(s) proposed and whether any contamination of the land requires remediation to make the land suitable.*

It is also recommended that Hazardous Building Material Surveys (HBMS) be undertaken prior to any demolition and redevelopment works on individual land parcels where there is the potential for hazardous materials to be present, irrespective of the preliminary risk ranking herein.”

The Proposal is consistent with the Direction, subject to a detailed site investigations and Hazardous Building Material Surveys (HBMS) being undertaken upon submission of a Development Application.

Direction 4.5 Acid Sulfate Soils

The Direction requires a relevant planning authority to consider an acid sulfate soils study assessing the appropriateness of a proposed change of land use given the presence of acid sulfate soils (ASSs).

The site is part Class 2 and part Class 5 ASSs and sits at 1-3m AHD. Given five basement levels of basement are proposed, which will extend below 5 AHD, the provisions of the Canada Bay LEP are triggered.

The Proposal is therefore required to undertake a preliminary assessment in accordance with the ASSMAC Acid Sulphate Soil Manual and, subject to the results, provide a detailed management plan in accordance with the ASSMAC assessment guideline with results found to be satisfactory prior to, and as part of, any future Development Application.

SITE SPECIFIC MERIT

NSW Caselaw Planning Principles

Planning Principles are often used to assist in making planning decisions. They are based on legal precedents and therefore have some weight in legal considerations. Planning principles are stated in general terms, but are intended to be applied to particular cases to promote consistency. The Case of *Karavellas v Sutherland Shire Council [2004] NSWLEC251* established a Planning Principle relevant to instances where isolated sites are created in the redevelopment of land. An assessment against the Principles in this case are therefore relevant to assessment of the Proposal in order to determine if 79-81 Queens Road / 2-8 Spencer Street is an 'isolated site', unable to be developed, or if 10-12 Spencer Street would become an 'isolated site' under the Proposal.

The Planning Proposal states that it *"has been designed and scaled appropriately to respond and consider the adjoining site in both its current form as well as its future development condition, demonstrating an appropriate response to the Land and Environment Court Planning Principle for site isolation under 'Karavellas v Sutherland Shire Council.'* However, an assessment against the Principles in the case was not undertaken.

An assessment against the Principles is required as the subject site is only able to meet the minimum lot area for the Key Site, if both the Proponent's site and 10-12 Spencer Street are developed together. That is, the Proponent's site cannot achieve the minimum lot requirement alone. If the sites are not developed together, 10-12 Spencer Street might become an 'isolated site'.

The Proposal is therefore seeking to remove 10-12 Spencer Street from Key Site 17 and to reduce the minimum site area, so that development of 79-81 Queens Road / 2-8 Spencer Street may proceed and access the Incentive Height and FSR.

An assessment of the Proposal against the Principles is provided below:

Principle - *Firstly, where a property will be isolated by a proposed development and that property cannot satisfy the minimum lot requirements then negotiations between the owners of the properties should commence at an early stage and prior to the lodgement of the development application.*

Principle - *Secondly, and where no satisfactory result is achieved from the negotiations, the development application should include details of the negotiations between the owners of the properties. These details should include offers to the owner of the isolated property. A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable*

Assessment – Negotiations appear to have been initiated by the landowners of 79-81 Queens Road / 2-8 Spencer Street at an early stage, to either purchase 10-12 Spencer Street or undertake a joint Development Application.

The submission made by the proponent during public exhibition of the PRCUTS Planning Proposal in March 2022 also mentioned that negotiations made at that time were unsuccessful.

The planning proposal includes a timeline of negotiations initiated by the proponent with the owners of 10-12 Spencer Street, to either purchase 10-12 Spencer Street or undertake a joint DA. These were unsuccessful.

Assessment - Two financial offers were made to purchase 10-12 Spencer Street of \$8,125,000 and \$10,500,000. Both offers were above the market value estimated by the proponent.

Council's independent feasibility assessment (by Atlas Economics) found that, if 10-12 Spencer Street were developed as per the Proposal scheme, it would have a market value of \$8,360,000. Note that the assessment allowed for the cost to deliver the 3m wide public domain enhancement along Spencer Street
(Attachment 4 - Feasibility Assessment (for Council)).

The Feasibility Assessment by Atlas Economics assumed that the development proposed on 10-12 Spencer Street is able to achieve the FSR of 2.17:1 as

expenses likely to be incurred by the owner of the isolated property in the sale of the property. Thirdly, the level of negotiation and any offers made for the isolated site are matters that can be given weight in the consideration of the development application. The amount of weight will depend on the level of negotiation, whether any offers are deemed reasonable or unreasonable, any relevant planning requirements and the provisions of s 79C of the Environmental Planning and Assessment Act 1979.

Principle - *The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.*

Principle - *To assist in this assessment, an envelope for the isolated site may be prepared*

proposed. However, Council's Urban Design Review found that the built form proposed cannot achieve an FSR of 2.17:1. Further, the Review has recommended an FSR on 10-12 Spencer Street of 1.8:1 (**Attachment 2 – Urban Design Review (for Council)**) so that the total FSR across both sites does not exceed 3.0:1 as envisaged by the current LEP. Whilst the independent feasibility assessment did not test for this lower FSR, the difference of 0.37:1 FSR is unlikely to alter the result of the feasibility assessment, noting that the second offer made to purchase exceeded the estimated market value by \$2,140,000.

Assessment – If 10-12 Spencer Street were amalgamated with the Proponent's site, they would be able to be developed together applying the LEP incentive FSR (3.0:1) and height (67m) across both sites.

The Proposal will not result in a development of appropriate urban form with acceptable level of amenity. The western façade of the tower on the Proponent's site is less than 3m from the boundary with 10-12 Spencer Street, contrary to the deemed to satisfy requirements of the National Construction Code.

Whilst alternative solutions can be provided under the National Construction Code that would enable the building to be constructed closer than 3.0m to the western boundary, this would require the implementation of internal or external wall wetting sprinklers, automatic closing or permanently fixed windows or automatic closing fire shutters. These outcomes are not considered to provide an outcome that will generate design excellence or 'achieve an appropriate urban form with acceptable level of amenity' in comparison to a building that was compliant with the standards in the current LEP.

The Proposal also relies on a development concept that provides a 1.0m upper-level setback to William Street (compared to 3m in the current DCP). This is also not acceptable, as it would result in the appearance of a continuous street wall of 20-storeys, which is not an acceptable urban form.

If Key Site 17 were fragmented into two sites, the Planning Proposal would need to be amended as described below to achieve an acceptable urban form and level of amenity.

Assessment - The planning proposal includes a schematic building envelope and floor plan layout that shows 10-12 Spencer Street developed as per the

which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.

Principle - *The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments.*

maximum height in the DCP, but with an entire ground floor build out and larger floor plates for levels 2-5.

The proposed deeper floor plates for levels 2-5 are not acceptable, as this would preclude cross-ventilation to apartments on both sides of the boundary. Note that the building 'indent' shown on the proposed Indicative Design Concept cannot compensate for the loss of cross-ventilation as it is will eventually be entirely enclosed on the west and by the tower immediately above.

The undesirability of a long-term multi-storey blank wall is consistent with advice that Council has provided to the proponent dating back to 2022. Submissions made during the public exhibition of the PRCUTS Planning Proposal were peer-reviewed. The peer-review of the proposed fragmentation of the two landownerships comprising Key Site 17 found that meeting NCC and ADG requirements would *"require inclusion of a blank party wall at the boundary between the two subdivided Lots, which would create undesirable visual impacts for the precinct."*

The proposal acknowledges that the fragmentation of the site will result in the need for driveway access to be rationalised. It is recommended that the LEP require a single driveway access point for both sites and for appropriate right of access easements to be created.

Assessment – The Urban Design Review (for Council) tested the built form on both sites. The Review advised that the separation of the Key Site into two development lots may be supported subject to revisions to the built form on the site. The recommendations are based on:

- achieving the general built form in the DCP and PRCUTS Masterplan,
- overall density across both sites not exceeding the 3.0:1 FSR recommended by PRCUTS,
- adhering to the desired future character of separate high amenity well-designed towers with lower buildings between, and
- ensuring *"development of appropriate urban form and with acceptable level of amenity."*

The above requires the tower building to be set back 3.0m from the boundary to 10-12 Spencer Street and for a 3.0m setback to be provided to the tower above the podium.

This outcome is also consistent with previous advice, which confirmed that *"splitting the site into two development lots would require an additional tower setback to the west, which would need to be at least*

3.0m to avoid the need to provide an alternative solution under the BCA.”

Lot amalgamation requirements - Key Site 17

The Proposal is seeking to amend the LEP provisions for Key Site 17. The current provisions permit development of Key Site 17 to access the Incentive Height and FSR standards if the development achieves a minimum site area of 4,096sqm (which comprises 98% of Key Site 17) and delivers infrastructure listed under Part 8 of the LEP:

- (i) *an 8m wide setback on land that fronts William Street, Five Dock, and*
- (ii) *a 3m wide setback on land that fronts Queens Road, Five Dock and land that fronts Spencer Street, Five Dock.*

The Proposal is seeking to remove 10-12 Spencer Street from Key Site 17 and to reduce the minimum site area for the Proponent's site accordingly to 3,151sqm.

The removal of 10-12 Spencer Street from Key 17 will have the effect of removing the Incentive Height and FSR provisions. Instead, the proposal is seeking to increase the base height and FSR in lieu of the incentives and introduce a local clause into the LEP to require the delivery of the 3m wide setback (public domain) to Spencer Street. This would remove the incentive to deliver the 3m wide public domain to the Queens Road frontage. The implications of this are discussed below.

It is recommended that a base and incentive height and FSR mechanism be retained for 10-12 Spencer Street to incentivise delivery of the 3m wide embellished public domain along Spencer Street. To achieve this outcome, the Proposal should be updated to refer to 10-12 Spencer Street as 'Key Site 17A'.

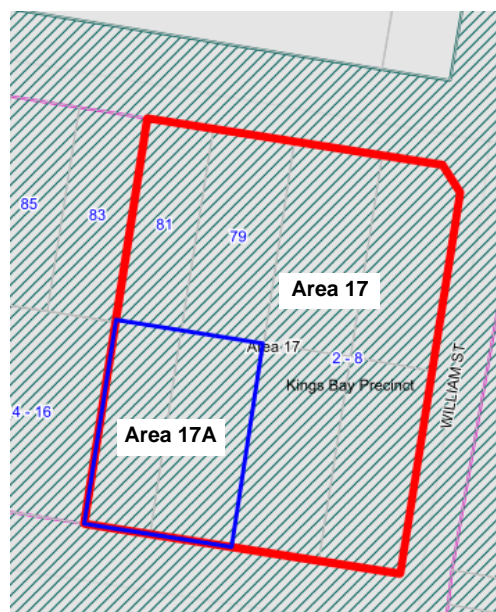


Figure 16: Recommended amended Key Site Map

Building heights and Floor Space Ratio (FSR)

One of the Urban Design Principles for King Bay includes the principle which is to “Define a building height strategy”. This is further explained by the statement “Create a dynamic skyline by spreading higher built form”. This is a deliberate and intentional strategy which, rather than assuming all buildings have the same maximum height, encourages a range of building heights with most buildings creating a lower height datum and well-spaced taller buildings encouraged in key locations including on land fronting William Street and Spencer Street.

Key Site 17 is a location where a taller built form is proposed. However, the PRCUTS Masterplan aimed to ensure the orderly development of land by requiring the consolidation of fragmented lots and creating the dynamic skyline. The Masterplan achieved this by identifying specific amalgamations and locating taller slender towers between podiums. Taller built form is only possible if sites are amalgamated. The current building heights and FSRs were developed on the basis of the subject site comprising one large amalgamated site, rather than two smaller sites.

The implications of the proposed fragmentation are that some amendments to the built form envisaged in the DCP and PRCUTS Masterplan will be necessary. For example, the 20-storey tower will need to be relocated to be wholly within the Proponent's site and good urban design and amenity outcomes will need to be achieved across both sites.

At the same time, it is important to adhere to the 3.0:1 maximum FSR recommended by PRCUTS across both sites. This is because the development capacity recommended under the PRCUTS assumed delivery of the infrastructure in the *Infrastructure Schedule*. The Schedule was based on the estimated number of new homes and jobs delivered under the Strategy. Any additional development capacity would therefore necessitate a review of the Schedule and delivery of a proportionate increase in social infrastructure.

Further, Council has commissioned two traffic studies for the PRCUTS area. Both studies were informed by opportunities created by Sydney Metro West. They found that by 2036, the area will see a 35% to 39% increase in traffic from 2019 levels, particularly along Parramatta Road, and that 75% of the 2036 traffic will be traffic passing through the area. Whilst some traffic will be diverted to WestConnex M4, a significant proportion will still be using surface roads, including Parramatta Road. The traffic model highlighted that local roads to the north and south of Parramatta Road will be impacted due to difficulties entering Parramatta Road and that this will generate traffic re-routing through local east-west streets. Accommodating additional density along the corridor is therefore highly constrained by future traffic conditions and the capacity of the local and regional road network.

The Proposal is seeking to amend the ground floor height limits on both sites to enable one-storey of development to connect the buildings, to enable a shared accessway from Spencer Street via the Proponent's site, and it is proposing deeper floor plans on 10-12 Spencer Street, increasing the overall FSR on both sites. The Urban Design Review found that the Indicative Design Concept achieves a greater FSR than proposed. (refer PP Reference Scheme in **Attachment 2 – Urban Design Review (for Council)**).

Proponent's site

No change is proposed to the Incentive Building Height or FSR for 79-81 Queens Road / 2-8 Spencer Street (Note that the proponent has indicated an intention to apply for the 30% height and FSR bonus applicable for providing 15% affordable housing (for 15 years) under the Infill Affordable Housing provisions of the *Housing SEPP*).

The Proposal is seeking to move the 20-storey tower eastwards to be wholly within the site, but with flexibility to encroach within 1m of the western boundary and 1m setback to the William Street podium edge.

Given the height of 10-12 Spencer Street is proposed to be limited to maximum of 5-storeys and built to the common boundary, there is unlikely to be issues regarding building separation for the levels above that. However, under the National Construction Code (NCC), setbacks of less than 3m from a boundary are not permitted to have openings, which will limit the design flexibility of the tower on the Proponent's site. That is, as the western wall of the proposed tower is less than 3m from the boundary with 10-12 Spencer Street, neither habitable or non-habitable uses with openings can be located along the western elevation unless sprinklers, permanently fixed windows or fire shutters are provided. A tower with blank wall without openings or balconies would provide limited outlook, natural ventilation and daylight access and amenity.

The ADG describes blank walls as appropriate temporary measures and mainly suitable to CBD urban environments. A permanent blank wall in the Kings Bay context is not an acceptable urban form and will not provide an acceptable level of amenity for the residents.

Similarly, a tower elevation of 20 storeys with sprinklers, permanently close windows, automatic closing windows or automatic closing fire shutters is a poor design response that would only be necessary due to the fragmentation of the site. Development controls that facilitate this outcome should therefore be avoided.

The Proposal is also seeking to reduce the upper level tower setback to William Street from 3m to only 1m. This is also not acceptable, as it would result in the appearance of a continuous street wall of 20-storeys in a prominent location and opposite a public park. This is not an acceptable urban form. The Urban Design review has also found that reducing the setback is not required to achieve the maximum incentive FSR.

10-12 Spencer Street

The Proposal is seeking to remove the Incentive Building Height of 67m from 10-12 Spencer Street, to amend the base Building Height from 12m to 19m and to amend the base FSR from 3.0:1 to 2.17:1.

The Proposal is seeking to amend the base height and FSR to enable significantly larger floor plates for levels 2-5. This would result in poor amenity outcomes for the apartments on the shared boundary as they would have limited cross-ventilation and solar access.

Recommendation

The proposed site fragmentation could set an undesirable precedent by permitting additional FSR in cases where site amalgamation of a Key Site is not possible. It is particularly important that any fragmentation of key sites does not compromise the delivery of public benefits or result in suboptimal design outcomes.

The Urban Design Review by Studio GL found that the impacts of the proposed de-amalgamation are able to be addressed, subject to the following amendments:

- maximum building heights of 67m (20-storeys) on 79-81 Queens Road / 2-8 Spencer and 19m on 10-12 Spencer Street be retained;
- maximum 3.0:1 FSR under PRCUTS be retained across both sites;
- maximum FSRs of 3.3:1 on 79-81 Queens Road / 2-8 Spencer and 1.8:1 on 10-12 Spencer Street;
- 20-storey tower moved eastward to at least 3m inside the (new) western boundary to enable openings and cross-ventilation to the apartments and avoid the need for alternative methods of protection;
- 3m upper level setback to the edge of the William Street podium to ensure a human scale is maintained at street level; and
- base and incentive height and FSR retained on 10-12 Spencer Street, to incentivise delivery of the 3m wide embellished public domain along Spencer Street. That is, identify 10-12 Spencer Street as 'Key Site 17A'.

These recommendations are illustrated in Figure 23 below and **Attachment 3 – Proposed Alternative Scheme (by Council)**

DCP amendments:

It is also recommended that the DCP be amended to support the LEP.

The Proponent has expressed a preference for the DCP to include 'articulation zones' on the eastern and western facades of the tower (refer to Figure 18 below). This is to allow for the final built form to be determined via the Design Excellence process with the view to including built elements and openings within the articulation zone for up to 60% of the façade.

This approach is not recommended as it would not provide Council any certainty regarding the resultant building envelope.

Tower extrusions into the 3m podium setbacks to William Street would reduce the horizontal articulation provided by the William Street podium, create the appearance of a continuous vertical streetwall and significantly compromise the human scale at street level that the podium provides. The PRCUTS Planning and Design Guideline includes 'Block Configuration and Site Planning Requirements' which require development to *"Define street edges with low rise buildings or appropriately scaled podiums to create a pedestrian scale at street level."*

The issue of tower extrusions into the 3m setback to the proposed new boundary facing west only arises as a consequence of the Planning Proposal. Otherwise, there would be no boundary, no discussion of 'articulation zones', no need to investigate ways to articulate the western façade, and no consideration of the need to include permanently fixed windows, automatic closing windows, fire shutters etc. It is therefore recommended that the controls illustrated in Figure 23 (over page) be incorporated into the DCP.

If the planning standards and controls recommended in this report are not implemented, the proposal would not be supported as it would not achieve a development with an appropriate urban form and an acceptable level of amenity.

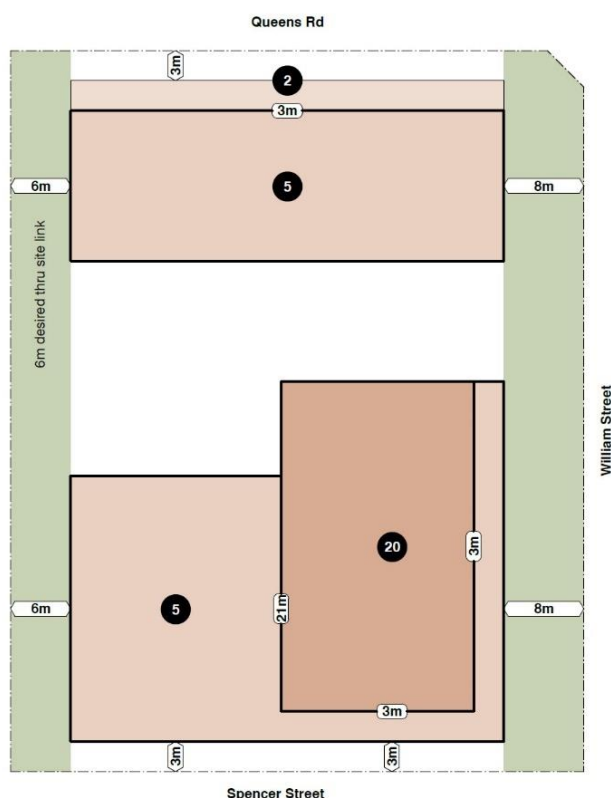


Figure 17: Current layout as per DCP

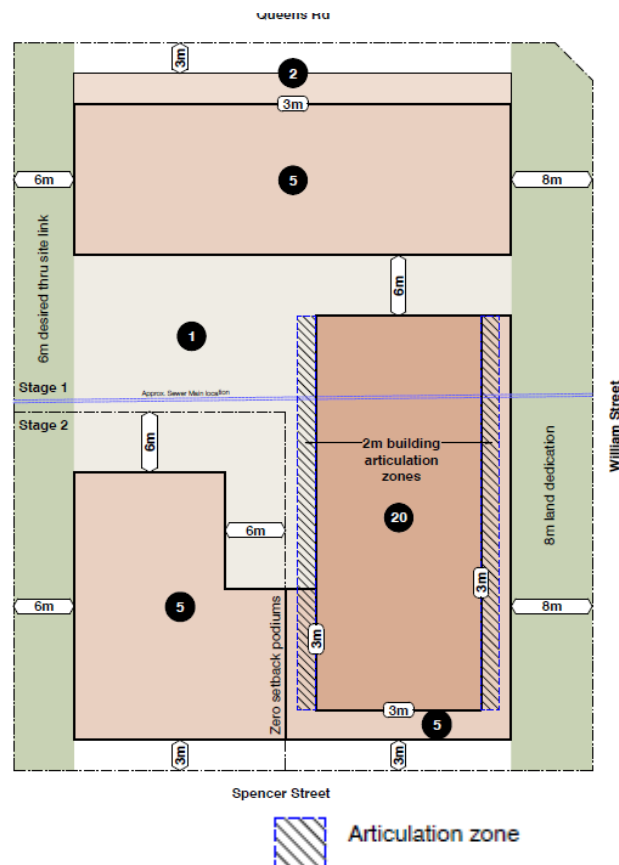


Figure 18: Layout proposed by Proponent

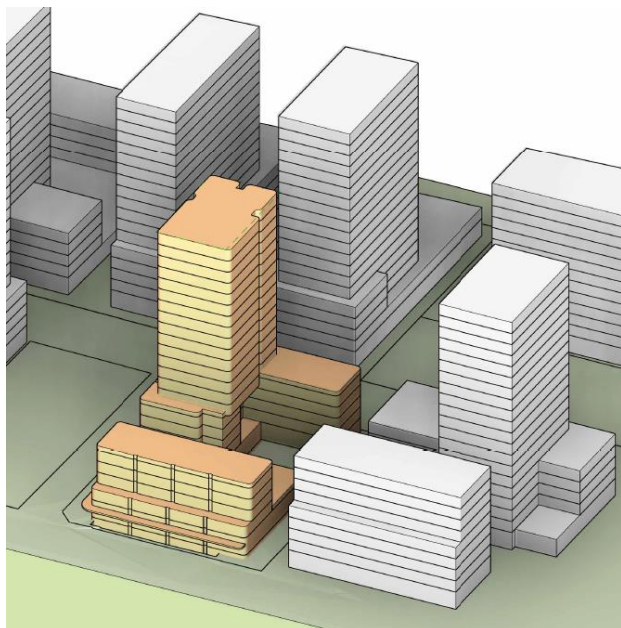


Figure 19: Current built form under PRCUTS Masterplan and DCP (Indicative Design Concept)

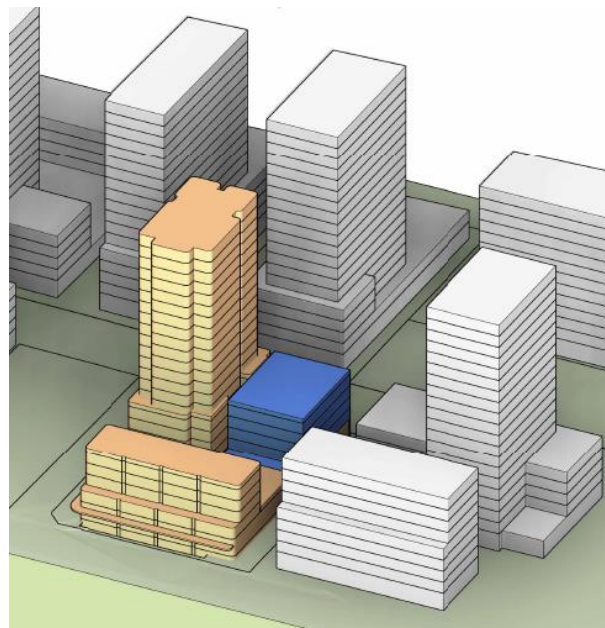


Figure 20: Proposed built form (Indicative Design Concept)

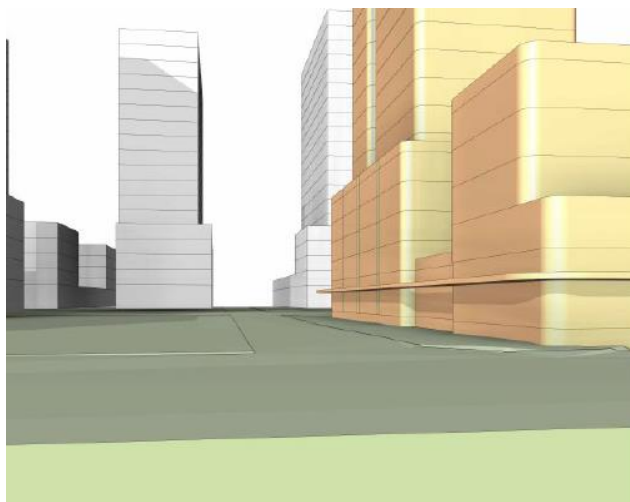


Figure 21: Current built form under PRCUTS Masterplan and DCP (Indicative Design Concept)

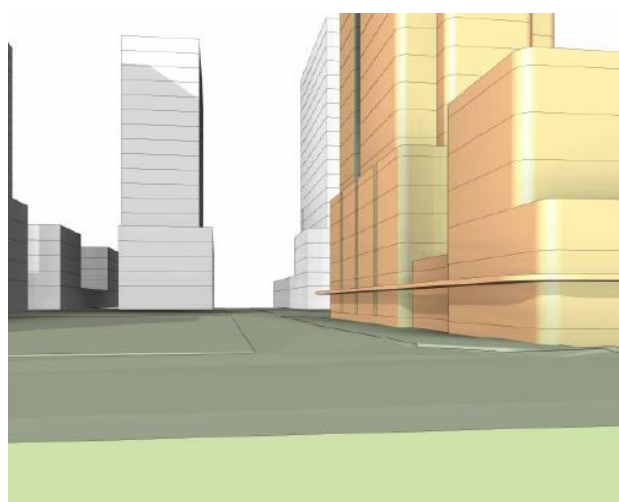


Figure 22: Proposed built form (Indicative Design Concept)



Figure 23: Proposed alternative scheme

Community infrastructure

The Proposal is not seeking to remove the current requirement to deliver the infrastructure applicable to the Proponent's site (in exchange for Incentive Height and FSR). However, as the Proposal is seeking to remove 10-12 Spencer Street from the base and incentive scheme, it may have the effect of removing the incentive for that site to deliver the 3m wide public domain, which is currently a condition of seeking any additional height and FSR above the base height and FSR.

The Proposal has sought to address the removal of the incentive to deliver the infrastructure by amending Part 6 of the LEP to add a new site-specific provision that would *require* any development of 10-12 Spencer Street to deliver the 3m wide Spencer Street public domain, in addition to a 6m wide through site link along the western boundary that connects Spencer Street and Queens Road.

It is important that any proposal that seeks to require the delivery of specified infrastructure be voluntary. In response, planning incentives (in the form of additional height or FSR) are often used as planning mechanisms to achieve community benefits. That is, developments are permitted to seek additional development potential (up to a specified maximum) in exchange for delivering specified infrastructure. Council has applied this approach most recently in the making of the PRCUTS Planning Proposal (Stage 1) and the DPHI has applied a similar approach in various Transport Oriented Development Precincts.

It is recommended that 10-12 Spencer Street be identified as 'Key Site 17A' and that the delivery of a 3m setback to Spencer Street continue to be required for the purpose of public domain improvements.

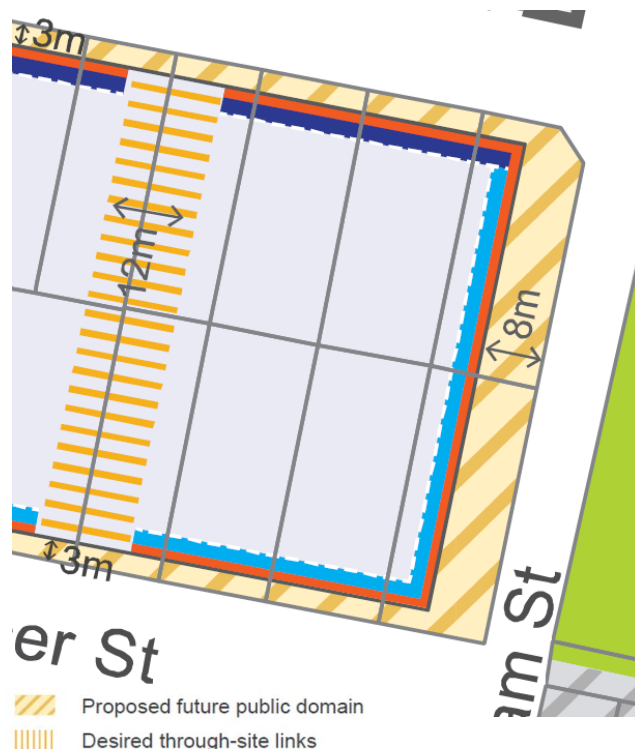


Figure 24: Infrastructure required in exchange for bonus height/FSR and Desired infrastructure (Canada Bay DCP)

Landscaping, canopy cover and deep soil

The proposal is seeking to deliver the William Street widening (as required under the LEP in exchange for bonus height and FSR) and also to deliver the desired through-site link along the western boundary. However, the Proposal is seeking to amend the DCP building heights and landscaped area provisions in order to locate communal open space on level 1, rather than at ground level as envisaged by the PRCUTS Masterplan and the PRCUTS Tree Canopy Assessment. This is to enable a shared accessway from Spencer Street via the Proponent's site. Additional communal open space is also indicated on level 5, but this is possibly an error as it is shown as part of internal space.

The Proposal does not include a detailed assessment of landscaped area or tree canopy coverage and, given the extent of the basement levels, this may result in Key Site 17 being unable to meet the requirements for landscaped area, deep soil and tree coverage.

It is recommended that the Proposal be updated prior to exhibition to demonstrate what site area can be provided as landscaped area and as deep soil, and what tree canopy coverage can be achieved, which may include trees planted at upper levels. It is also recommended that the Proposal illustrate the amount of solar access that the communal open space will receive in mid-winter to ensure the communal spaces have sufficient amenity and the vegetation / trees receive sufficient solar access to ensure long term health.

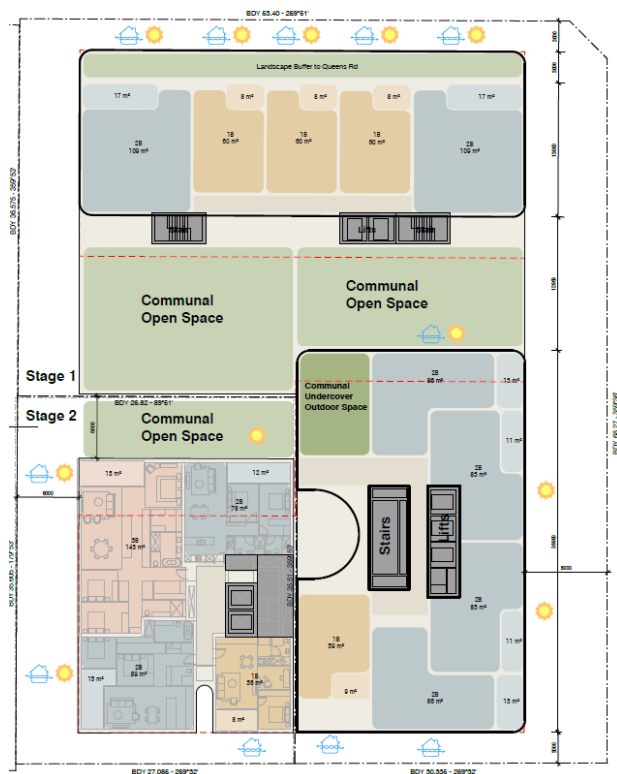


Figure 25: Proposed level 1 floor plan
(Indicative Design Concept)

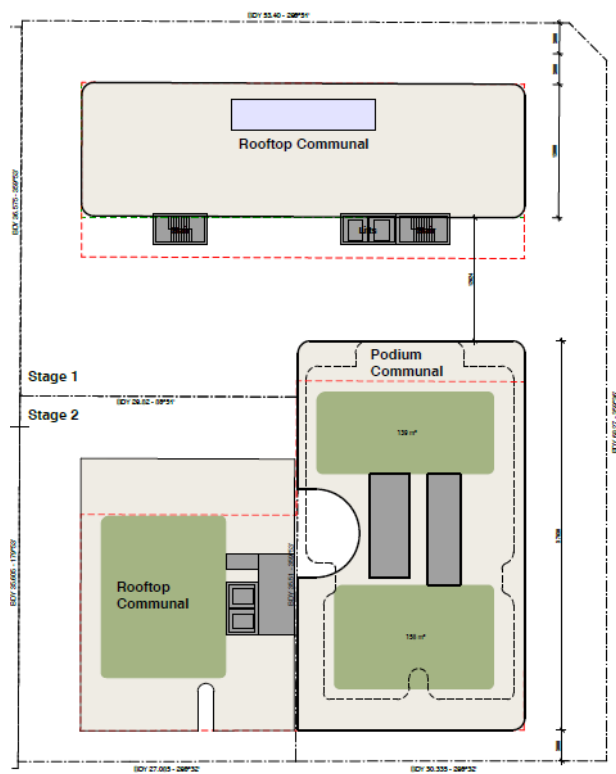


Figure 26: Proposed level 5 floor plan
(Indicative Design Concept)

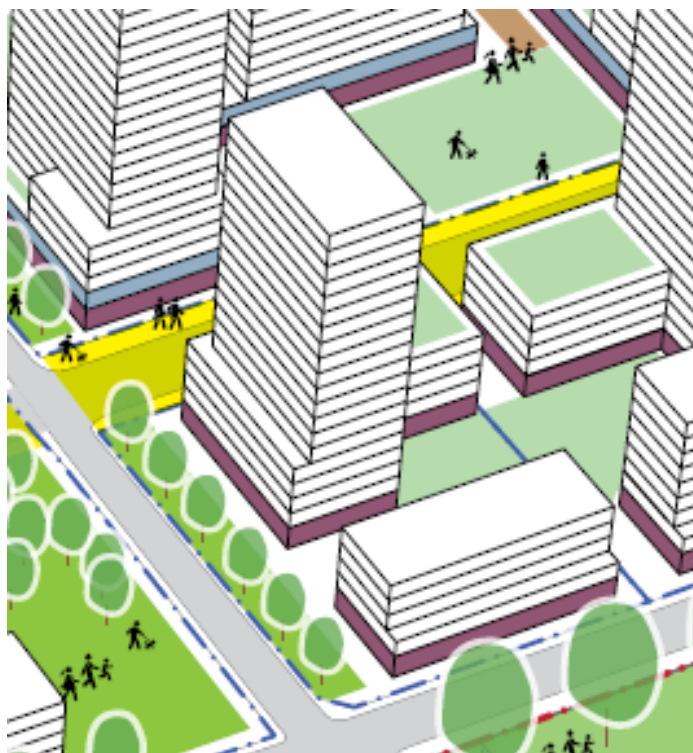


Figure 27: Ground floor open space shown green
(PRCUTS Masterplan)

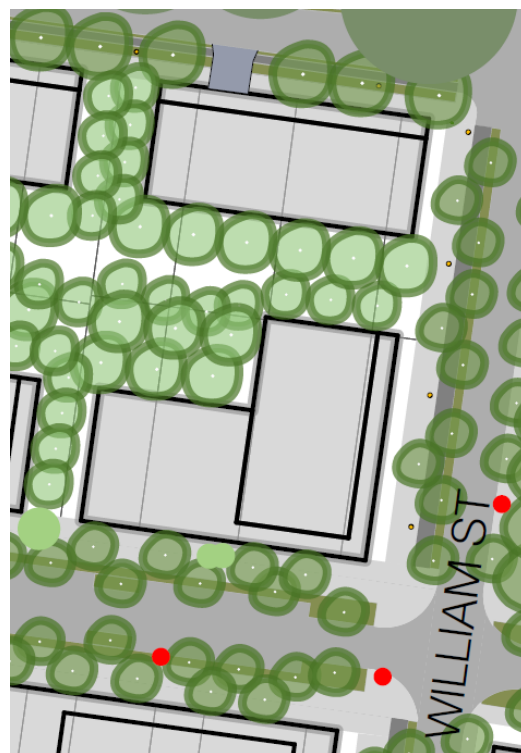


Figure 28: Ground floor open space
and tree canopy (PRCUTS Tree
Canopy Assessment)

Access and parking

The Proposal is seeking to amend Part 6 of the LEP to add a new site-specific provision that requires vehicular access to 10-12 Spencer Street to be consolidated with the basement parking on the Proponent's site.

This amendment is consistent with the DCP, of encouraging provision of below-ground car parking that is interconnected to and shared with, or is able to be interconnected in the future to, the below-ground car parking on adjoining sites and developments in order to minimise vehicle entry points.

Council's traffic team has advised that the consolidated vehicular access point for both the Proponent's site and 10-12 Spencer Street from Spencer Street is acceptable, as minimising the number of vehicle crossovers will result in a well designed and safer public domain.

However, the basement parking under 10-12 Spencer Street would be somewhat constrained and inefficient as a result of having only two access points through to the Proponent's site, one at ground level and one at the first basement level.

Further, 10-12 Spencer Street appears to be constrained by a large 750rc Sydney Water stormwater pipe running just below ground level through the site, which would need to be re-routed (see Figures below). If the pipe were unable to be re-routed, the first basement level would be unable to accommodate any parking and the proposed location of the ramp would need to be redesigned, further constraining the first and second basement levels to accommodate parking spaces. Whilst 79-81 Queens Road / 2-8 Spencer Street also appears to be impacted by the pipe, it could be more easily accommodated within that site without the need to re-route it.

It is recommended that the DCP be amended to include relevant controls to ensure there is a shared access driveway and service area. A 'right of access' easement would need to be placed on the land title to ensure a single shared driveway from Spencer Street and a single shared internal ramp located on 79-81 Queens Road / 2-8 Spencer Street to safeguard, facilitate and guarantee vehicular access for 10-12 Spencer Street from Spencer Street to all basement levels.

The proposed basement floor plan indicates that the layout of the basement has been designed to have 'Integrated servicing and access' in conjunction with the proposed shared accessway. However, the traffic team has advised that assessment of safety and efficiency would be subject to a more detailed traffic impact assessment report as part of any future DA.

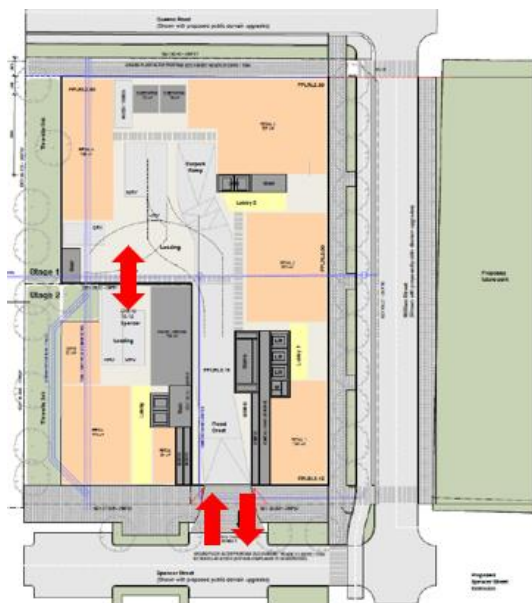


Figure 29: Proposed ground floor layout

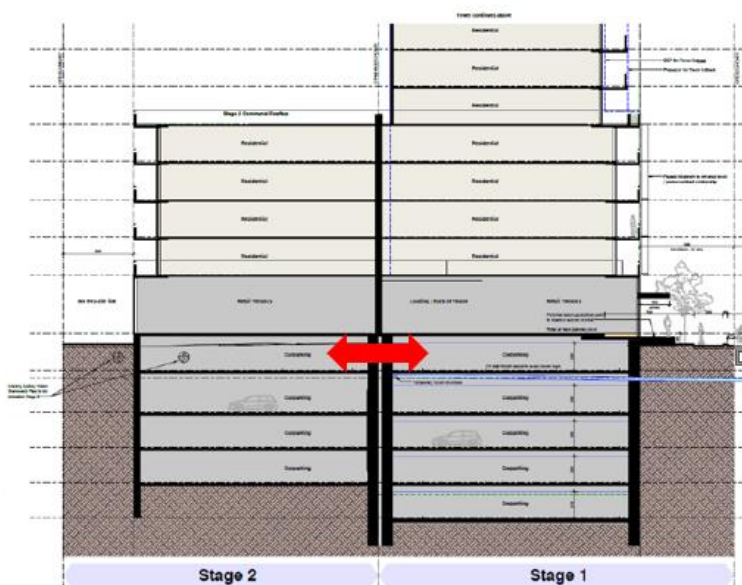


Figure 30: Proposed basement cross-section

Canada Bay Local Planning Panel

The Proposal was considered by the Canada Bay Local Planning Panel on 20 March 2025. The Panel's role is to provide advice to Council for their consideration. In providing advice, the Panel considered the strategic merit and site-specific merit of the Planning Proposal.

The Panel considered the Council staff report (including attachments), heard from the proponent and their representatives, and responded to questions from the proponent. The Panel also visited the site prior to the meeting and considered observations made during the site inspection.

The Panel provided the following advice (**Attachment 12 – Local Planning Panel Minutes**)

1. *The Planning Proposal for land at 79-81 Queens Road and 2-12 Spencer Street, Five Dock (PP2025/0001) be progressed to Gateway determination subject to the following amendments:*
 - a) *identify 10-12 Spencer Street as 'Key Site 17A' to incentivise the delivery of the 3m wide embellished public domain along Spencer Street;*
 - b) *retain the PRCUTS recommended maximum Floor Space Ratio of 3.0:1 across both sites, resulting in a maximum Incentive Floor Space Ratios of 3.3:1 to 79-81 Queens Road/2-8 Spencer Street and 1.8:1 to 10-12 Spencer Street;*
 - c) *apply a maximum Incentive Height of Building of 67m to 79-81 Queens Road / 2-8 Spencer Street and 19m to 10-12 Spencer Street;*
 - d) *inclusion of a competitive design process; and*
 - e) *provide the potential for a single vehicle access to allow a consolidated driveway and basement with the future development at 10-12 Spencer Street.*
2. *The following additional information be provided prior to the Planning Proposal being submitted to the Department of Planning, Housing and Infrastructure for a Gateway Determination:*
 - a) *demonstrate the capacity of the site to provide landscaped area and deep soil in accordance with the Apartment Design Guide;*
 - b) *a flood risk assessment that demonstrates flooding is able to be managed within the subject site and does not adversely impact any other properties.*
3. *In preparing Development Control Plan controls for the site, the following should be considered:*
 - a) *encouraging all vehicular access off Spencer Street. While this may be inconsistent with urban design advice to Council, the Panel is of the view that such access is preferable to Queens Road, which is a classified road, and William Street, due to both planned urban design enhancements and traffic volumes in that street.*
 - b) *discouraging above ground parking.*

The Panel's recommendations are consistent with the Council Officer recommendations.

The Panel further advised that "if at any point along the process of the Planning Proposal, the owners of No. 10-12 Spencer Street changes their position to sell to the proponent, then the Planning Proposal should not proceed, as the current controls are preferable and the Planning Proposal only really arises from unsuccessful negotiations."

The Panel's reasoning for this advice was that "the key issue is whether it is appropriate to change the amalgamation requirement of "Site 17" into 2 sites. This is not ideal, as the wider strategic vision may be compromised in planning for separate development, while the delivery of key infrastructure (particularly a 3m widening of Spencer Street) may be fragmented, delayed or not achieved. So, retaining the current controls is preferable. At the same time, in principle, if an owner has pursued reasonable endeavors to secure an amalgamated site, including with a commercial offer to purchase a site as part of a wider amalgamated site, reasonably above valuation assuming an uplift, and a

reasonable urban design and infrastructure delivery outcome is possible while splitting an amalgamated site in two, then that may be an acceptable outcome, even if not ideal. This is the case here, as the proponent has made reasonable efforts and offers to secure 10-12 Spencer Street, unsuccessfully, and the Panel is satisfied that the two sites may be able to be developed separately.” **(Attachment 12 – Local Planning Panel Minutes).**

It is therefore recommended that if, as a result of public exhibition of the Planning Proposal, the landowners of 10-12 Spencer Street give a commitment to sell the land or working with the proponent to deliver a joint Development Application (removing the necessity for a planning proposal), the Proposal not proceed to finalisation.

TIMING, CONSULTATION AND RISK CONSIDERATIONS

Should the Proposal not be endorsed for submission to the Department of Planning, Housing and Infrastructure for a Gateway determination before 9 May 2025, the proponent would be eligible to request the Department to undertake a Rezoning Review of the Proposal.

Should the Proposal proceed to Gateway Determination, the Planning Proposal would be placed on public exhibition for a period of 28 days in accordance with the *Canada Bay Community Participation Plan*.

FINANCIAL CONSIDERATIONS

Future development on the land would be subject to the *Canada Bay Local Infrastructure Contribution Plan*. **LEGISLATIVE AND POLICY CONSIDERATIONS**

The Planning Proposal has been reviewed against relevant legislation, including the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2021*.