

## SUPPLEMENTARY COUNCIL ASSESSMENT REPORT

<b>Panel Reference</b>	2018NH041
<b>DA Number</b>	DA0134/18
<b>LGA</b>	Ku-ring-gai
<b>Proposed Development</b>	Subdivision of land, demolish existing structures (including Roseville Memorial Club and retail tenancy) and construct mixed-use building comprising new ground floor Memorial Club, shop-top housing of 33 residential dwellings, basement parking and associated works
<b>Street Address</b>	62 to 66 Pacific Highway ROSEVILLE NSW 2069
<b>Applicant/Owner</b>	Roseville Returned Servicemen's Memorial Club Limited
<b>Date of DA Lodgement</b>	12 April 2018
<b>Number of Submissions</b>	77 submissions (11, 12, 45 and 15 over the four respective notification periods)
<b>Recommendation</b>	Refusal
<b>Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)</b>	Works on land to which Council has an interest in excess of \$5 million
<b>List of all relevant s4.15(1)(a) matters</b>	<ul style="list-style-type: none"> <li>• SEPP 55 – Remediation of Land</li> <li>• State Environmental Planning Policy No. 65</li> <li>• SEPP (Infrastructure) 2007</li> <li>• State Environmental Planning Policy (BASIX)</li> <li>• State Environmental Planning Policy (Vegetation in Non-Rural Areas)</li> <li>• SREP (Sydney Harbour Catchment) 2005</li> <li>• Draft Environment State Environmental Planning Policy</li> <li>• Draft State Environmental Planning Policy (Infrastructure) 2007</li> <li>• Draft Remediation of Land State Environmental Planning Policy</li> <li>• Ku-ring-gai LEP (Local Centres) 2012</li> <li>• Ku-ring-gai Local Centres DCP 2016</li> <li>• Ku-ring-gai Development Contributions Plan 2010</li> <li>• Clause 92 (1)(B) of the Environmental Planning Assessment Regulation 2000</li> <li>• Consolidating LEPs Planning Proposal</li> </ul>
<b>List all documents submitted with this report for the Panel's consideration</b>	<p>Attachment 1 – Original assessment report</p> <p>Attachment 2 – Record of SNPP Deferral</p> <p>Attachment 3 – Applicant summary response to SNPP Deferral</p> <p>Attachment 4 – Revised architectural plans</p> <p>Attachment 5 – Revised Clause 4.6 statement (FSR)</p> <p>Attachment 6 – Revised Clause 4.6 statement (Building height)</p> <p>Attachment 7 – Additional submitters map</p>

<b>Clause 4.6 requests</b>	Request to vary development standard – FSR (12.9%) Request to vary development standard – Height of Building (16.7%) Request to contravene manner in which Site area is calculated at Clause 4.5 of KLEP
<b>Summary of key submissions</b>	The community consultation process resulted in the following submissions: <ul style="list-style-type: none"> <li>• Inappropriateness of relying upon credits from previous S94 contributions as a basis for providing suitable car parking supply for the current development proposal.</li> <li>• The legality and inappropriateness of relying upon public lands as part of the Site area and FSR calculations.</li> <li>• Various non-compliances with ADG's.</li> <li>• Roseville already oversupplied with apartments.</li> </ul>
<b>Report prepared by</b>	Vince Hardy – Urban Planning Consultant, Cityscape Planning + Projects
<b>Report date</b>	10 August 2020

#### Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?

**Yes, in original assessment report**

#### Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?  
*e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP*

**Yes, in original assessment report**

#### Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?

**Yes**

#### Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)?  
*Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions*

**No**

#### Conditions

Have draft conditions been provided to the applicant for comment?  
*Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report*

**Yes**

## DEFERRAL BY SYDNEY NORTH PLANNING PANEL

An assessment report in relation to this matter was considered by the Sydney North Planning Panel on 14 March 2020. The Panel deferred the determination of the application as follows:

*“The Panel agreed to defer the determination of the matter until a Supplementary Assessment Report is received covering the issues listed below.*

*The Panel is of the view the DA could not be approved given the outstanding Contamination Report and the inadequacy of the Clause 4.6 written requests for the Breach of Height and FSR. In relation to the Clause 4.6 written requests, the Panel considers there have been insufficient environmental planning grounds particular to the circumstances of the proposed development demonstrating why dispensation from compliance with the development standards is justified in this instance.*

*However, the Panel felt there was merit in the proposal warranting a deferral to await the Contamination Report, expected at the end of March, and to resolve the following issues:*

- a) Clarify Car Parking Credits (obtained by the historic monetary contributions paid to Council) and reconsideration of the allocation of spaces between residential and Club with a view to increasing the number of car spaces for the Club staff and patrons.*
- b) Further clarify gaming room smoke exhaust and outlet design and the visual interface between the street and gaming room*
- c) Provide details of sustainability initiatives for the proposed development.*
- d) Consider redesign or construction methods to provide appropriate acoustic separation (e.g. a minimum of 10RW units above the minimum requirement specified in the Building Code of Australia) between the bedrooms of one unit and the living rooms or bathrooms of any adjoining unit where these rooms align.*
- e) Consider redesign to minimise any height breach, given additional uncertainties arising from the likelihood of further shade structures and the constraints of the proposed floor to floor heights.*
  - With regard to the proposed floor to floor heights, it is noted that the proposed development is a 6-storey mixed- use building, with 5 storeys (levels 1 to 5) to be residential units. The residential levels to be Class 2 building under the BCA2019.*
  - The proposed height of the building above ground level is 23.7 metres at the lift overrun and stairs.*
  - Clause E1.5 of BCA2019 for a Class 2 building requires sprinklers throughout the whole of the building, including any part of another class, if any part of the building has a rise in storeys of 4 or more (basements are not counted) and an effective height of not more than 25m.*
  - The Panel notes that any Construction Certificate lodged after 1 May 2019 for a building that contains 4 or more storeys and are Class 2 residential must provide a sprinkler system in accordance with Specification E1.5 and E1.5a of BCA2019. This was not required under the previous version of the BCA.*
  - The Applicant is requested to consider the resultant impacts from any sprinkler pipes given that they will need to be concealed within the ceiling void – thereby requiring*

*additional head height to ensure the minimum BCA2019 and SEPP65 head heights are achieved. “*

*The Applicant is requested to address these issues and provide Council with supplementary and amended plans and documentation by the end of April to allow the Independent Assessor to provide a Supplementary Report to the Panel as soon as possible.*

*When this information has been received, the Panel will hold another public determination meeting.*

## **PACKAGE OF ADDITIONAL INFORMATION AMENDED PLANS**

On the 26 May 2020, the applicant submitted a response to the Panel's deferral, which included a package of additional reports and plans inclusive of:

- a summary letter to SNPP
- letter addressing proposed easements and covenants supporting the subdivision proposal
- plan of proposed subdivision
- plan of lot consolidation and proposed easements
- clause 4.6 request to vary development standard – FSR
- clause 4.6 request to vary development standard – Height of Building
- updated architectural plan set
- schedule of architectural amendments
- stormwater management plan
- schedule of stormwater engineering design changes
- letter advising of the ability to achieve servicing of development with proposed floor to floor heights
- stage 2 Detailed Site Investigation – Contamination report
- sustainability initiatives report
- amended Traffic Statement
- demographic statement
- response to Acoustic issues
- amended acoustic report
- letter to Ku-ring-gai Council and Sydney North Planning Panel
- photos of translucent balconies

## **AMENDMENTS TO DEVELOPMENT PROPOSAL**

The height of the building has been modified in a number of ways in an effort to address the issues raised by the Panel. The changes include:

- Basement levels 1-3 inclusive have lowered the RL by 140mm
- the club internal ground floor level has been lowered by 140mm
- floor to floor heights of all residential levels have been altered to be a consistent 3.1m
- Levels 5 and 6 floors have been lowered
- an extension to Basement level 3 and the creation of an additional 3 car parking spaces
- an additional covered pergola has been provided at the Communal Open Space (CoS) level to provide sun and weather protection
- a new riser duct from the smoking room that discharges at the centre of the roof within the services vent area
- further details of proposed louvre at the interface of the gaming machines with the street

## COMMUNITY CONSULTATION

The additional information and amended development proposal was publicly notified between 10 June 2020 and 24 June 2020 and attracted fifteen (15) submissions each of which objected to the development proposal. Submissions from the following were received to the amended application:

1. Lynne S Lee – 68 Pacific Highway, Roseville (4 submissions provided)
2. David Castle – Bayswater Rd, Lindfield – (2 submissions provided)
3. Emma Adario – 110-116 Pacific Highway, Roseville
4. Frank Walker – 4 Alexander Pde, Roseville – (2 submissions provided)
5. John Weiher – [jjweiher@hotmail.com](mailto:jjweiher@hotmail.com)
6. Kathy O'Donnell – 6/2-14 Pacific Highway, Roseville
7. Rebecca Tan – Eaton Rd, Lindfield
8. Robin Castle - Bayswater Rd, Lindfield
9. Kathy Cowley – Friends of Ku-ring-gai Environment Inc
10. Lily Qiu and David Wang – 1 MacLaurin Pde, Roseville

Many of these submissions reiterated previously expressed concerns, which are considered and addressed in the original assessment report. In summary, the initial concerns raised by the submissions include:

- The size and scale of the development is inconsistent with local character and heritage values of Roseville and will cause overshadowing and overlooking of adjoining residents.
- The development will adversely impact upon Memorial Park by way of shadows, visual impacts and the long term health of its large trees.
- Development is inconsistent with LEP and DCP objectives, FSR and Building height provisions.
- FSR calculations should not include the existing Council owned land.
- Lack of parking provided by the development and adverse impacts on local traffic network.
- Objections to sale of the Council land to the developer.
- Poor street activation to the Pacific Highway.
- Development is not in the public interest.

However, the submitters have also now raised the following additional concerns:

- The inappropriateness of relying upon credits from previous S94 contributions as a basis for providing suitable car parking supply for the current development proposal.
- The legality and inappropriateness of relying upon public lands as part of the Site area and FSR calculations.
- Various non-compliances with ADG's.
- Roseville already oversupplied with apartments.

## INTERNAL REFERRALS

### Urban Design

Council's Urban Design Consultant has raised the following issues in response to the additional information provided to address the questions raised within the SNPP deferral:

#### ***Gaming Room Smoke and Visual Interface***

*Details drawing DA304 (E) indicate sightlines from the public domain into the gaming room would be obscured. Exhaust duct now included plus exhaust system. Acoustic transmission is not resolved with open louvres as this relies on the machine volumes being 'turned down'.*

*Can this be effectively controlled over the long-term or can machines be permanently disabled to prevent being set to higher sound volumes?*

*The location of the gaming machines along the Pacific Highway does not resolve the lost street activation caused by the louvres that must prevent a visual connection between the public domain and gaming activity within the club. This remains a conflict for KLEP\_LC cl 6.6 objectives.)*

***Consider redesign or construction methods to provide appropriate acoustic separation***

*Renzo Piano & Associates letter dated 5th May 2020 states no additional acoustic measures are necessary, citing buildings they have designed built to the BCA standards. This will be a matter for the Panel.*

*The Letter states: 'There are no incidences of complaints received by our clients in relation to acoustics in these buildings'. However, there is no information provided as to what inquiries or building analysis has occurred to support this statement.*

*As regards urban design (no technical acoustic expertise), the BCA is a minimum performance document developed for minimum health, safety and survival. The BCA is not considered to be a maximum design and amenity guidebook at all. 16 years since last BCA acoustics review seems quite a long time between reviews while construction methods are changing. I am not aware of whether frequent resident complaints about poor acoustic amenity occurs with apartments that do comply with the BCA indicating its current benchmarks require further review; or whether acoustic issues are the result of construction not complying with the required acoustic standards and/or with internal unit layouts that place louder-use rooms adjacent to the quieter rooms of adjacent units.)*

***Consider Redesign to Minimise Height Breach***

*No amendments to change the roof design or relocate intended rooftop use that would resolve the height. In contrast, there appears an additional covered pergola which has been added. This is required for adequate communal amenity, but does not assist the height breach. The elements remain visible from the public domain with visual impact exacerbated by the urban context of significantly lower scale of the remaining Roseville commercial/mixed use precinct.*

*Basements have been lowered to accommodate the additional floor-to-floor height. This now satisfies ADG minimum requirements, and can be supported.*

*The additional solar impacts to the Memorial Park are caused by the variation to KDCP\_LC Part 14 for the street wall; and the roof top parapet exceeding the height. - The lift overrun, pergola and other roof elements are causing the public domain visual impacts.*

*The cl 4.6 contains a misrepresentation of perceived public benefit to the Memorial Park see Figure 10 of the cl 4.6 (dwgs DA803, DA804, DA805 (E)) where a 'compliant' development is presented as if it caused a worse solar outcome than does the proposed 'non-compliant' development. There is a 3-4 storey component of the envelope that is on Council's land. This shows the whole western side of the Memorial Park as being in complete shade by 3pm in winter as if representing impacts of a compliant development. This area would, in fact, be in sunshine if the 'control' envelope was contained within the Club's site boundaries - there would be no change to the existing solar amenity of the western park in the afternoon, and*

*thus no additional solar amenity public benefit with the proposed development. This inaccuracy is contained in the cl 4.6 justification, which for urban design is concerning. The planning technicalities of the strength of the cl 4.6 remain outside the scope of urban design.)*

## **Landscaping**

Council's Landscape Assessment Officer has advised that no objection to the proposal is raised from a landscaping and tree protection perspective, noting all issues raised in relation to this discipline have previously been addressed.

## **Engineering**

Council's Development Engineer has commented on the additional information provided as follows:

### ***Land dedication***

*I do not support the sale of the land currently owned by Council which forms part of this application. I do not support the concept of selling of Council land, which currently contains Council road assets (kerb and gutter), in return for an easement for Council's assets (kerb and gutter and future footpath).*

*However, if this land has already been sold by Council to the applicant then I can no longer object to this proposal on this particular issue.*

### ***Water Management***

*The site is located within the Roseville Local Centre and has two street frontages, to Pacific Highway to the east and Larkin Lane to the west. The site currently consists of 3 allotments. The amalgamated site forms a rectangular shape with a combined area of 1,375m<sup>2</sup>. The site has a gradual fall of approximately 1.2m from its highest point at the north-eastern corner towards the south-west corner of the boundary.*

*The stormwater plans show all roof areas and impervious areas draining to an on site detention (OSD) tank located under the driveway entry to Larkin Lane in the north west corner of the site. It is proposed to have the site discharge from the OSD tank directed to a new kerb inlet pit (KIP) on the other side of Larkin Lane. This new KIP will connect to an existing KIP further down Larkin Lane via a proposed 375mm pipe extension to Council's network.*

*A completed Ku-ring-gai Council OSD calculation sheet has been submitted which shows an OSD tank requirement of 23.6m<sup>3</sup>, a PSD of 12.1l/s, and an orifice diameter of 74mm. The updated stormwater plan shows the dimensions of 7.2m x 2.8m x 1.45m of the OSD tank.*

*A water balance table has been submitted which suggests a "potential rain tank volume" of 20m<sup>3</sup>, with connections to toilet flushing. The table shows reduction in runoff days of 50%, which satisfies Council's requirements. The updated stormwater plan shows dimensions of 6m x 2.8m x 1.2m for the rainwater tank.*

*MUSIC analysis has been provided which shows a 10KL rainwater reuse tank, stormfilter chamber, 4 PSorb (MCC). These devices have now been shown on the revised stormwater plans.*

### ***Vehicle access and accommodation arrangements***

*The site is zoned 'B2' under the Local Centres LEP. The parking provisions have been determined using Ku-ring-gai Council Local Centres Development Control Plan for commercial*

and mix use. The site is located within 400m walking distance from Roseville Railway Station. According to the Ku-ring-gai Local Centres DCP Volume A Part 8B.2-15 'Car Parking Rates', the total parking spaces required for the residential component would be a minimum 28 spaces and maximum 45 spaces with 6 visitor spaces.

Bedroom	Minimum	Maximum
9 x 1	9x0.6 = 5.4.	9x1=9
17 x 2	17x0.9 = 15.3.	17x1.25=21.25
7 x 3	7x1 = 7.	7x2=14
Total	27.7 = 28	44.25 = 45

Visitor spaces are to be provided at a rate of 1 space per 6 units =  $33/6 = 5.5 = 6$

The rate provided for the retail component (696m<sup>2</sup>) is based on rate for shops, including restaurants and cafes, with a rate of 1 space per 26m<sup>2</sup> GFA to 1 space per 33m<sup>2</sup> GFA, which equates to minimum 21 spaces and maximum 27 spaces.

The development now seeks to provide 56 off-street parking spaces, comprising 10 spaces for the club (an increase of 5 spaces) (includes 1 accessible), 1 carwash bay, 6 residential visitor spaces (includes 1 accessible visitor), 40 residents' spaces (including 5 accessible spaces). The minimum residential parking spaces requirements have been met for the development.

The number of spaces allocated to the retail component do not meet the minimum spaces as specified under Volume A Part 8B.2-15 of the DCP: 'Car Parking Rates'. With a proposed retail floor area of 696m<sup>2</sup>, this equates to at least 21 up to 27 spaces however only 10 are provided.

Revised SIDRA analysis has been provided for 3 days as previously requested. Revised results show levels of service C, a satisfactory level of service, the same as the initial analysis.

Sight sightlines for oncoming vehicles and to pedestrians on Larkin lane has been provided.

### **Waste Collection**

The turning manoeuvrability has been provided for waste collection vehicle access on the ground floor (commercial) and basement 1 (residential).

A driveway longitudinal section has been submitted to demonstrate the minimum head height of 2.6m to access the basement 1 area. A 20% driveway grade has been provided which satisfies the requirements of Part 23.7(35) of the Local Centres DCP.

A higher headroom has been provided to the commercial waste collection/loading dock on the ground floor.

### **Construction Management**

An indicative construction management plan has been submitted.

All site access is proposed via Larkin Lane

A 'work zone' is not proposed. All loading unloading proposed for within the site boundary.

### **Geotechnical Investigation**

Boreholes were drilled at 2 locations. The boreholes were drilled to augur depth of 1.6m to 4m



*below ground level (BGL). They were bored to refusal on shale bedrock. Standard penetration testing was carried out within the soils at 1.5m depth intervals. Boreholes were continued to termination at 14m and 13.9m depth.*

*Subsurface conditions*

<i>Origin</i>	<i>Description</i>	<i>Depth to top of unit (m)</i>	<i>Unit Thickness (m)</i>
<i>Fill</i>	<i>Asphalt pavement</i>	<i>Ground surface</i>	<i>0.2-0.4</i>
<i>Residual</i>	<i>Clay</i>	<i>0.2-0.4</i>	<i>0.4-0.8</i>
<i>Bedrock</i>	<i>Shaley Clay</i>	<i>0.8-1.2</i>	<i>4.8-5.1</i>
<i>Bedrock</i>	<i>Shale</i>	<i>5.8-6</i>	<i>&gt;7.9</i>

*Groundwater was not observed in the boreholes during augur drilling to depths of 1.6m to 4m BGL.*

*Based on investigations, the basement level of 101.2m AHD is at least 2.7 to 3.7m below the observed groundwater level and would be within shale bedrock. It is recommended that the basement is tanked.*

**Recommendations**

*The proposed development remains unacceptable with regard to the following:*

**Parking**

*The number of spaces allocated to the retail component do not meet the minimum spaces as specified under Volume A Part 8B.2-15 of the DCP: 'Car Parking Rates'. With a proposed retail floor area of 696m<sup>2</sup>, this equates to between 21 and 27 spaces to be provided for the club, however only 10 are provided.*

**Building**

Council's Building Surveyor has advised that no objection to the proposal is raised, subject to the imposition of conditions relating to accessibility and Building Code of Australia compliance should the application ultimately be approved.

**Health**

Council's Environmental Health Officer supports the proposal, subject to conditions relating to the following matters, should the application ultimately be approved:

- location and screening of plant equipment
- treatment of club smoking areas
- location of club gaming machines
- noise mitigation measures
- ventilation
- outdoor lighting
- deliveries
- waste management

## ASSESSMENT OF INFORMATION PROVIDED TO RESPOND TO REASON FOR DEFERAL

### **Inadequacy of Clause 4.6 – Request to vary FSR development standard**

#### **Background:**

The Panel will recall that the site is subject to two different floor space ratio (FSR) standards however, the development provides an integrated built form across both FSR standards and as such a gross floor area (GFA) calculation should be applied to the site. The Applicant acknowledges that this causes a technical breach of the FSR standard as it exceeds the GFA provided on that part of the site that enjoys an FSR of just 2:1.

This position formed part of the original Planning Assessment Report prepared by Council and presented to the Panel. However, the Planning Assessment Report did challenge the manner in which the Applicant calculated site area and therefore the actual FSR that was proposed. In summary, the position was put that the portion of the subject site (being the 156.8m<sup>2</sup> strip of land currently accommodate Larkin Lane including bitumen road surface, kerb and gutter and footpath area) is a 'public place'. Therefore, pursuant to Clause 4.5 Calculation of floor space ratio and site area of KLEP, this area must be excluded from the site area and subsequent FSR calculations.

As proposed, the development provides a GFA of 312m<sup>2</sup> beyond what would be otherwise allowed on the subject site and results in an FSR non-compliance of 12.9%.

#### **Current position:**

The amended development proposal does not provide any change to the GFA proposed as part of the original proposal considered by the Panel.

The amended Clause 4.6 request (Attachment 5) provides further information that seeks to demonstrate that strict compliance with the standard is unnecessary and that there are sufficient environmental planning grounds to justify the variation of the development standard.

However, the modified Clause 4.6 request does now recognise that inclusion of the Larkin Lane lands as part of the site area calculations is problematic as it is indeed public land and must be considered separately as part of the FSR calculations. Accordingly, the amended Clause 4.6 request now also includes a formal request to the 'contravention' of *Clause 4.5 Calculation of floor space ratio and site area* of KLEP. An extract of that clause is provided below:

#### **4.5 Calculation of floor space ratio and site area**

**(4) Exclusions from site area** *The following land must be excluded from the site area—*

- (a) land on which the proposed development is prohibited, whether under this Plan or any other law.*
- (b) community land or a public place (except as provided by subclause (7))*

**(7) Certain public land to be separately considered** *For the purpose of applying a floor space ratio to any proposed development on, above or below community land or a public place, the site area must only include an area that is on, above or below that community land or public place, and is occupied or physically affected by the proposed development, and may not include any other area on which the proposed development is to be carried out.*

The basis of the Applicant's proposed contravention is that the relevant strip of land that accommodates Larkin Lane is not 'typical' public land that the objective of clause 4.5 (1)(b)(iii) would generally focus on. The Clause 4.6 request then outlines seven (7) reasons for supporting that position and concludes that the relevant objective is achieved despite the contravention of the clause.

## **Planning Comment:**

An assessment of the reasons why the Applicant suggests the land is not 'typical' public land and thereby warrants a contravention of Clause 4.5 of KELP is provided below:

### **1. Dominant use does not serve any public purpose**

The Applicant states that the Larkin Lane land is not public land as it does not serve any public purpose.

This position simply ignores the fact that part of this land currently accommodates a bitumen road surface that operates as a public road and provides the sole vehicle access to the primary public parking area for the Roseville town centre. The land also accommodates public infrastructure inclusive of kerb and gutter works, facilitates public pedestrian movement and is owned by the Council.

The fact that other sections of that land are informally used as private parking by the club does not diminish the fact that the balance of the land is used and serves an important public purpose.

The suggestion that this land does not serve a public purpose is non-sensical.

### **2. Its Operational land and not Community Land**

The Applicant states that the Larkin Lane land is not public land as it is not classified as Community Land under the Local Government Act.

The fact that the land is classified as Operational and not Community Land under the *Local Government Act, 1993* is irrelevant. Public car parks, community centres and Council Depots are all typically classified as Operational land yet still represent public lands that clearly serve a public purpose.

### **3. Not zoned in contemplation of any public purpose**

The Applicant states that the B2 Local Centre zoning of the land under KLEP confirms that it is not contemplated for public purpose.

The zoning of the land is irrelevant to its role in operating as public land. All local roads within the LGA are zoned in manner consistent with the adjacent landholdings. E.g. all local roads in residential areas have a residential zoning. However, this zoning does not contemplate or invite future residential use of those road reserves.

Similarly, the Ku-ring-gai Council Civic Centre is located on land with a B2 Local Centre zoning, yet this zoning does not diminish its role as providing a public purpose or place.

### **4. Land is not identified in the DCP for a purposes of a park**

The Applicant states that the relevant DCP does not identify the land as new or existing park.

The non-identification of the land as a park within the DCP does not exclude it from still providing another valuable public purpose such a road or laneway.

## 5. Land is not identified in DCP for future “Key community infrastructure”

The Applicant states that the relevant DCP does not identify the land as key community infrastructure.

Again, the non-identification of the land as a park within the DCP does not exclude it from still providing another valuable public purpose such a road or laneway. In this regard, reference to Figure 14F.4-1 of Ku-ring-gai Local Centres DCP (see **Figure 1**) shows that Council clearly contemplates an important public purpose for Larkin Lane as it seeks future land dedications and building setbacks to that laneway.

It is acknowledged that the relevant strip of land is not identified in this DCP figure for dedication. However, discussions with Council's strategic planning unit indicates that the subject land's exclusion had only occurred because that land is currently held in public ownership (by Council) and therefore there was not considered to be any necessity for the DCP to identify and dedicate those lands to Council, as Council already owned it.





**Figure 1: Extract of Ku-ring-gai Local Centres DCP**

**6. There is no ability for a developer to extract a financial benefit from the additional GFA other than by reaching a commercial agreement with Council**

The Applicant states that the intent of the relevant LEP objectives is to avoid an inappropriate outcome whereby a developer was able to extract additional GFA benefits from public lands in circumstances where the owner of the public lands (Council) does not receive any benefit. The Applicant then states that the certainty of that public benefit accruing can be ensured through the development approval and construction process.

It is not certain that the intention of the relevant objective is indeed as it's stated by the Applicant. However, the fact that the developer proposes to provide public benefit, being a footpath in Larkin Lane in exchange for the development rights, does not overcome the fact the land is 'typically' public land. Indeed, the very essence of the Applicant's position is contradictory as it claims that the land serves no public purpose, yet seek to provide a public footpath as way of recompense for the loss of lands that provide that important public purpose.

**7. The development will provide a public benefit**

The Applicant states that the development provides a public benefit commensurate with the additional GFA benefit that this outcome provides.

The inclusion of the Larkin Lane provides considerable public benefit to the applicant by way of additional GFA and yield. The provision of a public footpath in Larkin Lane is of limited public benefit and is not even dependent on that outcome.

Simply put, that same public benefit could be just as readily obtained through the imposition of a standard condition of development consent that required the developer to construct a footpath at the site Larkin Lane frontage. This outcome, which Council commonly imposes on development consents, could be achieved without necessitating the sale of public lands, consolidation of those lands into a public landholding, adopting a VPA, creating easements for access and management or any of the other convoluted mechanisms that underpin the current development proposal.

Accordingly, the development does not provide any real public benefit and no benefit commensurate with the loss of important public land. Indeed, regardless of this specific

issue pertaining to the suitability of the proposed contravention of KLEP Clause 4.5, the planning assessment of this development proposal has previously put the position that the subdivision and consolidation of the Larkin Lane land, that underpins the development, is not orderly development of the land as required by the objects of the EP&A Act and as such is not in the public interest.

For the reason outlined above, it is not accepted that a contravention of Clause 4.5(7) of KLEP has been justified. Accordingly, Larkin Lane land is public land and therefore, pursuant to clause 4.5 of KLEP that land should be excluded from the site area and subsequent FSR calculations.

In this context, the amended development proposal provides a site area (excluding the Larkin Lane land) of only 1218.5m<sup>2</sup> and GFA of 3523m<sup>2</sup> which translates to a FSR of 2.89:1. The development therefore exceeds the relevant FSR development standard by 12.9% and demonstrates that it provides a built form that is significantly larger than what the statutory planning framework had contemplated for those sites.

### **Further Consideration on the FSR issue**

The new Clause 4.6 request relies heavily upon a proposed contravention of Clause 4.5 of the KLEP based on an argument that the Larkin Lane land does not represent 'typical' public land. Despite significant reference to *NSW Land Environment Court*, Case Law of limited relevance and detailed discussion on what represents an esoteric interpretation of the joint operation of two LEP clauses, no legal advice was provided to support the position represented in the Clause 4.6 Request.

Clause 4.5 of KLEP is not a development standard but is rather an instructional clause that sets out the manner in which Site Area and FSR calculations are made. It is therefore not accepted that the Applicant can lawfully seek to vary or contravene Clause 4.5.

In addition to questions over the lawfulness of the pathway taken by the applicant, there remain fundamental concerns with the merits of this approach. In this regard, given the development does not seek to provide any built form on the Larkin Lane lands it therefore loads the entire GFA budget of three lots onto just two lots, which results in a significantly larger built form on those two lots than would otherwise have been contemplated in the drafting and making of KLEP.

This outcome would also appear to be inconsistent with the objective of Clause 4.5, which states as follows:

*(b) to set out rules for the calculation of the site area of development for the purpose of applying permitted floor space ratios, including rules to—*

*(i) prevent the inclusion in the site area of an area that has no significant development being carried out on it, and*

It can therefore be rightfully contemplated that the intention of that objective is to prevent the exact outcome that is currently being proposed by the Applicant as part of this development proposal.

### **Inadequacy of Clause 4.6 – Request to vary Height of Building development standard**

The amended development proposal includes an amended Clause 4.6 request to vary the Height of Building development standard (Appendix 6).

There is some uncertainty as to the actual height of the amended development proposal as the plans reference AHD levels that differ to the building height referenced in the Clause 4.6 requests. This is demonstrated in Table 1 below:

**Table 1: Comparison of maximum Building Height.**

Development Proposals	Height Shown on Plans at lift overrun	Maximum Building Height	Scale of breach of standard (20.5m) referenced in clause 4.6 request	Variation (%)
Original development considered by Panel in March 2020	135.435 AHD	23.77m	3.27m	15.9%
Current Amended development proposal	135.415 AHD	23.927	3.42m	16.7%
Change	-0.02m	+0.157m	+0.15m	+0.8%

The amended Clause 4.6 request provides further information that seeks to demonstrate that strict compliance with the standard is unnecessary and that there are sufficient environmental planning grounds to justify the variation of the development standard.

In summary, the additional environmental planning grounds stated include:

*"Objective 3D-1 (ADG's) says that there should be an "adequate area of communal open space ... provided to enhance residential amenity and to provide opportunities for landscaping'.*

*The design guidance offers examples of sites where communal open space equal to 25 per cent of the site might not be achieved. Relevantly, this includes sites within business zones or in a dense urban area, and in such cases they can, instead, demonstrate good proximity to public open space and facilities.*

*Accordingly, no further specific communal open space is actually required to be provided.*

*A reasonable alternative to providing communal open space on the rooftop is the provision of no communal open space and reliance on the club facilities and the adjacent public open space. However, it is preferable, in terms of protecting local amenity (as the objective seeks to do) to provide the communal open space on the rooftop area, rather than add to the use of the public open space (in circumstances where there are no material adverse impacts from that rooftop use).*

*In essence the club can be used as a 'common room', the apartments do have larger balconies and there is a park adjoining the site.*

*Nevertheless, it remains desirable to provide a more private communal open space for residents and so provision has been provided on the roof. The provision on the roof results in improved residential amenity (an aspect of "local amenity" under the objectives) and improved amenity for other park users (as the use of the park may be mitigated) without any material detrimental impacts. "*

#### **Comment:**

There are several matters contained within the Applicant's position that warrant analysis and response:

#### **1. No need to provide 25% COS**

The Applicant states that there is no actual requirement to provide Communal Open Space

(COS) on site as the SEPP 65 Apartment Design Guidelines (ADG's) only provides an objective that require "an adequate area of communal open space..."

The relevant ADG Objective and Design Criteria clearly states as follows:

### **Objective 3D-1**

***An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping***

#### **1. Communal open space has a minimum area equal to 25% of the site area.**

Whilst the ADG Design Criteria does not have the same statutory significance as the ADG objectives, contemporary planning practice would only facilitate a development without a suitable allocation of COS on sites in uniquely specific circumstances. The ADG's countenances these circumstances and provides detail 'Design Guidance' as follows:

***Where developments are unable to achieve the design criteria, such as on small lots, sites within business zones, or in a dense urban area, they should:***

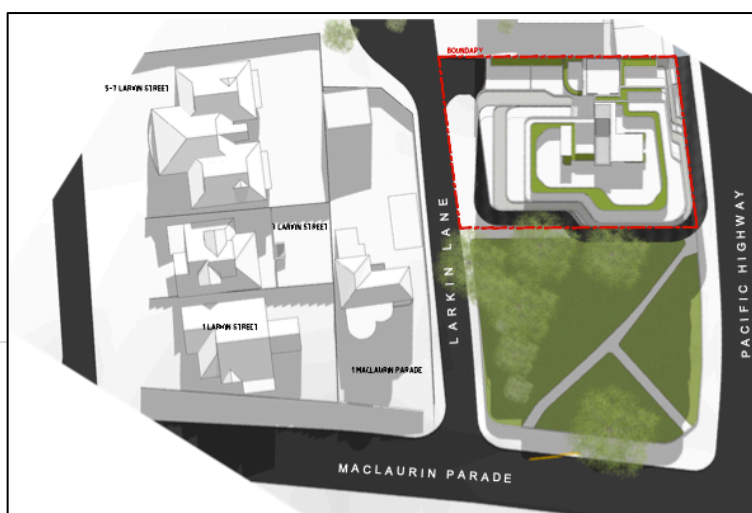
- ***provide communal spaces elsewhere such as a landscaped roof top terrace or a common room***
- ***provide larger balconies or increased private open space for apartments***
- ***demonstrate good proximity to public open space and facilities and/or provide contributions to public open space***

A review of these criteria demonstrates that even in urban areas or business zone the ADG's clearly still expect sites to provide COS on a roof top terrace.

Further, the site's proximity to the local park only would provide an exemption for delivery of its own COS when it is 'unable to achieve the Design Criteria' and would also have to demonstrate the development: "...provide contributions to public open space".

The site is not 'unable' to provide COS as is demonstrated by the actual inclusion of COS on the roof top as part of the development proposal. Further, the development provides no contribution to local public open space. Rather, it borrows from the amenity of that adjacent open space area and in doing so causes a significant loss of amenity by casting significant overshadowing of that park. **Figure 2** provides an extract of the shadow diagrams that demonstrates almost complete overshadowing of the park in winter lunchtime periods.

Accordingly, the suggestion that the development is not required to provide COS as part of the development is not accepted.





## **Figure 2: Extract of DA shadow diagrams**

### **2. The development can rely upon the Memorial Club as COS**

The Applicant states the club, that forms part of the ground floor of the proposed development, can be reasonably used as a common open space.

The club space that forms part of the development is neither 'common' nor 'open' and therefore does not provide suitable COS.

Access to a registered club is not 'common' space as it is restricted to Club members only, will have age dependent restrictions and is also a commercial facility that may provide restricted use at times of functions or events. Further, it could not allow its users an expectation that they could bring their own food and drink in a manner that would allow them to fully enjoy the amenity of that space.

The club is not 'open' space as the entire ground floor area is enclosed space other than a small (45m<sup>2</sup>) outdoor terrace that is likely to serve as 'smoking area' for club patrons. Further, this terrace is located on the southern side of the building and will therefore be cast in full shadows throughout the entire year.

Accordingly, the suggestion that the club provides a reasonable alternative to communal open spaces, that provides residential amenity in a manner that satisfies the relevant ADG objective is non-sensical.

It is also important to note that there can be no surety that the club will form part of the broader development in perpetuity. It is a commercial premise that is subject to commercial and market forces and as such it is not unreasonable to expect that it could at some future point be replaced by retail facilities that provide even less residential amenity than the Applicant currently purports it to provide.

Accordingly, it is considered that the modified development proposal does not make the case that there are sufficient environmental planning grounds to justify varying the development standard.

### **Outstanding Contamination Assessment**

A Stage 2 Detailed Site Investigation prepared by *Construction Sciences*, dated 20/05/2020, has been provided as part of the amended development application.

This investigation included:

- A desktop review
- Drilling of two bore holes, to depths of approximately 12m below ground level, with one located inside the current RSL Club building, to assess significant widespread contamination

- of the site,
- Collection of soil samples,
- Installing two groundwater monitoring wells,
- Collection and analysis of groundwater from those new monitoring wells and also one existing well, and the data assessment and reporting.

The report concludes the site is suitable for the proposed development, from a contamination perspective, in general accordance with the requirements of SEPP55 and NEPM (2013).

**Comment:**

The information provided by the applicant resolves the outstanding concerns in relation to potential site contamination and remediation.

**Clarify Car Parking Credits and consider reallocation of spaces between land uses**

The Applicant has conducted a review of developer contributions levied and paid for as part of previous development approvals issued on the site. This review revealed that DA1366/02 levied a S94 contribution of \$152,636 in lieu of the shortfall of 23 parking associated with a proposed expansion of the club as part of that Development Application. This sum (indexed to \$157,281) was paid to Council on 1 December 2005.

The amended development proposal provides an amended design that provides an additional 3 parking spaces. These have been allocated to the club element of the proposal. The amended proposal also seeks to reallocate a further 2 parking spaces from the residential component to the club.

Accordingly, the amended development proposal now increases the parking allocation for the club from 5 to a total of 10 spaces.

The Applicant has also indicated that they do not support a further reconsideration of the allocation of car parking spaces between the retail and residential components of the club as that would reduce the ability of the development to meet the parking demands of future residents. In support of that position the Applicant has provided a Demographic Study which outlines the potential car usage and parking needs of future residents of the development.

**Comment:**

Council's development engineers have indicated the club element of the development generates a parking demand for between 21-27 spaces.

The amended development proposal now provided 10 spaces which in addition to the credit of 23 parking spaces (paid as part of the S94 Developer Contribution) represents a total of 33 spaces.

This would appear to provide a suitable allocation of parking spaces for the club component of the development.

**Further clarify gaming room smoke exhaust outlet and visual interface with street**

The amended development proposal now includes a new riser duct from the smoking room that discharges at the centre of the roof within the services vent area.

The applicant has also provided further detail on the interface of the gaming room with the street by

providing detail of the proposed louvre at this location.

The proposed louvre will restrict viewing from pedestrian areas into the gaming area and may assist in reducing noise transfer from the gaming room to the street. However, no detail has been provided in relation to that potential noise mitigation.

**Comment:**

The proposed louvre will result in blank wall presentation at this important street interface. This is considered to be a poor urban design response and is inconsistent with Clause 6.6 of KLEP.

**Sustainability initiatives for the proposed development**

The amended development proposal includes commentary by *Efficient Living Sustainable Building Consultants dated 27-04-2020*, on the environmentally sustainable commitments (ESD) for the development. The initiatives include:

- thermal comfort
- reduced energy demands
- reduce water use
- stormwater management
- use of sustainable building materials

**Comment:**

The development proposal provides a range of sustainability outcomes consistent with the requirements of BASIX and Council's stormwater management requirements.

**Appropriate acoustic separation**

The Panel requested that the applicant consider methods to provide appropriate acoustic treatment between various rooms and units within the development. Further advice has been provided by the Applicant's acoustic engineer that inter-tenancy walls and treatment within the ceiling cavities can be acoustically upgraded to improve the overall acoustic treatment.

**Comment:**

No issues have been raised by Council's Environmental Health officer and any issues relating to acoustic treatment can be resolved by way of a condition of consent.

**Consider redesign to minimise any height breach from shade structures and floor to floor height constraints**

The amended development includes a redesign that results in the following outcomes with regards to floor to floor heights and overall building height.

- Basement levels 1-3 inclusive have lowered the RL by 140mm
- the club internal ground floor level has been lowered by 140mm
- the floor to floor heights of all residential levels have been altered to be a consistent 3.1m
- Levels 5 and 6 floors have been lowered
- a covered pergola has been provided at the Communal Open Space (CoS) level to provide sun and weather protection.

The applicant has also provided written advice from a building engineer that the proposed floor to

floor levels are capable of accommodating all services.

**Comment:**

The Panel were seeking a redesign to minimise the breach of the relevant development standard. However, the development results in an actual building height increase, whilst the inclusion of a new shade structure has, as expected by the Panel, exacerbated the breach of the development standard by providing additional built form elements on the level and above the maximum building height.

No redesign has occurred to minimise this further breach.

**CONCLUSION**

This amended application has been assessed under the heads of consideration of Section 4.15 of the *Environmental Planning and Assessment Act* 1979 and all relevant instruments and policies. The proposal does not achieve compliance with the requirements of the relevant instruments and policies and refusal is recommended as revised below.

**RECOMMENDATION**

**PURSUANT TO SECTION 4.16(1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

- A. THAT the Sydney North Planning Panel, as the consent authority, is of the opinion that the request submitted under Clause 4.6 of the Ku-ring-gai Local Environmental Plan (Local Centres) 2012 to vary Clause 4.3 - Building Height and Clause 4.4 Floor Space Ratio has not met the requirements of Clause 4.6(3). The Panel is also of the opinion that are insufficient environmental planning grounds to vary the development standards and that the written requests are not well founded.
- B. THAT the Sydney North Planning Panel as the consent authority, refuse consent to Development Application DA 0134/18 for subdivision of land, demolish existing structures (including Roseville Memorial Club and retail tenancy) and construct mixed-use building comprising new ground floor Memorial Club, shop-top housing of 33 residential dwellings, basement parking and associated works at 64-66 Pacific Highway, Roseville for the following reasons:

**Proposed subdivision does not promote orderly development of land or use of infrastructure**

1. The subdivision element of the proposed development is not consistent with the following object of the EP&A Act:  
  
*“(c) to promote the orderly and economic use and development of land.”*
2. The proposed development is inconsistent with the following aims of Clause 1.2 Aims of the LEP:  
  
*“(h) to achieve land use relationships that promote the efficient use of infrastructure*  
  
*(i) to facilitate good management of public assets and promote opportunities for social, cultural and community activities”*

**Particulars**

- a) Larkin Lane provides an important publicly accessible roadway that provides vehicular and pedestrian access to a major public car park and rear lane access for the retail and business development that have a frontage to the Pacific Highway.
- b) The development proposes the reconfiguration of the subject lands through the subdivision and consolidation of several parcels of land inclusive of part of a lot that is currently publicly owned land and part of which provides public infrastructure, being part of Larkin Lane.
- c) The proposed subdivision therefore would facilitate an outcome whereby existing and important public infrastructure, inclusive of road carriageway, kerb, gutter and road verge area would be consolidated within privately owned lands.
- d) The consolidation of that public infrastructure into a single and larger private land holding does not represent orderly and economic use of that land.

Orderly development and use of land would result in Larkin Lane and its important public road infrastructure being wholly maintained in public ownership and as a separate parcel of land from a mixed-use development. Efficient use of infrastructure and good management of public assets would result in Larkin Lane and its public road infrastructure being wholly maintained in public ownership and as a separate parcel of land from that of a mixed-use development.

### **Draft Planning Agreement does not provide a public purpose**

1. The Draft Planning Agreement is not consistent with section 7.4 of the EP&A Act as it does not provide 'public purpose'.

#### Particulars

- a) The Applicant is proposing to enter into a Planning Agreement whereby that part of the Site that currently provides that an easement would be granted over the Larkin Lane carriageway, kerb, gutter in favour of Council for the purpose of maintaining public access.
- b) Whilst this Planning Agreement does provide a potential alternative for maintaining public access to those important community assets, it is a sub-optimal outcome compared to the existing arrangement where the public assets are owned and managed by Council.
- c) There is no public benefit evident or offered by the Applicant to justify the proposed alteration of those existing cadastral and tenure arrangements.

### **The development will jeopardise the realisation of the planned strategic outcomes of the Precinct**

1. The proposed development is inconsistent with Part 3A of the DCP and in particular with objective 1 of Section 3A.1 which is as follows: *“To ensure consolidation and subdivision create usable and regularly shaped lots that relate to the site conditions and the context.”*
2. The proposed development is inconsistent with the following sections of the DCP: *Section A, Part 3A-General Controls for Consolidation and Subdivision, Section B, Part 14F- Urban Precincts and Sites – Roseville, 14F.4 Setbacks.*

#### Particulars

- a) Council’s strategic vision for the Roseville Urban Precinct seeks to widen Larkin Lane and provide a 6m setback to that Lane to provide for footpaths and street tree planting to support and enhance the planned future character of the centre.
- b) The DCP does not provide a land dedication or setback requirement to that portion of the Site, located to the west of the Club, that currently forms part of the Memorial Park site.
- c) This exclusion has only occurred because that land was already in public ownership and therefore there was no foreseen necessity to identify and set aside those lands for public purposes.
- d) Rather than dedicate the widened section of Larkin Lane to Council, the proposed development actually seeks to consolidate the relevant portion of the Site into a private land holding.
- e) Further, the proposed development provides a 0m setback to Larkin Rd whereas the DCP requires a 6m setback.
- f) The proposed development would therefore jeopardise the realisation of the strategic planning outcome represented in the DCP.
- g) The Site also forms part of the sole vehicle entry point to the primary public car park for the Roseville Local Centre.
- h) The proposed development is therefore clearly inconsistent with the DCP objective for land consolidation, which seeks to *“...allow for development which is suited to the site, its context and strategic intent.”*

#### **Building Height Exceeds the Development Standards**

1. The proposed development does not comply with clause 4.3 of the LEP as it proposes a building height in excess of 20.5m.

#### Particulars:

- a) Clause 4.3 of the LEP sets a maximum height control of 14.5 metres and 20.5 metres for the respective parts of the Site.

- b) The height blanket study and elevations that accompanies DA0134/18 demonstrates that a section of the balconies proposed at Level 4, will likely exceed the 14.5 metres height limit insofar as it applies to that respective part of the Site.
- c) Almost the entire component of the roof level and roof terrace area exceeds the 20.5m height limit insofar as it applies to the respective part of the Site.
- d) The proposed development provides a maximum building height of 23.7 metres at the lift overrun, plant room and stairs, which exceeds the development standard by 3.25 metres or 15.9%.
- e) The non-complying built elements as proposed, such as the plant room, stairs and lift overrun are relatively large elements that are not well integrated into the broader development and built form. Other non-complying elements as proposed, such as planter boxes that provide a perimeter to the communal open space are located close to the outer edge of the roof area and therefore will have clear legibility from numerous locations with the public domain.
- f) The Site occupies a key viewing location within the Pacific Highway corridor and has lengthy view lines along that corridor on both the southern and northern approaches. The length of these view corridors would likely result in those non-complying built elements being readily discernible from numerous vantage points along that corridor.
- g) The application is accompanied by a Clause 4.6 request to vary this development standard however, this request is not well founded as it does not demonstrate that, despite the non-compliance with the maximum height of building standard:
  - i. the proposed development will achieve better outcomes for and from the development
  - ii. there are sufficient environmental planning grounds to justify contravention of standard,
 The proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the relevant zone within which the development is to be carried out

### **Floor Space Ratio Exceeds the Development Standards**

1. The development proposal does not comply with Clause 4.4 as it proposes a Floor Space Ratio (FSR) of 2.89:1.

#### Particulars:

- a) Clause 4.4 of the LEP sets a maximum FSR control of 2.0:1 and 2.8:1 for respective parts of the Site.
- b) A single built form is proposed over the Site and therefore it is not practical to apply the different FSR controls to the respective parts of the Site and the proposed built form.

- c) A consolidated FSR standard has therefore been applied to the Site, which has been calculated utilising the respective FSR and proportional areas of the sites over which it applies.
- d) Clause 4.5(6) of the LEP states that only lots that provide 'significant development' are to be included in the calculation of the site area and FSR.
- e) No built form is proposed to be provided on Lot 2 DP202148 and therefore that portion of the Site should be excluded from the FSR calculations.
- f) The joint operation of the *LG Act* and Clauses 4.5(4), (7) and (11) of the LEP exclude any 'public place' from the calculation of site area and FSR.
- g) The definition of a 'public place' as provided by the *LG Act* includes a public road.
- h) Lot 2 DP202148 currently provides part of Larkin Lane which is 'public place'.
- i) For the reasons outlined at paragraphs d)-h) of this Contention, that section of the Site that includes Lot 2 DP202148 is not to be included as part of Site area and FSR calculations.
- j) The resultant Site area (for the purpose of the FSR calculations) is therefore 1218.5m<sup>2</sup>.
- k) When respective FSR controls are applied to the each of the respective lots, the maximum GFA allowed and FSR for the Site is 3210.52m<sup>2</sup> and 2.63:1 respectively.
- l) The proposed development provides 3523m<sup>2</sup> of GFA and an FSR of 2.89:1, which exceeds the relevant FSR development standard by 12.9%.
- m) The application is accompanied by a Clause 4.6 request to vary this development standard however, the Clause 4.6 request does not acknowledge the full extent of the resultant non-compliance which is likely to arise.
- n) The Clause 4.6 request is not well founded as it does not demonstrate that, despite the non-compliance with the FSR standard:
  - i. The proposed development will achieve better outcomes for and from the development,
  - ii. There are sufficient environmental planning grounds to justify contravention of standard,
  - iii. The proposed development will be in the public interest because it is consistent with the objectives of the particular development standard and the relevant zone within which the development is to be carried out.

#### **Development does not provide active uses at the street level**

1. The proposed development does not comply with Clause 6.6(3)(b) of the LEP as it does not provide uses and building design elements "*that encourage interaction between the inside of the building and external public areas adjoining the building*".
2. The proposed development is inconsistent with DCP, *Section B, Part 14F.9 Precinct R2; Pacific Highway Shops, Control 7, iii*) which requires that development '*provides active street frontages along the Pacific Highway and the frontage to Memorial Park*'.



Particulars:

- a) The proposed development provides a significant component (being 44%) of blank walls or non-active frontages to the Pacific Highway at the ground floor level, as a consequence of the proposed siting of the lift well, stairs and a gaming machine room at this location.
- b) These building design elements and uses do not allow for any interaction between the inside of the building and those external public spaces at the Pacific Highway street frontage.
- c) Larkin Lane is likely to be dominated by the substation, a fire stair aligned along the street boundary, the TAB and the car park entry. This leaves only a small component at the southern corner which would effectively activate this important street frontage area.

**Non-compliance with DCP street wall height requirement**

1. The development is inconsistent with built form controls provided by *Part 14F.5 Built Form, Precinct R2 – Pacific Highway Shops* of DCP, which requires a 3-storey (11.5m) street wall height to the Pacific Highway and 2m upper level setback above the street wall height.

Particulars:

The proposed development provides a 5-storey 16.86m street wall height at the Pacific Highway frontage.

**Section 4.15(1)(b), (c) and (e) of the *Environmental Planning and Assessment Act 1979* and the public interest.**

1. The development application should be refused because the Site is not suitable for the proposed development.

Particulars:

- a) The Site includes important community infrastructure, which is represented as a part of the Larkin Lane carriageway and its verge.
- b) This important community infrastructure is not suitable for consolidation within a private and developable land parcel.
- c) The subdivision element of the proposed development is inconsistent with those sections of the DCP that seek to deliver important public domain outcomes for the Roseville Local Centre.

**Public Interest**

1. The development application should be refused because approval of the proposed development would not be in the public interest.

Particulars:

- a) The public interest is demonstrated by conformity with the applicable planning controls the subject of contentions 1 to 4 hereto.
- b) The public interest also is demonstrated by matters which have been raised by objectors and which are summarised in Part A of this Statement.
- c) The development application should be refused having regard to the matters listed in section 4.15(i), paragraphs (1)(iii)(b) and (c) and (e) as detailed in the objectors' submissions in Part A hereto.

**Signed**



**Vince Hardy – Planning Consultant**

**Report Dated:**

Appendix 1 – Original assessment report

Appendix 2 – Record of SNPP Deferral

Appendix 3 – Applicant summary response to SNPP Deferral

Appendix 4 – Revised architectural plans

Appendix 5 – Revised Clause 4.6 statement (FSR)

Appendix 6 – Revised Clause 4.6 statement (Building height)

Appendix 7 – Additional submitters map