



## Report to Sydney Central City Planning Panel

<b>SWCCP reference</b>	2018SWC003
<b>DA No.</b>	1008/2017
<b>Date of receipt</b>	8 December 2017
<b>Proposal</b>	<p>Concept Development Application in accordance with Section 4.22 of the Environmental Planning and Assessment Act 1979 (EPA Act) for the restoration and refurbishment of the Roxy Theatre and associated forecourt, including part demolition at the rear section of the site and a 33 storey building envelope for a commercial building.</p> <p>The part demolition and restoration of the Roxy Theatre is for the purpose of accommodating a range of uses including an entertainment facility, a function centre and commercial premises.</p> <p>The proposal is Integrated Development requiring approval under the Heritage Act 1977 and the Water Management Act 2000.</p>
<b>Street address</b>	65-69 George Street, Parramatta
<b>Property Description</b>	Lots 1 and 2 in DP 76080
<b>Applicant</b>	K Capital Group c/- Urbis Pty Ltd
<b>Owner</b>	Rifon 2 Pty Ltd
<b>Submissions</b>	<p>41 public submissions from individuals and organisations.</p> <p>Submissions objecting: 36 Submissions supporting: 3 Comments (not objecting or supporting): 2</p>
<b>Relevant s4.15(a) Matters</b>	<ul style="list-style-type: none"><li>• Environmental Planning and Assessment Act (EPA Act) and Regulation (EPA Reg) including provisions relating to Integrated Development</li><li>• State Environmental Planning Policy No. 55 (SEPP 55)</li><li>• State Environmental Planning Policy (Harbour Catchment) 2005</li><li>• State Environmental Planning Policy (Infrastructure) 2007 (SEPP)</li><li>• State Environmental Planning Policy (State and Regional Development) 2011</li><li>• Parramatta Local Environmental Plan 2011 (PLEP 2011)</li></ul>

<b>Summary of s4.15 matters</b>		Yes
Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?		
<b>Legislative clauses requiring consent authority satisfaction</b>		Yes
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 summarised in the Executive Summary of the assessment report?		
<b>Clause 4.6 Exceptions to development standards</b>		N/A
If a written request for a contravention to a development standard has been received, has it been attached to the assessment report?		
<b>Special Infrastructure Contributions</b>		N/A
Does the DA require Special Infrastructure Contributions conditions (S94EF)?		
<b>Conditions</b>		No, as recommendation is for refusal
Have draft conditions been provided to the applicant for comment?		
<b>Recommendation</b>	Refusal	
<b>Report by</b>	SJB Planning - planning consultants to City of Parramatta Council	

**Attachments:**

- A - Detailed assessment
- B - Reasons for refusal
- C - Heritage Council of NSW comments
- D - Design Excellence Advisory Panel comments
- E - Selected drawings

## 1. Executive summary

The concept development application (DA) relates to the Roxy Theatre building and site, a State heritage item. The DA proposes a building envelope and the location of future land uses. The DA identifies works to the Roxy Theatre, including demolition works, that will contribute to defining the proposed building envelope, as well as the envelope of a proposed 33 storey commercial building located at the southern (rear) part of the site and partly above the altered theatre building. The DA does not propose any physical works but does identify the nature and extent of proposed intervention to the heritage item, including demolition, refurbishment and restorative works.

There are some threshold issues associated with the application, in addition to the detailed merit assessment matters. These are outlined below:

### Integrated Development

The property is State heritage listed under the Heritage Act 1977 as well as the PLEP 2011. The DA is “integrated development” as approval is required under the Heritage Act 1977. The Heritage Council of NSW has not provided general terms of approval and is opposed to the application. Pursuant to section 4.47 (4) of the EPA Act the lack of approval under the Heritage Act requires that the “*the consent authority must refuse consent to the application.*” This position has been confirmed by Council’s solicitors.

### Owner’s consent

The DA relies on vehicular access for loading/service vehicles across Council owned land that is not a public road. As that land effectively forms part of the application, the owner’s consent is required, but has not been sought nor given. Consequently, the DA does not comply with Section 49 and Schedule 1, Section 1 (1) (i) of the EPA Regulation.

### Parramatta Local Environmental Plan 2011 Clause 7.10 design excellence provisions

Two key matters (among others) arising from Clause 7.10 of PLEP 2011 are:

- *Is a competitive design process – architectural design competition – required for a concept DA?*

The Council’s legal advice is that a competitive design process under Clause 7.10(5) of PLEP 2011 is not required in the case of a concept DA.

- *In the event that a competitive design process is not required and is not undertaken, is the concept DA nonetheless required to demonstrate design excellence?*

The Land and Environment Court in the case of *Uniting Church in Australia Property Trust (NSW) V Parramatta City Council [2018] NSWLEC 1129* accepted that Clause 7.10 of PLEP 2011 applies to a concept DA. A quote from the LEC judgement is included below in italics:

*Consideration of a concept proposal for a building envelope must include, as part of the assessment of the concept proposal, matters such as heritage or streetscape constraints; whether a tower has an acceptable relationship with other towers in terms of separation, setbacks, amenity and urban form of the building envelope; the bulk and massing of a building envelope; permeability of pedestrian networks; impact on the public domain or special character areas; and whether the building envelope provides for an appropriate interface at ground level between the building envelope and the public domain. It is not possible to entirely postpone the consideration of the matters in sub-cl (4)(d)(iii), (iv), (v), (vi) (vii), (ix), (x), (xi) and (xii) to the design of the future building, because the form of the building can have a significant impact on each of these matters and can impede a future building, which is consistent with its concept approval, from successfully achieving these matters.*

Clause 7.10 (3) of PLEP 2011 requires the consent authority to determine whether the DA exhibits design excellence. As detailed further in this report the application does not exhibit design excellence, having regard to the provisions contained in clause 7.10(4).

The above summarised matters demonstrate that there are significant administrative matters to be considered, some of which are barriers to the granting of consent.

In addition to these matters, the concept DA has been assessed to be an unsatisfactory development outcome on this State heritage building and site and lacks planning merit. The merit considerations are outlined further within the report and **Attachment A**.

This report therefore recommends that this application be refused, for the reasons set out at **Attachment B**. It is noted that the applicant has already lodged an appeal to the Land and Environment Court against the “deemed refusal” of this application. A call over before the Registrar is scheduled for 6 September 2018.

## **2. Key issues**

- Integrated Development – no General Terms of Approval
- No owners consent for works on, and access, across separately owned land
- Heritage impact on State heritage item
- Design excellence associated with concept DA
- Adjoining site isolation
- Relationship to, and potential impact on, the Council's adopted Civic Link Framework Plan

## **3. Site location, description and related applications**

The site the subject of the application is 65-69 George Street Parramatta, which is located on the southern side of George Street, on the corner of Horwood Place which adjoins to the west. The property lies between Horwood Place and Smith Street to the east, within the Parramatta Central Business District.

The real property description is Lots 1 and 2 in DP76080. The site has an area of 2,361.6 sqm.

The site is adjoined to the south (rear) by a pedestrian walk way and then by Horwood Place multi-storey car park owned by the City of Parramatta Council. To the east the site is adjoined, in part, by Macquarie Lane and some at-grade public car parking and in part (northern section fronting George Street) by the “Roxy Arcade”, a single storey arcade of cafes/shops at 71-73 George Street, unrelated to the Roxy Theatre.

Opposite the site on the northern side of George Street is a modern multi-storey commercial building.

Located on the site is the State Heritage Item the Roxy Theatre, an Inter-War Spanish Mission style cinema building erected in 1930. The Roxy Theatre building includes a north facing entrance forecourt bordered to the east and west by retail space and colonnades leading to the main cinema building. The building, including past changes made to the interior, is described in further detail within this report.

The application also relies on vehicular access from and across Lot 100 DP 607789, which is shown below in Figure 8. There is no owner's consent for the use of Lot 100 provided with the DA.

The location is shown in Figure 1 below. Photographs of the Roxy Theatre and surrounds are included at Figures 2 – 7.

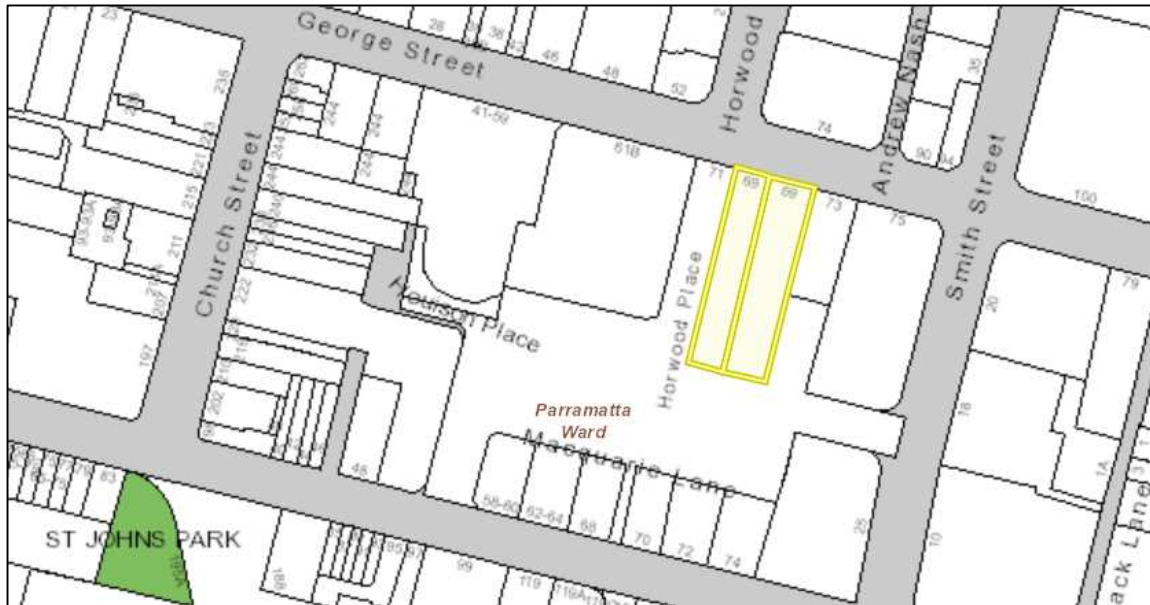


Figure 1: Locality Plan – site outlined in yellow. The extent of the public road network is shown in grey.



Figure 2: Roxy Theatre site and building viewed from the northern side of George Street looking south-west



Figure 3: Roxy Theatre building viewed from northern side of George Street looking south



Figure 4: Western elevation of the Roxy Theatre building viewed looking north-east from Horwood Place. The modern office building opposite on the northern side of George Street can also be seen





Figure 5: Eastern elevation of the Roxy Theatre building viewed looking north-west from public car parking area accessed from Macquarie Lane

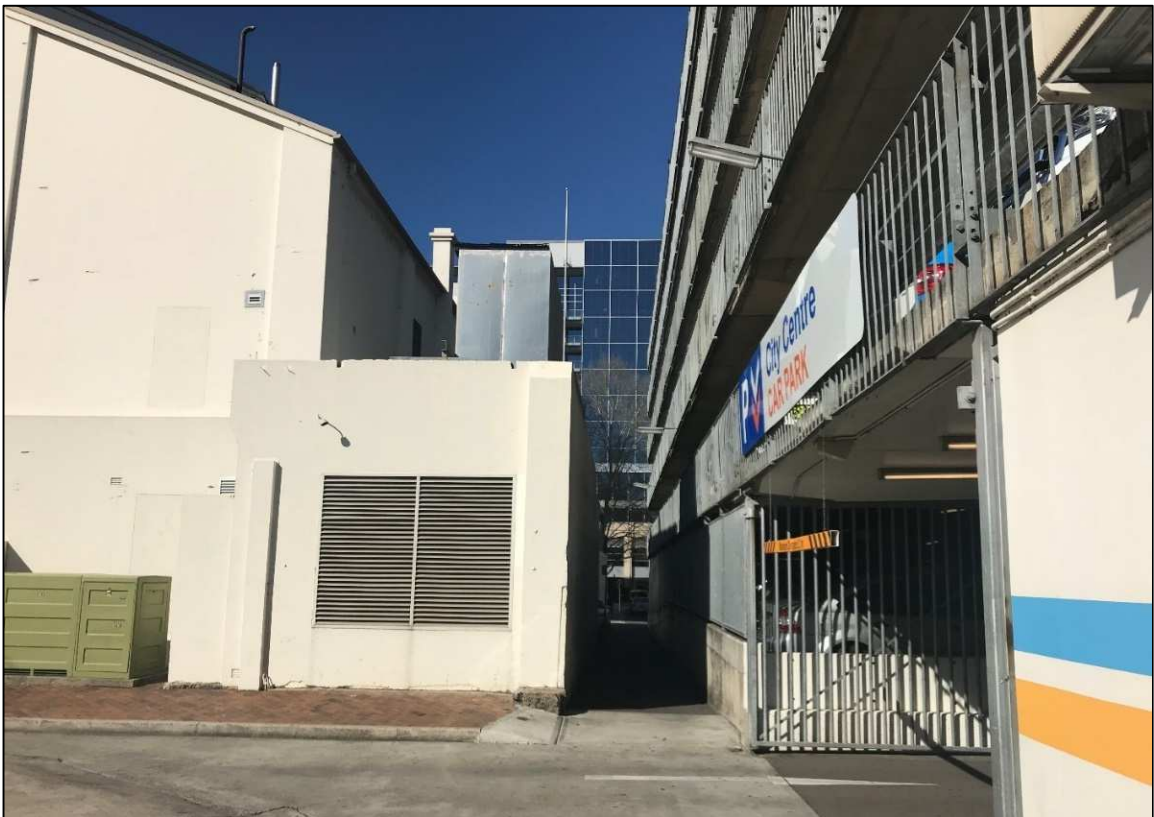


Figure 6: Pedestrian walkway at rear of the Roxy Theatre building linking Horwood Place to Macquarie Lane and Smith Street viewed looking east. The multi-storey Horwood Place car park can be seen on the right of the photograph



**Figure 7: Roxy Theatre site and building viewed from Horwood Place to the north of George Street, looking south-east.**

There is no on-site car parking or loading area and no vehicular access. All pedestrian access is from George Street.

According to the information supporting the application the building is not currently in use with the doors having been closed for more than three (3) years. The most recent development consent for land use relates to a 2002 DA for refurbishment, alterations and conversion to a multi-purpose entertainment venue. It is understood that use, including a night-club, operated prior to the premises closing. The most recent DA however, prior to this application, was for the construction of a canopy/shade structure over the George Street forecourt. The application was refused by Notice dated 13 February 2008, as the NSW Heritage Office would not grant its General Terms of Approval as required by the Environmental Planning and Assessment Act 1979.

The site has frontage to only one public road, being George Street (refer Figure 1). Horwood Place adjoining to the west and Macquarie Lane adjoining to the south-east are not public roads and are owned by the City of Parramatta Council, being part of Lot 100 DP 607789, which includes the whole of Horwood Place extending through to Macquarie Street, the whole of Macquarie Lane extending through to Smith Street and the Horwood Place multi-storey car park, as shown shaded yellow in Figure 8.

This relationship of the site to the Council owned Lot 100 DP 607789, and the implications for the redevelopment of the subject site, are discussed further below in the report under the heading Owner's Consent. The location and extent of Lot 100 DP 607789 and the location of the subject site at 65-69 George Street are shown below in Figure 8.





Figure 8: Council owned Lot 100 DP 607789 shaded in yellow. 69 George Street outlined in black.

#### 4. The proposal

The description of the proposed development provided in the Statement of Environment Effects (page 15) accompanying the application is:

*The applicant is seeking approval for a concept development application in accordance with Section 83B of the EP&A Act 1979. This 'Concept' development application will seek to secure approval for a concept proposal only with subsequent detailed proposals (and physical works) to be subject to subsequent development applications.*

*In summary, the application seeks approval for the following:*

- *The adaptive reuse and restoration of the Roxy Theatre to accommodate a range of uses, include an 'entertainment facility', 'commercial premises' and 'function centre' as defined in the PLEP 2011.*
- *Part demolition and site preparatory works to areas of non-heritage fabric at the southern portion of the site.*
- *A 33 storey building envelope to a maximum height of approximately 112m and RL122.37 (RL136.77 inclusive of the 15% increase subject to demonstration of design excellence) above existing ground level for use as a commercial office building. Noting that subject to design excellence being demonstrated, a maximum height of RL*
- *GFA consistent with the FSR standard applying to the site under the PLEP 2011.*
- *2 levels of part-basement excavation to accommodate loading and waste collection suitable for a commercial office building, and associated plant and storage space.*

The application states that a new commercial A-Grade office tower of approximately 21,000 sqm is proposed as well as new multi-purpose entertainment facilities with a total capacity in the order of 3,200 patrons. While a concept DA, the application also states that it is seeking to secure land use approvals:

*The applicant is seeking to secure approval for the use of the site for a mix of 'entertainment facility', 'commercial premises' and 'function centres' which are incorporate the following uses (level by level) which are permissible with development consent in the B3 Commercial Core zone: The various leisure, entertainment and function facilities would utilise the existing hotel licence.*

- Basement 1& 2: (New work) Storage, services and waste handling
- Street level: (Heritage)
  - The outdoor forecourt which will include a number of quality licenced restaurants, with an approximate capacity for 1,250 patrons.
  - Conversion of the existing foyer and nightclub into a variety of cafes and retail uses which will open out onto the new Civic Link to the west of the site, with an approximate capacity for 450 patrons.
  - The rear portion of the site will provide a lift lobby to the commercial tower above and will provide equitable access to the restored Roxy Theatre.
- Level 1-3: (Heritage) Restoration and repairs of the existing Roxy Theatre, with a capacity for 1,000 patrons.
- Level 4 and 5: (Tower) Multi-purpose convention, function and entertainment facilities with an approximate patron capacity of 1,050
- Level 6-30: (Tower) Commercial offices with an approximate GFA of 21,000sqm
- Level 31-32: (Tower) Mechanical plant

The application proposes an architectural design competition following the determination of the concept DA and prior to the lodgement of a detailed design DA(s).

The extent of demolition is shown in Figures 9 and 10 below, being extracts of the architectural drawings. Demolition is shown in red in Figure 9 and red dotted lines in Figure 10. Existing and proposed building envelopes are shown in Figures 9-13.



Figure 9: West elevation showing proposed demolition in red



Architectural elevation drawing of the proposed Horwood Place (Proposed Civic Link). The drawing shows a multi-story building with a central arched entrance and a decorative upper section. Key features and labels include:

- BOUNDARY**: Indicated by dashed red lines on either side of the central building.
- RETAIN EXISTING NORTH FACADE (HIGH SIGNIFICANCE)**: A label pointing to the central building's facade.
- 71 GEORGE STREET SINGLE STOREY SHOPS**: A label pointing to the lower section of the building.
- HORWOOD PLACE (PROPOSED CIVIC LINK)**: A label pointing to the lower section of the building.
- ROXY**: A sign on the upper section of the building.

Selected drawings are included as **Attachment E** to this report.



## 5. Public notification

The notification period was for 30 days, concluding on 20 February 2018. Forty-one (41) submissions were received; 36 objections; 3 in support; and 2 providing comments.

## 6. Referrals

Details of external and internal referrals are included in **Attachment A**.

## 7. Environmental Planning and Assessment Act 1979

Does Section 1.7 (Biodiversity Conservation Act 2016) apply?	No
Does Section 4.10 (Designated Development) apply?	No
Does Section 4.46 (Integrated Development) apply?	Yes <ul style="list-style-type: none"><li>Heritage Act 1977</li><li>Water Management Act 2000</li></ul>
Are submission requirements within the Regulation satisfied?	Yes

## 8. Consideration of SEPPs

Key issues arising from evaluation against SEPPs	None - see assessment at <b>Attachment A</b> .
--	--

## 9. Parramatta Local Environmental Plan 2011

The following table presents a summary assessment against the terms of this LEP. A detailed evaluation is provided at **Attachment A**.

	<i>Comment or non-compliances</i>
Zones	B3 Commercial Core
Definitions	<ul style="list-style-type: none"><li>Office premises</li><li>Entertainment facilities</li><li>Function centres</li></ul>
Part 2 Permitted or prohibited development	All land uses permissible with consent
Part 3 Exempt and complying development	N/A
Part 4 Principle development standards	<ul style="list-style-type: none"><li>Floor space ratio (FSR): 10:1: does not comply as some of the existing GFA within the existing building has not been included in GFA and FSR calculations. If this application was to be supported, Council would require that the architectural plans be revised to nominate a building envelope, with the issue of maximum FSR being</li></ul>



	<p>managed by way of a condition requiring any future detailed DA needing to satisfy relevant LEP controls, including where a bonus may be awarded via a design competition process.</p> <ul style="list-style-type: none"> <li>Building height: Identified as Area 2 on the Height of Buildings map. Therefore, Clause 7.4 sun access plane applies to protect public open space in Parramatta Square, the Lancer Barracks site and Jubilee Park from overshadowing. Sun access plane controls are specified in section 4.3.3 of the Parramatta Development Control Plan. Envelope height appears to comply.</li> </ul>
Part 5 Miscellaneous provisions	<p>Clause 5.10 Heritage conservation:</p> <ul style="list-style-type: none"> <li>Heritage item of State significance (I00711)</li> <li>Does not meet objectives</li> <li>Unacceptable impact on heritage significance of the item</li> </ul>
Part 6 Additional local provisions	<p>Clause 6.3 Flood planning</p> <ul style="list-style-type: none"> <li>The land is flood prone</li> <li>The Council's has requested an overland flood study in order to set flood levels for the development</li> <li>Provisions have not been met</li> </ul>
Part 7 Additional local provisions – Parramatta City Centre	<ul style="list-style-type: none"> <li>Clause 7.2 FSR: does not comply. Some existing GFA within the existing building has not been included in GFA and FSR calculations</li> <li>Clause 7.3 Car parking: complies</li> <li>Clause 7.4 Sun access: appears to comply. More detailed analysis would be undertaken during the design excellence process</li> <li>Clause 7.10: does not exhibit design excellence</li> </ul>

## 10. Parramatta Development Control Plan 2011

A detailed evaluation is provided at **Attachment A**, however in summary:

<i>Part</i>	<i>Comment or non-compliance</i>
Part 2 Site Planning	
2.4.2.1 Flooding	Not satisfied
2.4.8 Public domain	Not satisfied
Part 3 Development Principles	
3.3.7 Waste management	Capable of being satisfied at Stage 2 DA subject to satisfactory special arrangement shown in concept DA
3.4.1 Culture and public art	Capable of being satisfied at Stage 2 DA
3.4.2 Access for people with disabilities	Capable of being satisfied at Stage 2 DA
3.4.4 Safety and security	Capable of being satisfied at Stage 2 DA
3.5.1 Heritage – general	Not satisfied
3.5.3 Aboriginal cultural heritage	Capable of being satisfied at Stage 2 DA
3.6.2 Parking and vehicular circulation	Design and access to loading and service area for service vehicles not satisfied

Part 4 Special Precincts - 4.3.3 Parramatta City Centre	
Objectives	Not satisfied
4.3.3.1 Building form	
Minimum building street frontage 20m	Satisfied
Building to street alignment and street setbacks	Satisfied
Building depth and bulk	Not satisfied
Building separation Side setbacks: zero up to 26m; 6m above	Not satisfied
Rear setback: 12m	Not satisfied
Setback to shared lane: 3m above centreline of existing lane	Not satisfied
Wind mitigation	Not satisfied
Sun access to public places	Satisfied
4.3.3.3 Public domain and pedestrian amenity	
Site links and lanes	Not satisfied. See details with the report regarding the relationship and impact on the Council's adopted Civic Link Framework Plan.
Active frontages	Capable of being satisfied
Views and corridors	Not satisfied
Access and parking	Vehicular access not satisfied
Vehicular driveways/manoeuvring areas	Vehicle manoeuvring not satisfied
Landscape design	Capable of complying
Planting on structures	Capable of complying
Energy and water efficient design	Capable of complying
4.3.3.8 Design excellence	Not satisfied

## 11. Planning Agreements and Contributions Plans

The relevant matters are:

- There is no planning agreement
- Developer contributions would be calculated and imposed based on any future detailed DA(s).

## 12. Response to SWCPP briefing minutes

A briefing on this application was provided to the Panel at its meeting on 4 April 2018. The matters which relate to the assessment considerations have been addressed as demonstrated in the table below:

<i>Issue</i>	<i>Comment</i>
Integrated development – Heritage Act 1977	Not resolved. Heritage Council does not support the proposal and has refused to issue general terms of approval.
Design excellence - Panel supports design excellence competition to come first	Refer to comments in the report and <b>Attachment A</b> .
No legal access	Not resolved – refer to comments in <b>Attachment A</b> .
Civic Link Framework Plan	Not resolved – refer to comments in <b>Attachment A</b> .

## Conclusion

The concept DA fails to adequately address some threshold matters. These include the lack of General Terms of Approval from the Heritage Council of NSW and owner's consent for access to and across Council owned land that is not a public road, for the purpose of service vehicles.

The application, which relates to a State heritage item, has failed to gain the support and approval of the Heritage Council of NSW, the Council's Design Excellence Advisory Panel and the Council's City Architect. The application is not supported by the Council's independent heritage expert. On heritage and design excellence grounds, the application is considered to be an unacceptable outcome and warrants refusal.

Further, while it is acknowledged that this is a 'concept' application, the scheme is entirely predicated upon the success of the nominated structural approach. Multiple issues of concern relating to the proposition put by this application, that it is possible to integrate a substantial tower into the current state listed heritage building whilst maintaining all of its key elements and fabric, has not been adequately demonstrated.

In addition, there are a range of urban design, public domain and technical concerns also arising from the merit assessment of the application, as detailed in the report and **Attachment A** and that also contribute to the recommendation for refusal.

## RECOMMENDATION

- A. That pursuant to Section 80(3) of the *Environmental Planning and Assessment Act, 1979* the Sydney Central City Planning Panel refuse to grant consent to Development Application DA/1008/2017 for the reasons set out at **Attachment B**.
- B. That those persons who made submission be advised of this decision.



## ATTACHMENT A - PLANNING ASSESSMENT

<b>SWCCP reference</b>	2018SWC003
<b>DA No.</b>	1008/2017

### 1. Referrals

The following internal and external referrals were undertaken:

**Table 1: Referrals**

Heritage Council of NS	<p>Lengthy decision of 7 June, confirmed on 4 July 2018, a copy of which is attached as <b>Attachment D</b>.</p> <p>Key points:</p> <ul style="list-style-type: none"><li>a) <i>Strongly supports a reactivation of the Roxy Theatre which protects and complements its state heritage significance.</i></li><li>b) <i>Does not support the envelope for a 33-storey tower on this site because of the visual impact it will have on the heritage values and disparity in scale between the existing State heritage listed Roxy Theatre and the proposed tower envelope.</i></li><li>c) <i>Any demolition as part of a concept proposal is not supported.</i></li><li>d) <i>Advises that for General Terms of Approval to be granted for new built elements at the rear of the site, the consent authority should consider the application of the following parameters:</i><ul style="list-style-type: none"><li>i. <i>New built elements to be located behind, to the south of the tower parapet and illuminated sign.</i></li><li>ii. <i>New built elements are to be located below a sight line commencing a height of 1.6m (average eye height) from a position in the centre of the southern George Street footpath outside the entrance to the Roxy Theatre and then extending upward through the base of the tower parapet, which supports the illuminated sign, to the rear boundary.</i></li></ul><i>Consideration is also to be given of the view from above the theatre from adjacent buildings to the proposed development.</i></li></ul>
------------------------	---

Endeavour Energy	Concerns raised regarding lack of details for location of replacement substation noting the Civic Link Framework would make it difficult for any new substation to be located on the western side of the site; also raise concerns as to whether the current network could service the proposal
RMS	No objections subject to conditions.
Department of Industry - Lands & Water	A Controlled Activity Approval is not required. May however be an issue for a Stage 2 DA. (de-watering)
INTERNAL REFERRALS	
Council's Property Development Group – owner of adjoining Lot 100 in DP 607789	No owner's consent for the use of Lot 100 in DP 607789.
Council's Design Excellence Advisory Panel (DEAP)	The DEAP does not support the proposal in its current form. The Panel advised that there are a number of significant issues with the proposal.
City Architect	Application not supported. Insufficient information provided to be satisfied that a future Design Excellence process on this site will result in an outcome that achieves design excellence.  The scale also not an appropriate response to the heritage listed items along the Civic Link. The proposed truck egress movement across the Civic Link significantly compromises the function of this future public space and is not supported.
Development Engineer	Proposed stormwater discharge solution not supported. Flood prone land requiring a flood study to set flood levels for the development.  Detailed geotechnical report required given the proposed construction method.
Heritage Advisory Committee	The Committee's concerns related to the impact of proposed development on the structure and fabric and heritage significance of the Roxy Cinema.
Traffic Engineer	No objections subject to conditions.
ESD consultants	A number of practical design and implementation issues unresolved. May be capable of being addressed at detailed design stage.
Environmental Officer - Waste	All relevant matters to be addressed with detailed stage 2 DA
Environmental Officer - Contamination	Satisfied that potential for contamination can be addressed with detailed stage 2 DA

## 2. Environmental Planning and Assessment Act 1979

The sections of this Act which require consideration are addressed below:



## 2.1 Section 1.7: Application of Part 7 of Biodiversity Conservation Act 2016

The site is in an established urban area with low ecological significance. No threatened species, populations or ecological communities, or their habitats are impacted by the proposal.

## 2.2 Section 2.15: Function of Sydney District and Regional Planning Panels

The Sydney Central City Planning Panel is the consent authority for this application as the proposal has a Capital Investment Value of more than \$20 million (criteria at time the application was lodged).

## 2.3 Section 4.15 - Evaluation

This Attachment provides an assessment of the relevant matters for consideration under this section of the Act, as noted in the table below:

Table 2- Matters for consideration

<b>Provision</b>	<b>Comment</b>
Section 4.15(1)(a)(i) - Environmental planning instruments	Refer to section 4 below
Section 4.15(1)(a)(ii) - Draft planning instruments	Refer to section 4 below
Section 4.15(1)(a)(iii) - Development control plans	Refer to section 5 below
Section 4.15(1)(a)(iiia) - Planning agreements	Not applicable
Section 4.15(1)(a)(iv) - The Regulation	Refer to section 3 above
Section 4.15(1)(a)(v) - Repealed	Not applicable.
Section 4.15(1)(b) - Likely impacts	Refer to section 7 below
Section 4.15(1)(c) - Site suitability	Refer to section 8 below
Section 4.15(1)(d) - Submissions	Refer section 8 below
Section 4.15(1)(e) - The public interest	Refer to section 9 below

## 2.4 EPA Act Section 4.22 – Concept development applications

Section 4.22 (1) provides a description of a concept DA:

- (1) *For the purposes of this Act, a concept development application is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be the subject of a subsequent development application or applications.*

Section 4.22 (5) includes:

- (5) *The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.*

The reference to section 4.15 is a reference to the matters for consideration. Notwithstanding the terms of section 4.22 (5), the evaluation of the concept DA is required to be comprehensive and must consider the relevant planning controls; the likely impacts of development; the suitability of the site for the proposed development; any submissions and the public interest.

## **2.5 EPA Act Section 4.46 – Integrated development**

This section defines “integrated development” as matters which require consent from Council, and one or more approvals under nominated legislation. In such circumstances, prior to granting consent, each relevant approval body must provide its General Terms of Approval (GTA).

In this case:

- the Heritage Council of NSW has declined to provide GTA's; and
- DPI – Land and Water advise that a dewatering license may be a requirement if work intercept the ground water table. That matter would be dealt with in conjunction with any stage 2 DA.

## **3. Environmental Planning and Assessment Regulation 2000**

The application relies on vehicular access from and across Lot 100 DP 607789. This application does not satisfy section 49 of the Regulation as there is no owner's consent in writing for the use of that land.

## **4. Environmental planning instruments**

Compliance with these instruments is addressed below.

### **4.1 State Environmental Planning Policy No. 55 – Remediation of land**

Clause 7 of SEPP 55 requires the consent authority to consider if land is contaminated and, if so, whether it is suitable, or can be made suitable, for a proposed use.

Council's Environmental Health Officers have reviewed the information provided with the application and advise:

- The proposal will have limited access to soil and is not residential;
- An acceptable approach to determining the contamination status of the site therefore is for further testing of the soil to be conducted following the demolition of parts of the existing building; and
- Should contaminants of concern be found the site can be remediated and validated prior to construction.

To the extent practicable, noting the condition of the site and the nature of this application, it is considered the terms of this Policy have been satisfactorily addressed.

#### **4.2 Deemed State Environmental Planning Policy (Sydney Harbour Catchment) 2005**

This Policy applies to all of the City of Parramatta local government area. It aims to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways by establishing principles and controls for the whole catchment.

The nature of this project and the location of the site are such that there are no specific controls which directly apply, with the exception of the objective of improved water quality. That outcome will be achieved through the imposition of suitable conditions at any future detailed DA(s) stage to address the collection and discharge of water, both during construction and upon completion at any future detailed DA(s) stage.

#### **4.3 State Environmental Planning Policy (Infrastructure) 2011**

Clause 104 and Schedule 3 of the ISEPP requires relevant traffic generating developments of nominated size and capacity to be referred to RMS for consideration. In this case the proposed commercial premises with a size greater than 10,000 sqm has been referred to RMS.

On 19 April 2018 the RMS advised the Council in writing that it has no objections to the proposed development subject to a condition requiring a Construction Pedestrian Traffic Management Plan (CPTMP) for approval prior to the issue of a construction certificate.

#### **4.4 State Environmental Planning Policy (State and Regional Development) 2011**

This application is captured by Part 4 of this Policy which provides that the Panel is the consent authority for this application.

#### **4.5 Parramatta Local Environmental Plan 2011**

##### **Zoning and permissibility**

The site is zoned B3 Commercial Core. Office premises, entertainment facilities and function centres are all permissible with consent in the zone.

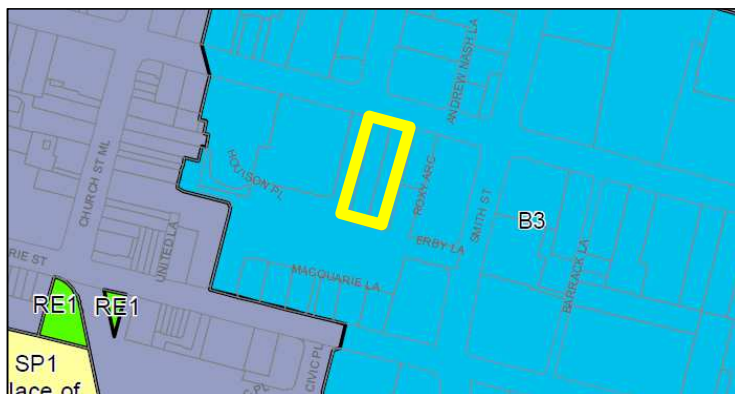


Figure 1: Extract of zone map – PLEP 2011. Site outlined in yellow.

## Zone objectives

Clause 2.3(2) requires the consent authority to have regard to the zone objectives when determining a development application. The objectives for the B3 zone are:

- *To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.*
- *To encourage appropriate employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To strengthen the role of the Parramatta City Centre as the regional business, retail and cultural centre, and as a primary retail centre in the Greater Metropolitan Region.*
- *To create opportunities to improve the public domain and pedestrian links throughout the Parramatta City Centre.*
- *To provide for the retention and creation of view corridors.*
- *To protect and enhance the unique qualities and character of special areas and heritage values within the Parramatta City Centre.*
- *To protect and encourage accessible city blocks by providing active street frontages, and a network of pedestrian-friendly streets, lanes and arcades.*

The proposal is inconsistent with the fifth (public domain and pedestrian links), seventh (heritage values) and eighth (network of pedestrian friendly streets, lanes and arcades) objectives. The reasons are detailed in the assessment contained within this report.

## Remaining provisions

Consideration of the remaining provisions of the PLEP 2011 that may be relevant to this application are addressed in the following table:

Table 3: PLEP 2011 compliance table

<b>Clause</b>	<b>Comment</b>	<b>Complies</b>
Clause 1.2 Aims of the plan	<p>(a) <i>to encourage a range of development, including housing, employment and recreation, that accommodates the needs of the existing and future residents, workers and visitors of Parramatta,</i></p> <p>(b) <i>to foster environmental, economic, social and physical wellbeing so that Parramatta develops as an integrated, balanced and sustainable city,</i></p>	<b>No</b>

	<p>(c) <i>to identify, conserve and promote Parramatta's natural and cultural heritage as the framework for its identity, prosperity, liveability and social development,</i></p> <p>(d) <i>to improve public access to the city and facilitate the maximum use of improved public transport, together with walking and cycling,</i></p> <p>(e) <i>to minimise risk to the community in areas subject to environmental hazards, particularly flooding and bushfire, by restricting development in sensitive areas,</i></p> <p>(f) <i>to protect and enhance the natural environment, including areas of remnant bushland in Parramatta, by incorporating principles of ecologically sustainable development into land use controls,</i></p> <p>(g) <i>to improve public access along waterways where natural values will not be diminished,</i></p> <p>(h) <i>to enhance the amenity and characteristics of established residential areas,</i></p> <p>(i) <i>to retain the predominant role of Parramatta's industrial areas,</i></p> <p>(j) <i>to ensure that development does not detract from the economic viability of Parramatta's commercial centres,</i></p> <p>(k) <i>to ensure that development does not detract from the operation of local or regional road systems,</i></p> <p>(l) <i>to ensure development occurs in a manner that protects, conserves and enhances natural resources, including waterways, riparian land, surface and groundwater quality and flows and dependant ecosystems,</i></p> <p>(m) <i>to protect and enhance the viability, identity and diversity of the Parramatta City Centre and recognise it as the pre-eminent centre in the Greater Metropolitan Region,</i></p> <p>(n) <i>to encourage development that demonstrates efficient and sustainable use of energy and resources in accordance with ecologically sustainable development principles.</i></p> <p><u>Comment:</u> The proposal is inconsistent with Aims (c) and (d) based on the detailed assessment included in this report.</p>	
Zone and Permissibility	<p>B3 commercial core Uses defined as <i>commercial premises, function centre and entertainment facility.</i></p> <p><u>Comment:</u> All land uses are permitted with consent.</p>	Yes
Clause 2.7 Demolition	<p><u>Comment:</u> No approval sought or to be given for any demolition work.</p>	N/A



Part 4 - Principal development standards		
Clause 4.3 Height	No mapped control – land is within “Area 2” and therefore defers to clause 7.4	Yes
Clause 4.4 FSR	The terms of this clause are superseded by clause 7.2. See comments below.	N/A
Part 5 - Miscellaneous provisions		
Clause 5.1 Land identified for acquisition	<u>Comment:</u> The site is not mapped for acquisition.	N/A
Clause 5.10 Heritage conservation	(1) Objectives  <i>The objectives of this clause are as follows:</i>  (a) <i>to conserve the environmental heritage of Parramatta,</i>  (b) <i>to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</i>  (c) <i>to conserve archaeological sites,</i>  (d) <i>to conserve Aboriginal objects and Aboriginal places of heritage significance.</i>	<b>No</b>
	(2) Requirement for consent Consent required	Yes
	(3) When consent not required	N/A
	(4) Effect of proposed development on heritage significance <i>The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6)</i>	Noted – Refer to assessment within this report.
	(5) Heritage assessment <i>The consent authority may, before granting consent to any development:</i> (a) <i>on land on which a heritage item is located, or</i>  (b) <i>on land that is within a heritage conservation area, or</i>  (c) <i>on land that is within the vicinity of land referred to in paragraph (a) or (b),</i>  <i>require a heritage management document to be prepared that assesses the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item or heritage conservation area concerned.</i>	<b>No</b>

	<p><u>Comment:</u> The Heritage Impact Statement accompanying the application has been assessed as fundamentally inadequate. Refer to further comments at section 7.1 below.</p> <p>(6) <i>Heritage conservation management plans</i> <i>The consent authority may require, after considering the heritage significance of a heritage item and the extent of change proposed to it, the submission of a heritage conservation management plan before granting consent under this clause</i></p> <p><u>Comment:</u> The Conservation Management Plan accompanying the application has been assessed as fundamentally inadequate. Refer to further comments at section 7.1 below.</p> <p>(7) <i>Archaeological sites</i> <i>The consent authority must, before granting consent under this clause to the carrying out of development on an archaeological site (other than land listed on the State Heritage Register or to which an interim heritage order under the <a href="#">Heritage Act 1977</a> applies):</i> <i>(a) notify the Heritage Council of its intention to grant consent, and</i>  <i>(b) take into consideration any response received from the Heritage Council within 28 days after the notice is sent.</i></p> <p><u>Comment:</u> The Heritage Council assessment considers that there is a low likelihood of any surviving historical archaeology at the site. A baseline archaeological assessment is not recommended at this stage.</p> <p>(8) <i>Aboriginal places of heritage significance</i> <i>The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:</i> <i>(a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and</i>  <i>(b) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.</i></p>	<p>No</p> <p>Yes</p> <p>Yes</p>
--	--	---------------------------------

	<p><u>Comment:</u> Relevant Aboriginal groups were notified of the application. No responses were received. An Aboriginal archaeological assessment will be required to support any future detailed DA</p> <p><i>(9) Demolition of nominated State heritage items</i> The consent authority must, before granting consent under this clause for the demolition of a nominated State heritage item:</p> <p>(a) <i>notify the Heritage Council about the application, and</i></p> <p>(b) <i>take into consideration any response received from the Heritage Council within 28 days after the notice is sent.</i></p> <p><u>Comment:</u> The proposal includes demolition of components of the State heritage item. The Heritage Council has refused to issue General Terms of Approval</p> <p><i>(10) Conservation incentives</i> The consent authority may grant consent to development for any purpose of a building that is a heritage item or of the land on which such a building is erected, or for any purpose on an Aboriginal place of heritage significance, even though development for that purpose would otherwise not be allowed by this Plan, if the consent authority is satisfied that:</p> <p>(a) <i>the conservation of the heritage item or Aboriginal place of heritage significance is facilitated by the granting of consent, and</i></p> <p>(b) <i>the proposed development is in accordance with a heritage management document that has been approved by the consent authority, and</i></p> <p>(c) <i>the consent to the proposed development would require that all necessary conservation work identified in the heritage management document is carried out, and</i></p> <p>(d) <i>the proposed development would not adversely affect the heritage significance of the heritage item, including its setting, or the heritage significance of the Aboriginal place of heritage significance, and</i></p> <p>(e) <i>the proposed development would not have any significant adverse effect on the amenity of the surrounding area</i></p> <p><u>Comment:</u> Proposal does not rely on heritage incentive provisions.</p>	<p>No</p> <p>N/A</p>
--	---	----------------------

Part 6- Additional local provisions		
Clause 6.1 Acid Sulfate Soils	<p>Mapped as Class 4.</p> <p><u>Comment:</u> Any consent to include a condition that detailed DA to be supported by ASS Management Plan, or statement that such plan is not needed.</p>	Yes
Clause 6.2 Earthworks	<p><i>Before granting development consent for earthworks, the consent authority must consider the following matters:</i></p> <p>(a) <i>the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,</i></p> <p>(b) <i>the effect of the proposed development on the likely future use or redevelopment of the land,</i></p> <p>(c) <i>the quality of the fill or the soil to be excavated, or both,</i></p> <p>(d) <i>the effect of the proposed development on the existing and likely amenity of adjoining properties,</i></p> <p>(e) <i>the source of any fill material and the destination of any excavated material,</i></p> <p>(f) <i>the likelihood of disturbing relics,</i></p> <p>(g) <i>the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.</i></p> <p><u>Comment:</u> Not applicable at concept DA stage.</p>	N/A
Clause 6.3 Flood planning	The site is marginally impacted by the 1:100 year flood level, however overland flooding is likely to be the dominant flooding mechanism. Insufficient information was provided with the application and requested additional information has not been provided to identify the flood level and ensure the basement will be properly protected.	<b>No</b>
Clause 6.4 Biodiversity	<p><u>Comment:</u> Not mapped</p>	N/A
Clause 6.5 Water protection	<p><u>Comment:</u> Not mapped</p>	N/A
Clause 6.6 Landslide risk	<p><u>Comment:</u> Not mapped</p>	N/A
Part 7 – City Centre		
7.2 - FSR	<p>Mapped control is 10:1, and the site is larger than 1,800m2 therefore FSR remains at 10:1, per column 4.</p> <p><u>Comment:</u> The proposal contends that FSR is 10:1 and also shows an envelope that is 11.5:1 based on achieving separate future Design Excellence. It is noted that:</p>	<b>No</b>

	<ul style="list-style-type: none"> <li>The architectural plans provided with the application well exceed the level of detail expected for a concept DA, including specific GFA floorplate calculations. As identified by both DEAP and council's heritage consultant, this in itself is a major failing of the application, as such fetters the value and purpose of any future design competition.</li> <li>Those plans indicate that some GFA within the existing building has not been included, such that the nominated FSR controls are exceeded.</li> <li>If this application was to be supported, council would require that the architectural plans be revised to nominate only a genuine building envelope, with the issue of maximum FSR being managed by way of a condition requiring any future detailed DA needing to satisfy relevant LEP controls, including where a bonus may be awarded via a design competition process.</li> </ul>	
7.3 - Parking	<p>Maximum car parking rates:</p> <ul style="list-style-type: none"> <li>Commercial: 1/100 sqm GFA</li> <li>Restaurants or cafes: 1/10 sqm GFA</li> <li>Shops: 1/30 sqm GFA</li> </ul> <p><u>Comment:</u> The parking supply calculations nominated are maximum rates, such that a lessor supply is numerically compliant, subject to a merit assessment for adequacy. The application identifies that a maximum of 199 spaces is required, no onsite parking is proposed.</p> <p>Council's assessment indicates that a maximum of 272 spaces for an FSR complaint scheme, and 308 spaces is bonus GFA was awarded via design excellence.</p> <p>Nevertheless, council supports no onsite parking, noting that heritage constraints would preclude construction of any basement levels of consequence.</p>	Yes
7.4 - Sun access	<p>Must take into consideration the relevant sun access plane controls specified for that land in section 4.3.3 of the Parramatta Development Control Plan.</p> <p><u>Comment:</u> Appears to comply. Detailed design and potential overshadowing impact subject to design excellence process</p>	Yes
7.6 - Air space operations	Land is not within Area 3 as mapped – so this clause does not apply. Within the Parramatta City Centre any proposal in excess of 156m AHD will require a referral. As the proposal is at RL 136.77 AHD the clause is satisfied.	N/A
7.10 Design excellence	<p><b><i>Design Excellence—Parramatta City Centre</i></b></p> <p><i>(1) The objective of this clause is to deliver the highest standard of architectural, urban and landscape design.</i></p>	No



	<p>(2) <i>This clause applies to development involving the erection of a new building or external alterations to an existing building on land to which this Part applies.</i></p> <p>(3) <i>Development consent must not be granted to development to which this clause applies unless, in the opinion of the consent authority, the proposed development exhibits design excellence.</i></p> <p>(4) <i>In considering whether development to which this clause applies exhibits design excellence, the consent authority must have regard to the following matters:</i></p> <ul style="list-style-type: none"> <li><i>(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</i></li> <li><i>(b) whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,</i></li> <li><i>(c) whether the proposed development detrimentally impacts on view corridors,</i></li> <li><i>(d) how the proposed development addresses the following matters:</i> <ul style="list-style-type: none"> <li><i>(i) the suitability of the land for development,</i></li> <li><i>(ii) the existing and proposed uses and use mix,</i></li> <li><i>(iii) any heritage and archaeological issues and streetscape constraints or opportunities,</i></li> <li><i>(iv) the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,</i></li> <li><i>(v) the bulk, massing and modulation of buildings,</i></li> <li><i>(vi) street frontage heights,</i></li> <li><i>(vii) environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity,</i></li> <li><i>(viii) the achievement of the principles of ecologically sustainable development,</i></li> <li><i>(ix) pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of any pedestrian network,</i></li> <li><i>(x) the impact on, and any proposed improvements to, the public domain,</i></li> <li><i>(xi) the impact on any special character area,</i></li> <li><i>(xii) achieving appropriate interfaces at ground level between the building and the public domain,</i></li> <li><i>(xiii) excellence and integration of landscape design.</i></li> </ul> </li> </ul> <p>(5) <i>Development consent must not be granted to the following development to which this clause applies unless a competitive design process has been held in relation to the proposed development:</i></p>	
--	---	--

	<p>(a) development in respect of a building that has, or will have, a height above ground level (existing) greater than 55 metres,</p> <p>(b) development on a site greater than 1,000 square metres and up to 1,800 square metres seeking to achieve the maximum floor space ratio identified on the <u>Floor Space Ratio Map</u>, where amalgamation with adjoining sites is not physically possible,</p> <p>(c) development having a capital value of more than \$10,000,000 on a “Key site” identified on the <u>Key Sites Map</u>,</p> <p>(d) development having a capital value of more than \$100,000,000 on any other site,</p> <p>(e) development for which the applicant has chosen such a process.</p> <p>(6) A competitive design process is not required under subclause (5) if the consent authority is satisfied that such a process would be unreasonable or unnecessary in the circumstances and that the development:</p> <p>(a) involves only alterations or additions to an existing building, and</p> <p>(b) does not significantly increase the height or gross floor area of the building, and</p> <p>(c) does not have significant adverse impacts on adjoining buildings and the public domain, and</p> <p>(d) does not significantly alter any aspect of the building when viewed from public places.</p> <p>...</p> <p>(8) If the design of a new building, or an external alteration to an existing building, is the winner of a competitive design process and the consent authority is satisfied that the building or alteration exhibits design excellence, it may grant development consent to the erection of the new building, or the alteration to the existing building, with:</p> <p>(a) in any case—a building height that exceeds the maximum height shown for the land on the <u>Height of Buildings Map</u> or an amount of floor space that exceeds the maximum floor space ratio shown for the land on the <u>Floor Space Ratio Map</u> (or both) by up to 15%, or</p> <p>(b) if the proposal is for a building containing entirely non-residential floor space in Zone B4 Mixed Use—a building height that exceeds the maximum height shown for the land on the <u>Height of Buildings Map</u> or an amount of floor space that exceeds the maximum floor space ratio shown for the land on the <u>Floor Space Ratio Map</u> (or both) by up to 25%.</p> <p>(9) In this clause:</p> <p><b>building or alteration exhibits design excellence</b> means a building where the design of the building (or the design of an external alteration to the building) is the winner of a competitive</p>	
--	--	--

	<p><i>design process and the consent authority is satisfied that the building or alteration exhibits design excellence.</i></p> <p><b>competitive design process</b> means an architectural design competition carried out in accordance with procedures approved by the Secretary of the Department of Planning and Environment.</p> <p><u>Comment:</u></p> <p>The applicant is seeking consent for the concept building envelope and mix and allocation of land uses and proposing that a competitive design process occur prior to the preparation of a Stage 2 detailed DA. The concept envelope seeks to demonstrate how the additional GFA (FSR of additional 1.5:1) arising from a successful competitive design process (7.10 (8)) would be accommodated.</p> <p>Two key matters (among others) arising from Clause 7.10 are:</p> <ul style="list-style-type: none"> <li>• <i>Is a competitive design process – architectural design competition – required for a concept DA?</i></li> </ul> <p>The Council's legal advice is that it is not.</p> <ul style="list-style-type: none"> <li>• <i>In the event that a competitive design process is not required and is not undertaken, is the concept DA nonetheless required to demonstrate design excellence?</i></li> </ul> <p>The Council's legal advice is that the design excellence provisions in Clause 7.10 apply.</p> <p>The SEE supporting the DA ignores the provisions of 7.10(3) and (4).</p> <p>The Council's Design Excellence Advisory Panel (DEAP) has provided very detailed comments, included as <b>Attachment D</b>. The DEAP does not support the proposal and has advised that there are a number of significant issues with the proposal.</p> <p>The Council's City Architect has also commented that the application is not supported and that this Stage 1 application does not have sufficient information to determine that the development will achieve design excellence. Further design development is required to establish a revised building envelope.</p> <p>The comments of the City Architect and DEAP; the unacceptable heritage impacts; the unsatisfactory response to the Council's adopted Civic Link Framework; and the unacceptable concept envelope setbacks results in the application failing to exhibit design excellence.</p>	
--	--	--

## 5. Parramatta Development Control Plan 2011

The following sections of this Plan are relevant

- Part 2 - Site Planning
- Part 3 - Development Principles
- Part 4 - Strategic Precincts (Parramatta City Centre)

Compliance with relevant provisions within those section of the Plan is addressed in the following table:

Table 4: DCP 2011 compliance table

2.4 Site Considerations		Comply
2.4.1 Views and Vistas	<p><i>Objectives</i></p> <p><i>O.1 To preserve and enhance district and local views which reinforce and protect the City's urban form and enhance legibility.</i></p> <p><i>O.2 To encourage view sharing through complementary siting of buildings, responsive design and well-positioned landscaping.</i></p> <p><i>O.3 To ensure highly visible sites are designed in scale with the City's setting and encourage visual integration and connectivity between places.</i></p> <p><i>Design Principles</i></p> <p><i>P.1 Development is to preserve views of significant topographical features such as ridges and natural corridors, the urban skyline, landmark buildings, sites of historical significance and areas of high visibility, particularly those identified in Appendix 2 Views and Vistas. Refer also to ...Views and View Corridors in Parramatta City Centre in section 4.3.3.4.</i></p> <p><u>Comment:</u> The disparity in scale between the State heritage item and the proposed commercial envelope sitting behind and above the heritage building will have a negative unacceptable impact on this landmark building and site.</p>	<b>No</b>
2.4.2.1 Flooding	<p>The detailed provisions are not reproduced below.</p> <p><u>Comment:</u></p> <p>The land is flood prone. The Council has requested an overland flood study in order to set flood levels for the development, which has not been provided. The DCP provisions have not been met.</p>	<b>No</b>
2.4.4 Land Contamination	<p><u>Comment:</u></p> <p>The Council's Environmental Health Officers have reviewed the information provided with the application and have determined that, the site can be made suitable for the proposed use.</p>	<b>Yes</b>
2.4.8 Public Domain	<p><i>Objectives</i></p> <p><i>O.1 To enhance the quality of the public domain.</i></p> <p><i>O.2 To ensure the public domain is attractive, safe, interesting, comfortable, readily understood and easily accessed.</i></p> <p><i>O.3 To ensure that development adjacent to public domain elements such as waterways, streets, parks, bushland reserves and other public open spaces, complements the landscape character, public use and enjoyment of that land.</i></p>	<b>No</b>

	<p><i>Design Principles</i></p> <p><i>P.1 Development is to be designed to address elements of the public domain, including the building interface between private and public domains, circulation patterns and accessways, gateways, nodes, edges, landscape features, heritage items, ground floor activity and built form definition to the street.</i></p> <p><i>P.2 Public access to the public domain is to be maximised.</i></p> <p><i>P.3 Buildings are to be located to provide an outlook to the public domain, without appearing to privatise that space.</i></p> <p><i>P.4 Development is to provide passive surveillance to the public domain. Continuous lengths of blank walls and fences at the public domain interface are to be avoided.</i></p> <p><i>P.5 Where appropriate, ground floor areas abutting public space should be occupied by uses that create active building fronts with pedestrian flow, and contribute to the life of the streets and other public spaces.</i></p> <p><i>P.6 Development is to be designed in accordance with Council's current public domain guidelines.</i></p> <p><i>P.7 New development is encouraged to provide public domain improvements. Applicants should consult with Council to determine the appropriate public domain treatment suitable for the site and surrounds. This may include street tree planting, street paving, street furniture and public artwork.</i></p> <p><u>Comment:</u></p> <p>In June 2017 Council has adopted the Civic Link Framework. The Council's City Architect has commented as follows:</p> <ul style="list-style-type: none"> <li>• The Civic Link Framework Plan prescribes that all new development along eastern and western boundaries of the Civic Link provide a street frontage height of no greater than 2 storeys. The objective of this control is to ensure new development forms a street wall of an appropriate "human scale" and character. This scale also an appropriate response to the heritage listed items along the Civic Link.</li> <li>• The proposed commercial tower on top of The Roxy Theatre results in a "sheer tower" with zero or near zero side setbacks to the external side walls of the existing theatre. Not only will this cause significant wind impacts at ground level, it will impact the character and amenity of the public domain.</li> <li>• The proposed truck egress movement across the Civic Link significantly compromises the function of this future public space and is not supported.</li> <li>• The application also relies on use of Council's existing carpark (and assumes removal of 4 spaces) to allow vehicular access and servicing to the development.</li> <li>• The development will likely have significant impacts on the proposed improvements to the public domain at the Civic Link and Parramatta Square. Impacts include – overshadowing, wind downdraft, and visual impacts of a sheer tower aligned to the external side and rear walls of the Roxy Theatre.</li> <li>• The proposed tower will most likely generate significant wind impacts to the Civic Link, which is intended to become one of Parramatta's most active pedestrianised public spaces.</li> </ul>	
3.1 Preliminary Building Envelope		Comply
	The key building envelope controls relevant to the site are contained in Section 4 of the DCP.	N/A

3.2 Building Elements		
	The key controls relevant to the site are contained in Section 4 of the DCP.	N/A
3.3 Environmental Amenity		Comply
	<p>Council's ESD consultant has commented (in summary) as follows:</p> <ul style="list-style-type: none"> <li>The proposed concept plans present a couple of fundamental challenges that do not appear to be addressed. Early design attention should be given to those items inherent in the envelope and form to ensure the proposed approach is correct.</li> <li>The ESD reporting presents a worthy vision but lacks context and consideration of commercial issues which are critical at this early juncture. The 'grab-bag' adoption of technology and lack of focus indicates a lack of intent provide a genuine solution to set a sustainability benchmark.</li> <li>The sustainability report provided is overly ambitious and lacks rounding. It presents very high aspirations, which, whilst commendable, present solutions that are unlikely to ever be delivered due to issues of commercial viability, engineering suitability and lack of basic suitability testing at this stage.</li> <li>The report undermines the stated aspirations by presenting options that conflict with each other or are detrimental to environmental outcomes. Any cost analysis presented ignores the fundamental barrier to a developer's delivery of sustainability, which is the split incentive and resulting inability to recognise any financial return on the investment.</li> <li>The tri-generation proposal lacks any substance to demonstrate its suitability. Tri-gen is currently challenged by the forecast price increases in natural gas and is out of favour. More importantly, how this related to the ice-storage and chilled water storage proposal is not detailed even though they appear in conflict.</li> </ul>	<b>No</b>
3.4 Social Amenity		Comply
3.4.1 Culture and Public Art	All new development having a capital value of more than \$5,000,000 in the Parramatta City Centre is required to provide and implement an Arts Plan as part of the overall development. The plan is to include the provision of high quality artworks within the development in publicly accessible locations, near main entrances and street frontages and in lobbies.	<b>No</b> but capable of being addressed in any future detailed DA
3.4.2 Access for People with Disabilities	<p>The siting, design and construction of premises available to the public are to ensure an appropriate level of accessibility, so that all people can enter and use these premises.</p> <p>Access is to meet the requirements of the Disability Discrimination Act, 1992 (DDA), the relevant Australian Standards and the Building Code of Australia (BCA).</p>	Capable of being addressed in any future detailed DA
3.4.3 Amenities in Building Available to the Public	The number of women facilities and amenities for parents in women's and men's toilets are encouraged to be of a higher rate and standard than that prescribed in the Building Code of Australia.	Capable of being addressed in any future detailed DA
3.4.4 Safety and Security	<p><i>P.1 Development is to be designed to incorporate and/or enhance opportunities for effective natural surveillance by providing clear sight lines between public and private places, installation of effective lighting, and the appropriate landscaping of public areas.</i></p> <p><i>P.2 Development should be designed to minimise opportunities for crime through suitable access control. Physical or symbolic</i></p>	<b>No</b>

	<p><i>barriers should be used to attract, channel and/or restrict the movement of people. Landscaping and/or physical elements may be used to direct people to destinations, identify where people can and cannot go and restrict access to high crime risk areas such as carparks.</i></p> <p><i>P.3 Development is to incorporate design elements that contribute to a sense of community ownership of public spaces. Encouraging people to gather in public spaces through appropriate design techniques, helps to nurture a sense of responsibility for a place's use and condition.</i></p> <p><i>P.4 Definition and transition of boundaries between public and private spaces is encouraged as a method of territorial reinforcement. Methods other than gates, fences and enclosures are encouraged. The installation of solid security shutters will not be supported.</i></p> <p><i>P.5 The incorporation of crime prevention measures in the design of new buildings and spaces is not to detract from the quality of the streetscape. Subtle design techniques should be applied to blend into façades and places.</i></p> <p><i>P.6 New development is to be designed to reduce the attractiveness of crime by minimising, removing or concealing crime opportunities. The design of development should increase the possibility of detection, challenge and apprehension of persons engaged in crime.</i></p> <p><i>P.7 A site management plan and formal crime risk assessment (Safer by Design Evaluation) involving the NSW Police Service may be required for large developments, which in Council's opinion, would create a crime risk.</i></p> <p><i>P.8 Public pedestrian areas within developments as well as communal accessways within multiunit developments are to provide non-slip pavement surfaces.</i></p> <p><i>P.9 The design of buildings adjoining laneways and through block connections should be designed to activate these spaces at ground level and provide casual surveillance from ground and upper levels.</i></p> <p><i>P.10 Lighting of laneway spaces is encouraged.</i></p> <p><u>Comment:</u> Design details addressing safety and security is critical in the assessment of any DA for the site given the intended nature, intensity and diversity of public uses and access. The SEE accompanying the DA ignores the DCP provisions.</p> <p>The relationship to, and the impact on, the public domain is also a relevant matter in considering the development exhibits design excellence. The proposal includes a complex and inter-related mix of land uses that will influence the internal operations of the building(s) as well as the surrounding public domain. These inter-relationships, interactions and impacts have not been adequately considered in the DA documentation.</p>	
3.5 Heritage		Comply
3.5.1 General	<p><b>Objectives</b></p> <p><i>O.1 Appropriate management of heritage in the Parramatta LGA.</i></p> <p><i>O.2 Retention and reinforcement of the attributes that contribute to the heritage significance of items, areas and their settings.</i></p> <p><i>O.3 Maintenance and improvement to residential amenity and open space areas.</i></p> <p><i>O.4 Development that is compatible with the significance and character of the area.</i></p>	No

	<p>Design Principles:</p> <ul style="list-style-type: none"> <li>• Scale</li> <li>• Siting</li> <li>• Architectural form and detailing</li> <li>• Material and Finishes</li> <li>• Use</li> <li>• Original Fabric</li> <li>• The Aging Process</li> <li>• Curtilage</li> </ul> <p><u>Comment:</u> There are detailed design controls, too numerous to reproduce within this table. The heritage assessment undertaken by the Council's independent heritage consultant and the Heritage Council has concluded that the scale of the proposed commercial office building envelope and the extent of intervention to the State heritage item are not appropriate and will have an unacceptable heritage impact.</p>	
3.5.2 Archaeology	<p><u>Comment:</u> The Heritage Council assessment considers that there is a low likelihood of any surviving historical archaeology at the site. A baseline archaeological assessment is not recommended at this stage.</p>	Capable of being addressed at detailed DA stage
3.5.3 Aboriginal cultural heritage	<p><u>Comment:</u> An Aboriginal archaeological assessment will be required to support any future detailed DA</p>	Capable of being addressed at detailed DA stage
<b>3.6 Movement and circulation</b>		<b>Comply</b>
3.6.1 Sustainable Transport	<p><u>Comment:</u> No parking provided. The Council's traffic engineer has raised no objection.</p>	Yes
3.6.2 Parking and vehicular access	<p><i>Design Principles</i></p> <p><i>P.1 Vehicle access points and parking areas are to be:</i></p> <ul style="list-style-type: none"> <li>• easily accessible and recognisable to motorists</li> <li>• undistruptive to pedestrian flow and safety</li> <li>• located to minimise traffic hazards and the potential for vehicles to queue on public roads</li> <li>• located to minimise the loss of on street car parking, and to minimise the number of access points.</li> </ul> <p><i>P.2 Car parking and service/delivery areas are to be located so that they do not visually dominate either the development or the public domain surrounding the development.</i></p> <p><i>P.3 Parking and service/delivery areas and vehicular access points are to be located to minimise conflict between pedestrians and vehicles and to minimise impact on residential amenity.</i></p> <p><i>P.4 Development on arterial roads is to seek access via a secondary street where possible.</i></p> <p><u>Comment:</u> The Council's City Architect has commented as follows:</p> <ul style="list-style-type: none"> <li>• The proposed truck egress movement across the Civic Link significantly compromises the function of this future public space and is not supported.</li> </ul>	<b>No</b>



	<ul style="list-style-type: none"> <li>The application also relies on the use of Council's existing carpark (and assumes removal of 4 spaces) to allow vehicular access and servicing to the development.</li> <li>The development will likely have significant impacts on the proposed improvements to the public domain at the Civic Link and Parramatta Square.</li> </ul>	
3.6.3 Accessibility & Connectivity	<p><b>Objectives</b></p> <p><i>O.1 To improve pedestrian access and connectivity between housing, open space networks, community facilities, public transport, local activity centres and schools.</i></p> <p><i>O.2 To encourage pedestrian through-site links that are designed to promote safety and amenity.</i></p> <p><b>Design Principles</b></p> <p><i>P.1 Pedestrian links should be provided where possible through development sites to improve connectivity between housing, open space networks, community facilities, public transport, local activity centres and schools.</i></p> <p><i>P.2 Through-site links should be arranged on the site to enable casual surveillance from buildings on the site and from the street or public domain.</i></p> <p><i>P.3 Through-site links should be integrated with the circulation system of the site so that they perform a role for circulation within as well as through the site.</i></p> <p><i>P.4 Through-site links are to be landscaped and appropriate lighting levels provided and maintained.</i></p> <p><i>P.5 Public, communal and private areas are to be clearly delineated within the site.</i></p> <p><i>P.6 Pedestrian and cycle links should be provided on sites adjacent to waterways to improve accessibility to these natural systems.</i></p> <p><i>P.7 Existing through-site pedestrian links are to be retained by all types of development, except where alternative access can be provided at Council's satisfaction.</i></p> <p><b>Comment:</b> See comments above regarding the unacceptable impact on the Civic Link Framework.</p>	<b>No</b>
		<b>Comply</b>
4.3.3 Parramatta City Centre	<p><b>Parramatta City Centre controls objectives</b></p> <p><i>The broad objectives for the Parramatta City Centre are:</i></p> <ul style="list-style-type: none"> <li><i>To support the primacy of the centre as an employment node with a strong commercial core occupied by high order quality commercial buildings.</i></li> <li><i>To support the commercial core with surrounding mixed use development that reinforces and complements the centre's core employment role.</i></li> <li><i>To ensure high quality design of buildings and public areas.</i></li> <li><i>To activate the Parramatta River edge and the relationship of the river to the city.</i></li> <li><i>To provide for the conservation and interpretation of Parramatta's heritage.</i></li> <li><i>To improve the natural environment.</i></li> </ul> <p><b>Comment:</b> The proposal does not meet objectives at dot points 3 and 5 above.</p>	<b>No</b>
4.3.3.1 Building form	<p><b>Objectives</b></p> <p><i>The following general objectives apply to this section:</i></p> <p><i>O.1 To establish appropriate scale, dimensions, form and separation of buildings;</i></p>	<b>No</b>

	<p>O.2 <i>Achieve active street frontages with good physical and visual connections between buildings and the street;</i></p> <p>O.3 <i>Define the public street so that it provides spaces that are legible, safe, comfortable, functional and attractive;</i></p> <p>O.4 <i>Ensure building depth, bulk and separation allows for view sharing and protects amenity, daylight penetration and privacy between adjoining developments;</i></p> <p>O.5 <i>Achieve an articulation and finish of building exteriors that contributes to a high quality and sustainable urban environment;</i></p> <p>O.6 <i>Protect and provide visual connections to the Parramatta River and parkland.</i></p> <p>Comments in response to relevant built form controls:</p> <p><u>Street frontage</u> At least one street frontage to be 20m. Frontages are 30.9m to George Street and 77.15m to Horwood Place. Complies</p> <p><u>Street (George St) alignment and street setbacks</u> No specified street wall height and setback included on this site due to the existing building. 20m setback for any tower. Complies.</p> <p>The existing buildings is retained with the proposed commercial tower a minimum of approximately 30m from George Street.</p> <p><u>Corner site setbacks</u> While the site occupies a corner to Horwood Place, this is not a public road. Nonetheless the built form outcomes should be considered as though it is a public road given the significance placed by the Council on the Civic Link Framework.</p> <p>Corner site control is 0m setback for the tower for a max horizontal distance of 45m.</p> <p>Tower is setback 3m from Horwood Place as it assumes the line of the Roxy theatre – Horizontal façade is 43m. Complies - however would defer to Civic Link controls as more current and site specific. Civic Link Framework nominates a 2 storey street wall height to Civic Link to respond to heritage items.</p> <p><u>Building depth and bulk</u> Max horizontal dimension of tower façade is 45m. East and west elevations are 43m. Complies.</p> <p><u>Building separation – side setbacks</u> 6m side setbacks apply to buildings with a height greater than 54m. This control applies to the eastern boundary, and strictly speaking also applies to the western boundary as Horwood Place is not a street.</p> <p>Setbacks to eastern boundary are generally setback 1.5m -3.4m and do not comply.</p>	
--	---	--

	<p>Setbacks to western boundary are 1.6m – 3m and also do not comply. With regard to the western boundary reference to the City Architect's comments regarding the relationship to the Civic Link Framework, provided above, are most relevant.</p> <p><u>Building separation – rear setback</u> 12m rear setbacks apply to buildings with a height greater than 54m. The proposal is generally setback 3m - 3.4m and does not comply.</p> <p><u>Setback to shared lanes.</u> DCP control does not apply to Macquarie Lane. Note Macquarie Road is not a public road.</p> <p><u>Building form and wind mitigation</u> Council engaged SLR Australia to undertake a peer review of the applicant's wind report which supports the application. SLR provides the following conclusions:</p> <p><i>Wind Characteristics</i> <i>The Windtech Wind Statement's use of BOM Sydney (Kingsford Smith) Airport wind data to apply to the Parramatta project site has the potential to overestimate the influence of northeast winds and southerly winds and underestimate the influence of southeast and southwest winds.</i></p> <p><i>Wind Criteria</i> <i>The Windtech Wind Statement does not provide a set of wind acceptability criteria. Despite this, the study is still able to provide recommendations which Windtech expects will succeed in achieving acceptable wind conditions for the relevant intended uses of the various public access areas. It is unusual for any Wind Study (qualitative or quantitative) not to provide a set of recommended wind acceptability criteria, especially if the Consultant's preferred choice of criteria does not align with the LEP/DCP wind criteria relevant to the site.</i></p> <p><i>Wind Impacts:</i> <i>The Windtech Wind Statement investigated the development's wind impact at both ground level and the Level 4 event space.</i></p> <p><i>In its Executive Summary, the Windtech Study states that wind tunnel testing of the subject development will need to be undertaken at a later stage in the design process to verify the assessment and recommendations presented in their report.</i></p> <p><i>The Executive Summary states that ... "the tapered setback of the tower base from the northern aspect will ensure that the proposed development will not impact the wind conditions within the forecourt of the existing Roxy Building" and that "ground level areas along George Street and the proposed Civic Link will benefit from the local shielding of the north easterly winds by the nearby surrounding buildings".</i></p> <p><i>Given the inconsistency identified in Windtech's wind climate analysis in relation to local dominant wind directions, we find the above may</i></p>	
--	---	--

	<p><i>potentially miss significant wind impact conditions for the Roxy forecourt area and George Street footpath, as well as the Level 4 event space. Some of these areas could benefit from the addition of horizontal mitigation (ie awnings, canopies, etc). This should be examined either in the context of the DA application or via the suggested wind tunnel testing.</i></p> <p><i>The above presents Council with something of a challenge, ie to give a significant-height proposed building development approval subject to confirmation (hopefully via wind tunnel testing?) that all public access areas will in fact be acceptable, to as yet undefined wind acceptability criteria.</i></p> <p><i>SLR certainly supports the Windtech recommendation that a quantitative Environmental Wind Tunnel Test be carried out for the project to generate statistically reliable quantitative data to compare against agreed acceptability criteria.</i></p> <p><i>If it is not possible to carry out such wind tunnel testing as part of the DA submission of the proposal, SLR recommends refinement of the Windtech Study to include:</i></p> <ul style="list-style-type: none"> <li><i>· Nominated Wind Acceptability Criteria</i></li> <li><i>· Re-examination of the impact of southeast and southwest winds on the Roxy forecourt area, George Street footpath and Level 4 event space.</i></li> </ul> <p><i>Based on the information submitted the DA does not comply.</i></p> <p><u>Building exterior</u></p> <p>Comments regarding the building envelope and form, the heritage impacts and the relationship to the Civic Link Framework have been comprehensively detailed above in the report and this Attachment.</p> <p><u>Sun access to public spaces</u></p> <p>Refer to comments above regarding the PLEP 2011 sun access plane.</p>	
4.3.3.2 Mixed use buildings	<ul style="list-style-type: none"> <li>• Retail and business at ground level – Complies</li> <li>• Ceiling heights comply - Complies</li> <li>• Active facades at all ground floor frontages - Complies</li> <li>• Service facilities located in basement, however concerns with relationship of loading dock to Civic Link Framework.</li> </ul>	<b>No</b>
4.3.3.3 Public domain & pedestrian amenity	<ul style="list-style-type: none"> <li>• No through site links required - however service area provides blank wall to existing lane.</li> <li>• Civic Link Framework requires all vehicle movements via Macquarie Lane only.</li> <li>• Active frontages provided to all street frontages Complies, noting above.</li> <li>• New ground floor at west elevation is at same level as Horwood Place.</li> <li>• Relationship to Macquarie Lane is unclear and unresolved.</li> <li>• No awning shown to Horwood Place – although this is not nominated in DCP.</li> <li>• Forecourt to Roxy maintained - Complies</li> </ul>	<b>No</b>
4.3.3.4 Views and corridors	View 7 nominated in the DCP is a relevant consideration (view west from Charles St along George Street).	<b>No</b>

4.3.3.5 Access & parking	<u>Location of vehicle access</u> <ul style="list-style-type: none"> <li>No new access proposed to George Street (currently no access) – Complies</li> <li>DCP allows for only 1 access point. Proposal has two - entry is via Macquarie Lane and exit via Horwood Place. Does not comply.</li> </ul> <u>Pedestrian access and mobility</u> <ul style="list-style-type: none"> <li>Generally satisfactory. Suitability of access for purposes of AS/BCA/DDA to be addressed with future detailed DA.</li> </ul> <u>On-site parking</u> <ul style="list-style-type: none"> <li>Defer to PLEP 2011 assessment above.</li> </ul>	No
4.3.3.6 Environmental Management	<u>Landscape design</u> To be addressed with future detailed DA. <u>Energy and Water Efficient Design</u> To be addressed with future detailed DA although note ESD comments provided above.	Yes
4.3.3.7 City Centre Special Areas	Not applicable	N/A

## 6. Planning Agreements or Contributions Plans

No planning agreement in place or proposed. As the recommendation is for refusal there are no contributions.

## 7. Likely impacts

### 7.1 Heritage impacts

#### Statement of significance

The State Heritage Inventory statement of significance for the Roxy Theatre is:

*“The Roxy Theatre has high cultural significance as a good and relatively intact representative example of the 'Picture Palaces' of the interwar period, its overall form and surviving original fitout and fabric displaying the major attributes of this building type. More particularly it is an excellent example of 'Interwar Spanish Mission' style, displaying features typical of this style but also with a notable individuality and quality of architectural design.*

*The theatre also provides evidence of the changing nature of film theatres and theatre going since the 1920s. Its architectural character and function have been influenced by both national and international developments in film technology and theatre visitation since the advent of the 'Talkies' - ranging from large single auditorium regularly seating nearly 2000 to the present multi-theatre configuration. The size and architectural character of the building also reflect American cultural influences in the interwar period and the profitability of 'Picture Palaces'.*

*The location and origins of the theatre are closely associated with the growth of Sydney's suburbs in the interwar years and Parramatta in particular. It is an attractive and distinctive local landmark and particularly valued by the regular theatre-goers of its early years and those interested in movie and architectural history (its retention in the 1970s being in large measure due to intervention by such groups). (Somerville 1997)”*

#### Assessment of heritage impact

The application is supported by the following documents:

- Architectural Design Report
- Heritage Impact Statement
- Heritage Conservation Management Plan
- Structural Engineers reports

Council's heritage consultant, Tropman and Tropman, has completed a comprehensive evaluation of the proposal. Their report provides the following conclusion:

*“The proposal calls for an extraordinary solution to develop a key site in Parramatta which coincidentally is the site of the Roxy Theatre a State heritage item. The Spanish Revival Mission Style Cinema is proposed to be kept via a complex overhead structure.*

*There is need to place controls on the site which ensure the ongoing and perpetual maintenance of the Roxy even if there is a change of ownership.*

*The submission is not an envelope application rather a stage 1 DA and as such unnecessarily influences the design along one path without offering alternative designs or structural solutions. There is little attempt at justification of the ideas presented and from what can be seen no well reasoned arguments which show why a very tall building should abut a smaller structure namely the Roxy Theatre.*

*The existing cinema and the building style do not form part of the architects discussion and there is no attempt to rationalise the ground floor at the east and west elevations to appropriately scale the building. That is to say in basic and conventional terms, there is no podium which would link the height lines of the old building and allow a new structure to be better articulated with a meaningful separation.*

*The proposed building form is a vertical shaft rising on all sides at the expense of the Roxy Theatre form and scale. Opportunities to treat the broad side facades are not explored in the submission and as the fundamental issue of the site is the heritage building that covers it in its entirety, this could be considered a major failing of the design presented.*

*This project is a shift in the paradigm of evaluation of impact and will need reasons as to how or why the project impact can be ameliorated in respect to the extraordinary character of the architectural solution.*

*The owner statements appear to be based on development opportunities of the site and undoubtedly this is the case and will be a driver for the preservation of the Roxy. The application*

*is contentious and while innovative it challenges conventional assessment criteria of the Burra Charter methodologies and the CMP without any justification.”*

Resulting from that assessment, the applicant has been requested to:

- Provide additional information, including:
  - Economic modelling to identify the extent of new development needed to fund the retention, restoration and use of the Roxy Theatre.
  - Details of all other structural solutions explored, and reasons why they were discounted.
  - Intended mechanisms to ensure the ongoing and perpetual maintenance of the Roxy even if there is a change of ownership.
  - As the concept of bridging and building over the Roxy carries with it extraordinary risks, provide a methodology for support of the Roxy auditorium during the proposed works
- Revise the HIS/CMP/Architectural design reports to address various matters, including:
  - The application is contentious and challenges conventional assessment criteria of the Burra Charter methodologies and the CMP without any justification. The application should explain the shift in the paradigm of evaluation of impact and offer reasons as to how or why the project impact can be ameliorated in respect to the extraordinary character of the architectural solution.
  - There is no discussion or exploration of the impact of the design on the proportions and articulation of the Roxy theatre
  - The large bulk of the proposed new building is hard to justify under the normal constraints set out in the Burra Charter guidelines. The Urbis report suggests there should be a connection at the lower levels while the design as presented shows a vertical treatment which exacerbates the difference in scale.
  - There is no attempt to rationalise the ground floor at the east and west elevations to appropriately scale the building. In basic and conventional terms, there is no podium which would link the height lines of the old building and allow a new structure.
  - Opportunities to treat the broad side facades are not explored, and as the fundamental issue of the site is the heritage building that covers it in its entirety, this is a major failing of the design presented.
  - Both the CMP and the HIS dismiss the stage area behind the screen. Both provide an artificial cut off point at the screen for demolition to the advantage of the new proposed service zone in the DA submission. Analysis of the back stage in any depth is not included in the CMP or HIS. The conclusions for demolition are not consistent with the policies for restoration of other parts of the Roxy.

The applicant did not respond to council's request for this information.

#### Structural considerations

As noted, this 'concept' application is predicated upon the success of the nominated structural approach to enable a tower to be integrated into the existing heritage building.

Council's structural consultant, Richard Green Consulting, has completed a comprehensive evaluation of the proposal in consultation with council's heritage consultant. Their report notes

that while the overall concept is feasible, further information is required on a number of aspects to ensure the safety of the Roxy Theatre, including but not limited to, that following matters:

- Investigation of the existing theatre
  - Provide a detailed set of measured drawings and an investigation of the footings to be able to consider the interaction between the theatre and the new building
  - These are critical as the new columns are shown hard up against the existing theatre walls which means they could damage the existing footings. The applicant needs to investigate the footings and adjust the relationship between the new footings and the existing footings appropriately
- Further information relating to excavation of the basement.
  - The basements are below the water table. If the water table is lowered during construction then you could get cracking of the theatre wall
- Support for the Theatre ceiling
  - The trusses that presently support the ceiling have been reduced in height. This is done by introducing steel beams spanning the theatre as an alternative structure. The new beams appear to land on the theatre walls and they should not be connected to the main tower columns as the two buildings should be separated
- Event floor space
  - Not demonstrated that the connection between the beam/truss and the columns can be designed and built successfully.
- Northern sloping façade
  - There appears to be no beam/truss to take the weight of the front facade. This could be solved by building a truss into the front sloping facade. As noted in the engineer's report there needs to be tension/compression force in all the lower floors to take the lateral component of the sloping columns. Obviously the scheme for the typical floor does not take this into account.

The applicant did not respond to Council's request for that information.

## **7.2 Context and setting**

### Compatibility with context

As detailed above in the assessment report and in this **Attachment A**, the disproportionate scale of the proposed commercial building envelope compared to the existing heritage building, together with the extent of intervention to the heritage building, results in a proposal that is incompatible with the characteristics of the site and the scale of the heritage item.

The concept envelope will also have an unacceptable relationship to, and impact upon, the strategic Civic Link Framework Plan, as detailed above.

The Heritage Council has provided an indication of the scale of envelope at the rear of the site that may be acceptable, which would result in any tower having a maximum height of approximately half of that currently proposed – and significantly less than that closer to the parapet element of the existing building (refer Figure 2 below).



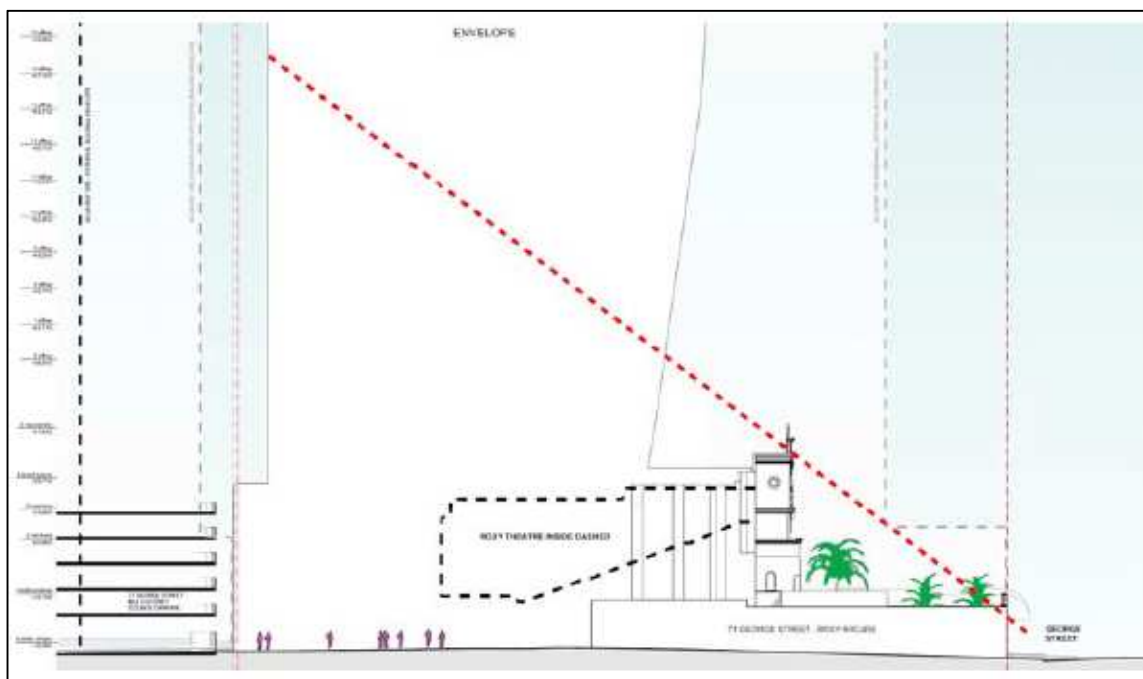


Figure 2: Figure prepared by OEH identifying site line control overlaid onto DA 1008/2017. View looking west along George Street, with red dotted line projected from eye height standing on footpath.

### Compatibility of adjacent land uses

Conceptually the range of land uses is supportable but these must flow from a fundamentally acceptable built form that is suitable in the context of the State heritage item and the Civic Link Framework Plan. This fundamental first step has not been achieved.

### **7.3 Site works**

As it is a concept DA there are no works proposed. Nonetheless the extent of future demolition and excavation is identified, and is integral to the concept. The extent of intervention and demolition of the heritage item is not supported.

The Council wrote to the applicant on 20 April 2018 and raised concerns, among other matters, regarding the potential construction impacts:

*The geotechnical report accompanying the application notes the extent of excavation required for the basement, and states that competent sandstone bedrock, expected to be at a depth of at least 14m below street level, is considered to be the shallowest suitable bearing stratum for the proposed tower footings.*

*The Heritage Impact Statement nominates only broad mitigation measures to address the potential for vibration impacts upon the fabric of the Roxy. However, the structural approach proposed is fundamental to the demonstrating the viability of this 'concept', and so a more comprehensive evaluation of this issue is required.*

*A risk management report is required which identifies and evaluates all elements of the proposal and intended construction methods, relative to the potential to impact upon the*

*structure and fabric of the Roxy Theatre. The report should consider, but not be limited to:*

- Excavation;*
- Shoring, piling and rock anchors;*
- Impacts upon all structural elements of the retained portion of the building, including footings, from vibration; and*
- Protection measures for the retained portion of the building during construction phases.*

*The construction methods, expected impacts and intended mitigation measures are to be endorsed by relevant members of the project team, including architect, heritage, structural engineer and vibration engineer.*

The Council has not received any response to the matters raised.

#### **7.4 Natural and technological hazards**

As detailed in the report, flooding issues have not been adequately addressed.

#### **7.5 Site design and internal design**

As detailed above in the assessment report the site design expressed in the concept DA is not supported on a range of reasons including heritage, built form and public domain impacts.

#### **7.6 Public domain**

The application has an unacceptable impact on the existing and desired future public domain, as expressed in the adopted Civic Link Framework Plan.

#### **7.7 Relationship to adjacent sites**

The unacceptable relationship to Horwood Place and Macquarie Lane are discussed in the report. In addition, the proposal will result in the isolation of the adjoining site to the east at 71-73 George Street. In its letter to the applicant dated 20 April 2018 the Council requested that the applicant respond to this issue, detailed below:

*The application must address the issue of the isolation of 73 George Street Parramatta by providing information sufficient to respond to the relevant planning principle established by the NSW Land and Environment Court, including a preliminary scheme showing the future development potential of that land in the event that consolidation is not achieved.*

The applicant has not responded to this issue.

In addition to the above, the Council also requested that the applicant address the relationship to adjoining sites:

*The scheme relies upon multiple, and significant variations to the side and rear boundary setback nominated in Parramatta DCP 2011.*

*The heritage constraints of the site alone are not sufficient justification for the location of the tower. The setbacks must also be evaluated relative to the future built context of the adjacent and surrounding sites, to ensure equitable outcomes.*

*Both the DEAP and council's City Architect have identified the need for a 'mini masterplan' for the street block within which the site is located.*

The applicant has not responded to this issue.

The overshadowing impacts appear to be acceptable.

## **7.8 Access, transport and traffic**

While no on-site parking may be acceptable, the proposed service vehicle arrangements are not acceptable as detailed in the assessment report.

## **7.9 Waste management**

This is an important practical consideration as yet unresolved given the difficulty in an acceptable service vehicle access solution, as well as the spatial requirements for waste management servicing several high waste generating land uses.

## **7.10 Construction Management**

The site is highly constrained by virtue of the heritage significance of the existing structures, which cover the entire site, and the site itself, which is small and narrow.

While it is acknowledged this application is a 'concept', with subsequent approval required for physical works, those constraints are such that it is reasonable to consider the capacity of the site to accommodate all processes necessary to construct the scale of development contemplated by this proposal.

The preliminary CMP as lodged is not sufficient to demonstrate the feasibility of managing the primary elements of construction on such a constrained and sensitive site.

The following information was therefore requested:

- Access/egress points for trucks (loading/unloading) and the location for work zones, noting that Horwood Place is not public road;
- Methods and equipment for bulk excavation – noting the preliminary CMP makes reference to the use of 'dozers';
- Locations for materials storage, waste materials and site amenities;
- Locations for tower cranes; and
- Measures to protect the retained portion of the Roxy Theatre building.

Note that construction traffic arrangements need to be provided for current conditions, and the revised traffic network that will be in place to accommodate construction of Parramatta Light Rail. In that regard note:

- George Street will become a two-way street;
- Church Street will be closed to vehicles from Market Street to Macquarie Street;
- Macquarie Street will become a single east bound lane between Church Street and Horwood Place; and
- Vehicle access between Horwood Place to Parramatta Square at 169 Macquarie Street will be closed.

The applicant has not responded to this issue.

### **7.11 Social and economic impacts**

Given the unacceptable impacts to the State heritage item the proposal has a consequential unacceptable social impact.

The future revitalisation of the Roxy Theatre building would be a significant economic and social benefit to the Parramatta City Centre and the wider community but this revitalisation requires an acceptable development outcome to be achieved.

## **8. Site suitability**

### **8.1 Does the proposal fit the locality**

The concept DA provides an excessive and unacceptable building envelope scale and form on the site.

### **8.2 Public submissions**

A total of 41 submissions have been received, as follows:

- 2 providing comments generally
- 3 submissions in support of the application were received. The most substantial in content was provided from a representative of the “Save the Roxy” campaign.
- 36 submissions objecting to the proposal, on heritage grounds in the main. The objections include submissions from:
  - the Australian Institute of Architects
  - The National Trust, both central office and Parramatta Branch
  - Cinema and Theatre Historical Society

A submission was received on behalf of the land owners of 75 George Street noting that the proposal does not have owner’s consent to use Macquarie Lane and Horwood Place; is inconsistent with the Civic Link Framework Plan; has not adequately considered the cumulative impacts to the broader Horwood Place block and surrounding development and that the envelope is inconsistent with the Parramatta DCP envelope and setback controls.

An objection was also received on behalf of the adjoining property to the east at 71-73 George Street. Included among the points of objection is the non-compliant side boundary setback, impacting on the existing and future development of No 71-73; the lack on consideration of No 71-73; the need for a precinct based design approach that considers all properties in the block;

the need for an equitable development outcome for adjoining properties to be considered rather than looking at the Roxy Theatre in isolation.

The submissions objecting to the proposal are supported by the assessment in this report.

### **8.3 Agency submissions**

Agency submissions are detailed above in the report. Most significantly, the Heritage Council has refused to issue General Terms of Approval.

## **9. Public interest**

The Roxy Theatre is a significant heritage site and building within the Parramatta CBD. A sympathetic, practical and commercial revitalisation of the State heritage item is something that will be in the public interest.

In this case, the assessment has determined that the concept DA will have an unsatisfactory heritage outcome on the building and its setting, and an unsatisfactory urban design outcome on the surrounding area, particularly in the context of the Council's Civic Link Framework Plan.



## **ATTACHMENT B – REASONS FOR REFUSAL**

<b>SWCCP reference</b>	2018SWC003
<b>DA No.</b>	1008/2017

1. The application does not satisfy the relevant provisions of the *Environmental Planning and Assessment Regulation 2000* as the application does not have written owner's consent for the use of land contained within Lot 100 DP 607789.
2. The application does not satisfy the provisions of Section 4.47(4) of the *Environmental Planning and Assessment Act 1979* as the NSW Heritage Council has refused to issue General Terms of Approval and therefore the application must be refused.
3. The application is inconsistent with Aims (c) and (d) of clause 1.2 of *Parramatta Local Environmental Plan 2011*:
  - a. The proposal will not conserve and promote Parramatta's natural and cultural heritage and social development due to the unacceptable impact on the State heritage item.
  - b. The proposal will not improve public access to the city due to the unacceptable impact on Horwood Place.
4. The application is inconsistent with the Objectives of the B3 Commercial Core zone of *Parramatta Local Environmental Plan 2011* as follows:
  - a. The development will not successfully create opportunities to improve the public domain and pedestrian links throughout the Parramatta City Centre.
  - b. The development will not enhance the unique qualities and character of special areas and heritage values within the Parramatta City Centre.
  - c. The development will not protect and encourage accessible city blocks by providing a network of pedestrian-friendly streets and lanes.
5. The application does not meet the provisions of *Parramatta Local Environmental Plan 2011* clause 7.10 *Design Excellence – Parramatta City Centre* as the proposed development does not exhibit design excellence. In particular, the application fails to meet the following provisions of clause 7.10 (4)(a), 4(b), 4(c) and (4)(d):
  - a. 7.10 (4) (a) – the development will not deliver a high standard of architectural design

- b. 7.10 (4) (b) – the form and external appearance of the development will not improve the quality and amenity of the public domain
  - c. 7.10 (4) (c) – the development will detrimentally impact on views to the heritage building
  - d. 7.10 (4) (d) (i) - the land is not suitable for the scale of development proposed
  - e. 7.10 (4) (d) (iii) - the development will have unacceptable heritage and streetscape impacts
  - f. 7.10 (4) (d) (iv) - the location, scale and form of the proposed tower is excessive and will result in an unacceptable relationship to the State heritage item located on the site and an unacceptable relationship to neighbouring sites in terms of separation, setbacks, amenity and urban form.
  - g. 7.10 (4) (d) (v) – the bulk and massing of the proposed built form of the commercial tower is excessive and unacceptable.
  - h. 7.10 (4) (d) (vi) – the street frontage heights to Horwood Place and Macquarie Lane are unacceptable.
  - i. 7.10 (4) (d) (vii) – the environmental outcomes arising from the likely wind impacts on the public domain are unacceptable.
  - j. 7.10 (4) (d) (ix), (x) and (xii) – the vehicular and service access across other land is unsatisfactory and does not have owner's consent. The impact on the existing and future public domain represented by the Civic Link Framework Plan is unacceptable.
6. The application is inconsistent with the heritage provisions contained within clause 5.10 of *Parramatta Local Environmental Plan 2011* as follows:
- a. 5.10(1) – the development does not meet the following objectives:
    - (a) The development will not adequately or successfully conserve the environmental heritage of Parramatta
    - (b) The development will not conserve the heritage significance of the State heritage item, its associated fabric, settings and views
  - b. 5.10(5) – the Heritage Impact Statement provided with the application is not adequate for the purpose of assessing the extent to which the carrying out of the proposed development would affect the heritage significance of the heritage item
  - c. 5.10(6) - the Conservation Management Plan provided with the application is not adequate



7. The application does not satisfy the flooding provisions contained in section 2.4.2.1 of *Parramatta Development Control Plan 2011* and requires an overland flood study in order to establish flood levels for the development.
8. The application does not satisfy the objectives and design principles for the public domain contained in section 2.4.8 of *Parramatta Development Control Plan 2011* as follows:
  - a. The development will not enhance the quality of the existing or desired future public domain, as represented by the Council's adopted Civic Link Framework Plan
  - b. The development does not satisfactorily address the public domain, including the building interface between private and public domains, the heritage item and the built form definition to the street.
  - c. The development is not designed in accordance with Council's current public domain guidelines as represented by the Council's adopted Civic Link Framework Plan.
9. The application does not satisfy the objectives and design principles of sections 3.6.2 and 3.6.3 of *Parramatta Development Control Plan 2011* regarding parking and vehicular access and accessibility and connectivity. The development will not improve pedestrian access and connectivity and will not encourage the desired future pedestrian network as represented by the Council's adopted Civic Link Framework Plan. The development will result in vehicle access points that will be disruptive to pedestrian flow and safety.
10. The application does not satisfy the Parramatta City Centre objectives contained in section 4.3.3 of *Parramatta Development Control Plan 2011* as the development will not ensure the high quality design of buildings and public areas and does not adequately provide for the conservation and interpretation of Parramatta's heritage.
11. The application does not satisfy the Building Form objectives and design principles contained in section 4.3.3.1 of *Parramatta Development Control Plan 2011* as follows:
  - a. The development will not establish appropriate scale, dimensions, form and separation of buildings.
  - b. The development will not achieve street frontages with good physical and visual connections between buildings and the street.
  - c. The development will not achieve a building bulk and separation that allows for view sharing and protects amenity, daylight penetration and privacy between adjoining developments.
  - d. The development does not comply with the building setback and separation controls.
  - e. The development does not achieve nominated wind standards to maintain safe and comfortable conditions in the surrounding public domain.
12. The application will result in the isolation of the adjoining property at 71-73 George Street. The applicant has failed to address the issue of the isolation of 71-73 George Street by

providing information sufficient to respond to the relevant planning principle established by the NSW Land and Environment Court, including a preliminary scheme showing the future development potential of that land in the event that consolidation is not achieved.