



SYDNEY CENTRAL CITY PLANNING PANEL

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSCC-102
DA Number	DA/1157/2016/H
LGA	City of Parramatta Council
Proposed Development	Section 4.55(2) modification to DA/1157/2016 for a concept plan for 4 stage mixed use development, specifically amendments to approved building envelopes including increases in height, amendment to approved uses, reallocation of floor space & deep soil, deletion of redundant condition and revised timing of approved public domain upgrades.
Street Address	657-661 Victoria Road & 4-6 Wharf Road MELROSE PARK NSW 2114 (SP102190, Lot 11 DP1238936, Lots 2 & 3 DP 588575)
Applicant	M Projects Pty Ltd (on behalf of Payce)
Owner	Tyriel Developments Pty Ltd
Date of lodgement	25 May 2020
Number of Submissions	One
Recommendation	Approval subject to revised conditions
Regional Development Criteria	The proposal is a s4.55(2) modification to an application with a capital investment value of more than \$20 million (criteria at time of lodgement) and the application seeks to vary a development standard by more than 10% (height).
List of all relevant s4.55(1)(a) matters	<ul style="list-style-type: none">• Environmental Planning and Assessment (EP&A) Act 1979• EP&A Regulations 2000• SEPP No. 55 – Remediation of Land• SEPP No. 65 – Design Quality of Residential Apartment Development & Apartment Design Guide• SEPP (Building Sustainability Index: BASIX) 2004• SEPP (Infrastructure) 2007• SEPP (State and Regional Development) 2011• SREP (Sydney Harbour Catchment) 2005• Parramatta Local Environmental Plan 2011• Draft Consolidated Parramatta Local Environmental Plan 2020• Parramatta Development Control Plan 2011
List all documents submitted with report	<ul style="list-style-type: none">• Attachment 1 – Proposed Concept Plan Drawings• Attachment 2 – Approved Concept Plan Drawings
Report prepared by	Alex McDougall Executive Planner, City Significant Development
Report date	13 November 2020

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report?	Yes
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Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?	Yes
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Clause 4.6 Exceptions to development standards

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

Does the DA require Special Infrastructure Contributions conditions (s7.24)?	No
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Conditions

Have draft conditions been provided to the applicant for comment?	Yes
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1. Executive Summary

This proposal seeks various modifications to an approved concept plan. The modifications include, but are not limited to, the following:

- Redistribution and reallocation of floor space across the concept plan site;
- Modification to building envelopes of Stage 4, including material increase in height to 2 towers which already exceed the height standard;
- Amendments to the deep soil plan;
- Decrease in commercial floor space from 2,500sqm to 1,070sqm;
- Deletion of redundant conditions; and
- Defer undergrounding of powerlines along Victoria Road.

The proposal, as modified, is considered to be substantially the same development as original approved, is considered to be in keeping with the requirements and recommendations of the relevant planning framework and is not considered to have an unacceptable impact on the amenity of adjoining or nearby properties.

The application is therefore in compliance with sections 4.15 and 4.55 of the Environmental Planning and Assessment Act 1979 and is thus recommended for approval, subject to revised conditions.

2. Key Issues

Parramatta Local Environmental Plan 2011:

- **Height of Buildings (cl. 4.3)** Control: 28m (~8 storeys),
 - Approved DA: Up to 35m (~10 storeys) plus other minor projections beyond the height limit.
 - Modified Proposal: Up to 40.3m (~12 storeys) plus other minor projections beyond the height limit.
 - Assessment: Considered to be acceptable given superior urban design and site-specific constraints including fill required, overland flow flooding, provision of public roads and open space.

3. Site Description, Location and Context

3.1 Background

The Sydney Central City Planning Panel (SCCPP) granted deferred commencement consent to Concept Plan DA/1157/2016 on 7 November 2017. The deferred commencement conditions, which required a revised Site Audit Statement, were satisfied and the consent was made operational on 11 January 2018.

The original Concept Plan envisaged a 4 staged development comprising a total of 1,077 dwellings, 767sqm commercial floor space, a new street network, open space and subdivision into 4 super lots. The originally approved concept plan is outlined in Figure 1 below. The 4 stages of development are as follows:

- Stage 1 – Superlot AC (DA/1157/2016, completed)
- Stage 2 – Superlot AD (DA/1025/2017, under construction)
- Stage 3 – Superlot AA (DA/1042/2017, approved)
- Stage 4 – Superlot AB (DA/295/2020, concurrent application)

The latest approved concept plan is outlined below:

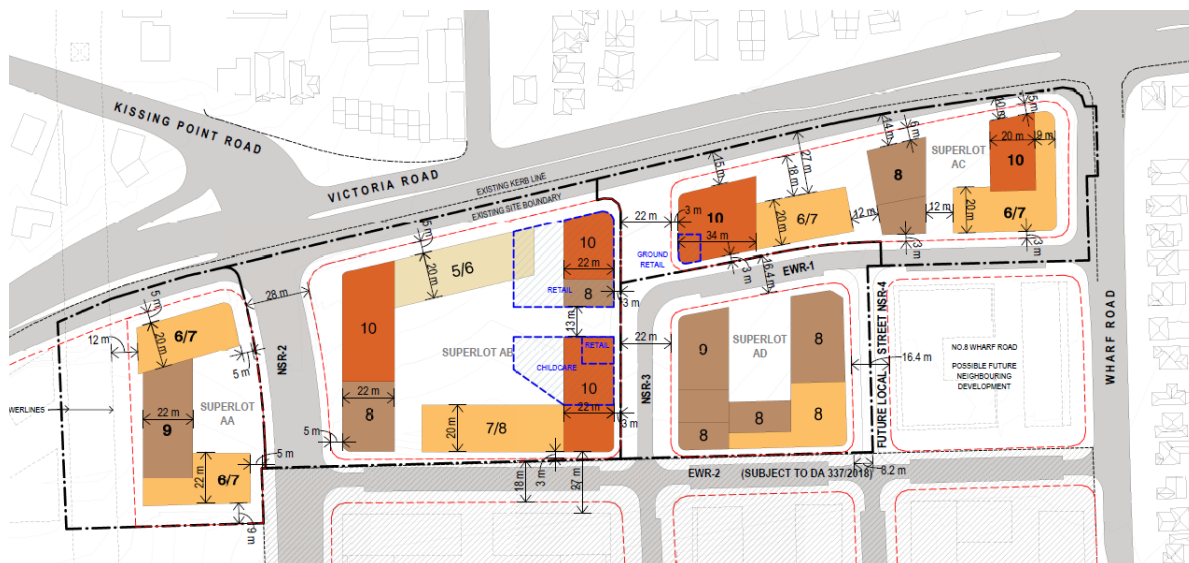


Figure 1. Concept Plan DA/1157/2016 as approved (notation indicates number of storeys).

3.2 Site Description

The site is an amalgamation of 4 lots with a total area of 47,589sqm. The lots generally address Victoria Road and its corner with Wharf Road. The street address of the site is 657-661 Victoria Road and 4-6 Wharf Road.

The site is an irregular shape and generally falls to the south and east from its frontage with Victoria Road. The high point of the site is its north-west corner adjoining Victoria Road to the lowest point in the south-east corner of the site. From north-west to south-east the fall across the site is approximately 19m.

The site's first non-agricultural use was as a Council owned and operated waste disposal facility. The most recent uses of the site were as a public park known as Bartlett Park and the remaining part of the site, on the corner of Victoria and Wharf Road, was used as a 'Putt-Putt' mini golf centre, comprising some single storey buildings and various landscaped mini golf courses.

While Victoria Road is a Classified (State) road, Council is the approval authority.

Development to the immediate south of the site comprises light industrial development. While to the north, east and southwest of the site development comprises low-rise residential development. To the immediate west of the site is the Ermington Gospel Church. Part of the site Lot 2 DP588575 is currently part used as an at-grade parking area for this church.

Development to the north and east of the site does not directly border the site and is separated by Victoria and Wharf Roads, respectively. Other than some commercial development around the corner of Wharf and Victoria Roads, development to the north and east generally comprises single to 3-storey dwelling houses.

The site is located on the boundary of the City of Parramatta Council and City of Ryde Council local government areas (across Wharf Road to the east is Ryde).

The site is located approximately 15km north west of the Sydney central business district and approximately 6km east of the Parramatta central business district.

District and local aerial images of the site are provided in the figures overleaf.

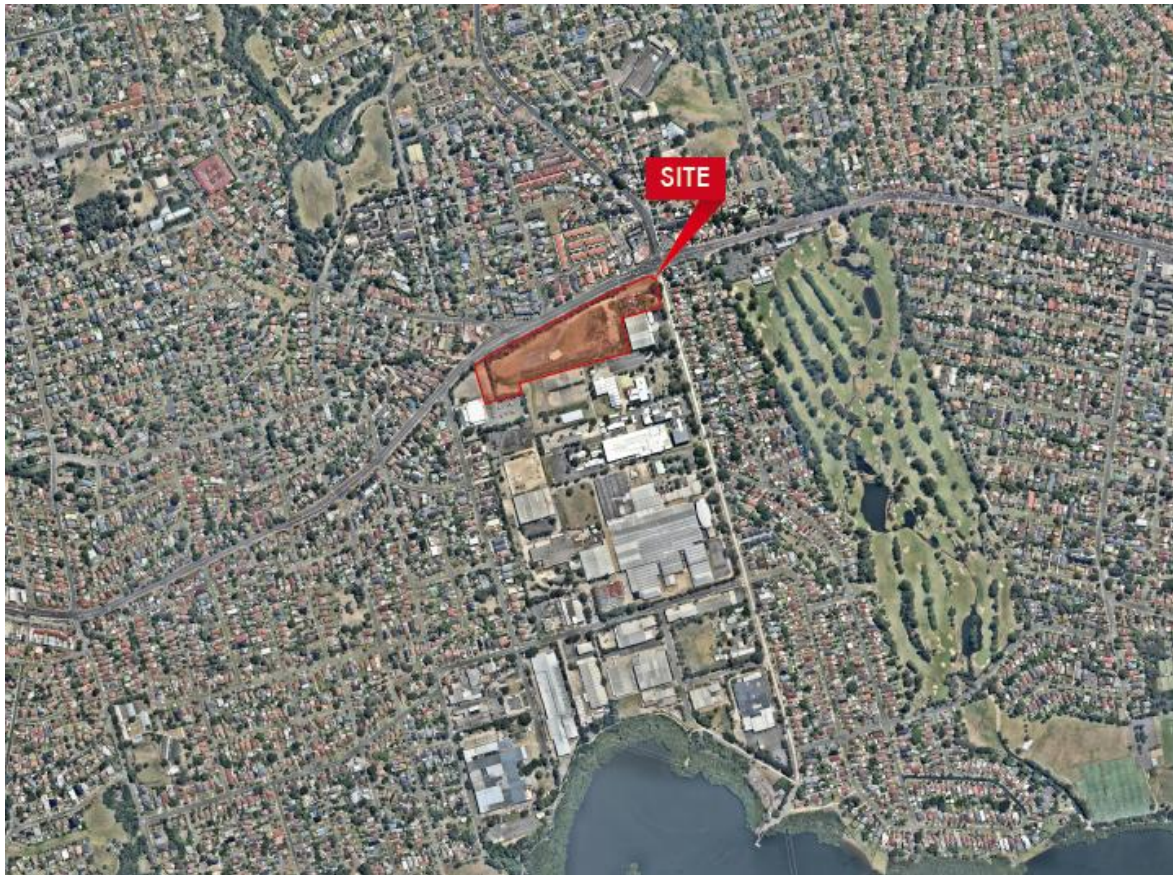


Figure 2. Wide Aerial



Figure 3. Detailed Aerial

3.3 Context

Melrose Park North

The wider Melrose Park precinct is subject to a Planning Proposal (PP) which would see the area transition from its current industrial character to high density residential and mixed use. The PP (Council Ref: RZ/1/2016), known as Melrose Park North, relates to land immediately south of the concept plan site / subject Stage 4 site. The latest proposed layout is shown below:

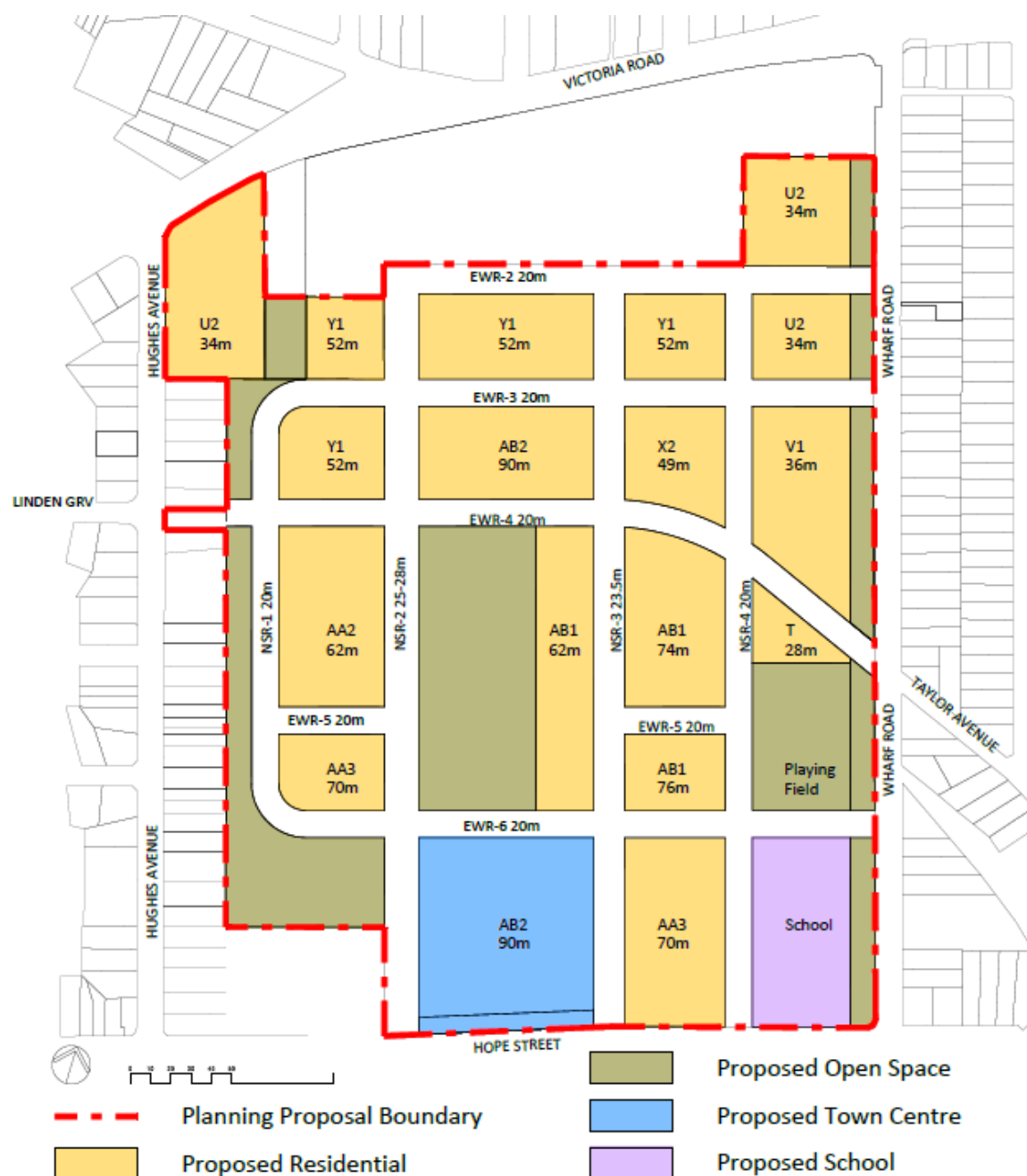


Figure 4. Envelopes on adjoining site to the south as currently envisaged by Melrose Park North Planning Proposal.

The PP was endorsed by Council's Independent Hearing and Assessment Panel (IHAP) on 20 June 2017, Council on 10 July 2017 and was subsequently granted gateway determination by the Department of Planning and Environment on 27 September 2017. Exhibition is anticipated to occur in the first half of 2021.

Subsequent to the original approval of the subject concept plan, a draft Transport Management and Accessibility Plan (TMAP) was developed as part of the Planning Proposal. The draft TMAP outlines upgrades to road infrastructure in the vicinity of the site that will be necessary as the number of new dwellings passes certain trigger points in order to ensure the new development will have no significant impacts on the wider road network. The draft TMAP and its recommendations have been endorsed by Council and TfNSW/RMS for the purposes of public consultation and will be exhibited as a supporting technical study to the draft Melrose Park North Planning Proposal when this is placed on public exhibition in 2021.

3.4 Application History

Application Ref	Description
DA/1157/2016	Concept Proposal for 4 staged development comprising 1,077 dwellings, 767sqm commercial floor space, street network, open space and subdivision into 4 super lots; and detailed Stage 1 proposal (corner Victoria Road and Wharf Road) comprising, earthworks and tree removal, site remediation, excavation of 3 basement levels providing 318 car parking spaces, construction of 3 x 6-10 storey residential flat buildings providing 277 residential apartments, public open space, landscaping, new internal roads. The application was determined by the Sydney Central City Planning Panel. Deferred Commencement Consent 07/11/17. Operational Consent Issued 11/01/18.
DA/1157/2016/A	Section 4.55(2) modification to approved concept plan for 4 stage mixed use development, including increase in number of proposed dwellings from 1,077 to 1,126 (49 additional dwellings), modification to building envelope heights and footprints, realignment of superlot boundaries and street network and revised subdivision plan. This application was determined by the Sydney Central City Planning Panel. Approved 12/09/18.
DA/1157/2016/B	Section 4.55(1A) modification to residential flat building development, specifically modification of condition 86 to not require tanking (waterproofing) of the basement. Approved 20/08/20.
DA/1157/2016/C	Section 4.55(1A) modification to approved DA/1157/2016 for the construction of 3 x 6-10 storey residential flat buildings to amend the external materials of building 2. Approved 11/06/19.
DA/1157/2016/D	Section 4.55(1A) modification to approved concept plan for 4 stage mixed use development, including reallocation of approved residential floor space to commercial floor space, increased deep soil area and modifications to staging of development. Part Approved / Part Refused 27/09/19.
DA/1157/2016/E	Section 4.55(1A) modification to approved residential flat buildings including revisions to substation location, vehicular entry, external stair and single apartment layout. Approved 23/10/19.
DA/1157/2016/F	Section 4.55(1A) modification to approved concept plan for 4 stage mixed use development, specifically delaying provision of western public open space. Approved 17/04/20.
DA/1157/2016/G	Section 4.55(1A) modification to approved concept plan for 4 stage mixed use development, specifically to reallocate 12sq.m of approved residential gross floor area from superlot AD (Stage 2) to commercial in superlot AC (Stage 1), amend Stage 1 Subdivision Plan and amend condition 20 regarding wayfinding. Approved 25/05/20.

4. The Proposal

Consent is sought to modify the concept plan as follows:

- Distribution of 67m² of unutilised floor space from Stage 2 to Stage 4;
- Reallocation of 1,430m² of Stage 4 commercial floor space back to residential floor space;
- Increase in the estimated number of Stage 4 residential units from 408 to 426 (+18);
- Change of use of childcare centre to medical centre;

- Modification to building envelopes of Stage 4:

Block	Height Change (storeys)	Height Change (metres)	Footprint Change (square metres)
North-East	+1-2	+3.75m	-130m ²
South-East	N/A	+0.85m	175m ²
South	N/A	+3.45m (lift overruns only)	+105m ²
South-West	N/A	+2.95m	+330m ²
North-West	+1	+4.45m	-330m ²
North	+1	+4.15m	N/A

- Separation between north-east and south-east buildings reduced from 13m to 11m;
- Separation between south and south-west buildings reduced from 12m to 6.5m;
- Reduction in Stage 4 deep soil from 1,900m² to 983m² (-917m²);
- Delete requirement to avoid overshadowing adjoining town centre; and
- Defer undergrounding of power lines along Victoria Road from prior to *any* OC for Stage 4 to prior to *final* OC for Stage 4.

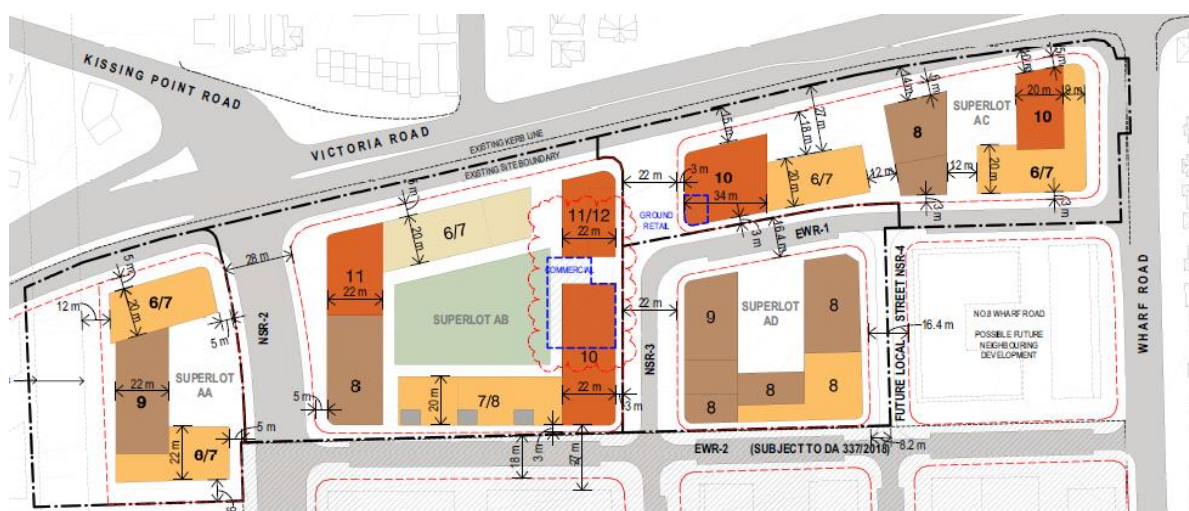


Figure 5. Concept Plan as proposed to be modified.

The above modifications require updates to concept plan conditions 1, 3, 7, 10, 28. For draft revised wording please see Appendix 1.

5. Referrals

5.1 Sydney Central City Planning Panel

The Sydney Central City Planning Panel (SCCPP) were briefed on the application on 1 July 2020. Their comments, and Council officer response, is provided in the table below.

SCCPP Comment	Officer Response
<p>In the assessment of these further height variations, the Panel recommends that detailed consideration should be given to:</p> <ul style="list-style-type: none"> • re-evaluation of the grounds relied upon for the currently approved variations • the implications of proposed land fill on 'existing' and 'finished' ground levels • the relationship between the building heights and the open space/landscaping setting, inclusive of proposed setbacks from Victoria Road and the former Council land. 	<p>Noted.</p>

5.2 Design Excellence Advisory Panel

The application was not referred to Council's Design Excellence Advisory Panel as the Panel provided minimal advice relating to the concept plan as part of the original application (focusing on Stage 1). Notwithstanding, in endorsing the associated detailed application for Stage 4, DA/295/2020, they implicitly considered the outcomes anticipated by the revised concept plan to be acceptable.

5.3 Internal

Authority	Comment
Accessibility	<ul style="list-style-type: none">No Comment.
Public Domain	<ul style="list-style-type: none">Site area encumbered by basement cannot be considered deep soil.The front setback from property boundary for lot AB should be preferably be maintained at 6m (in keeping with original approval).
Urban Design	<ul style="list-style-type: none">The permissible density can't be accommodated in the approved height limit with an acceptable built form; additional building height on Victoria Road, combined with the adjustment of the gaps location between the buildings, is needed and supported as it provides an overall better urban design outcome, greater distinction between the vertical and horizontal elements and better termination of the view corridors.

5.4 External

None

5.5 Submissions

The application was advertised in accordance with Parramatta DCP 2011 requirements for a 21-day period between 10 June and 1 July 2020. A total of 1 unique submitter raised concerns. The issues raised are outlined and discussed below.

Issues Raised	Comment
View Loss (sky views, district views and Parramatta river views from main living areas)	The proposal is not considered likely to result in unacceptable view loss. See assessment below.
Privacy Loss (in private open space)	The proposal is not considered likely to result in unacceptable loss of privacy. See assessment below.
Construction Noise	Associated detailed development applications will be subject to conditions requiring construction noise management plans to minimise impacts on adjoining and nearby occupiers.
Height non-compliance (particularly as it occurs on highest part of site)	The proposed height non-compliance is considered to be acceptable. See assessment below.
Out of keeping with character of low density residential area	The proposal is considered to be in keeping with the desired future character of the area. See assessment below.

6. Environmental Planning and Assessment Act 1979

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

6.1 Section 4.15: Evaluation of Proposed Modifications

This section assesses the proposed modifications in the context of the relevant planning instruments and plans, including but not limited to State Environmental Planning Policy No.

65 (Design Quality of Residential Apartment Development), Parramatta Local Environmental Plan 2011 and the Parramatta Development Control Plan 2011.

6.1.1 Redistribution of Unutilised Floor Space From Stage 2 to Stage 4

The applicant seeks to distribute 67m² of unutilised floor space from Stage 2 to Stage 4, resulting in a Stage 4 allowable floor space of 36,420m².

The total permissible floor space within the concept plan site is 95,166m².

The assessed floor space in each stage (accounting for mods) to date is as follows:

- Stage 1 (DA/1157/2016): 23,376sqm
- Stage 2 (DA/1025/2017): 20,704sqm
- Stage 3 (DA/1042/2017): 14,641sqm

As such there is 36,445m² left over for Stage 4 as proposed by the applicant. The proposal would still comply with the overall permissible floor space and as such this reallocation is considered to be acceptable.

6.1.2 Reallocation of Commercial Floor Space to Residential Floor Space

The applicant seeks to reallocate 1,430m² floor space from commercial to residential, reducing the total commercial from 2,500m² to 1,070m². Commensurate with this reallocation is allowance for up to 18 additional residential units within stage 4, increasing the *estimated* total from 408 to 426.

The site has a B4 Mixed Use zoning, the objectives of which include to provide a mixture of compatible land uses, to encourage vibrant neighbourhoods and provide for the daily commercial needs of the locality.

The original approval included 696m² of commercial floor space and 414 apartments which was considered to satisfy these objectives.

As such the proposal would still provide for a net increase in commercial floor space from that which was originally approved.

The net increase in commercial floor space will help further achieve the B4 zone objectives. The additional units will also add to the vibrancy of the area.

As such the reallocation is considered to be acceptable.

6.1.3 Change of Use of Childcare Centre to Medical Centre

The applicant seeks to change the use of the childcare centre to a medical centre.

This modification is considered to be acceptable for the following reasons:

- Provision of a child care centre specifically did not form justification for the application.
- Medical centres are a permissible use in the zone.
- Approval for use and fitout of the medical centre will be subject to consideration under separate applications.

6.1.4 Modification To Building Envelopes and Footprints of Stage 4

The proposal includes increases to the volume of the concept building envelopes for Stage 4 to accommodate the permitted floor space. A summary is outlined in Section 4 above.

The need to further increase the envelopes is owing generally to the following site constraints:

- Significant Grade Change – The desirable planning outcome of regrading the site, including significant fill in parts, to accommodate a shallower pitch. This regrading will maximise accessibility, provide for the required vehicular connections, and ensure that units do not have to be accommodated substantially below surrounding ground level. The proposed regrading is outlined in Figure 9 below.
- Overland Flow Flooding - The need to have ground level units at least 500mm above the adjoining public domain to protect against overland flow hazard. The overland flow hazard has become more pressing owing to recently completed modelling of the Probable Maximum Flood (PMF) event.

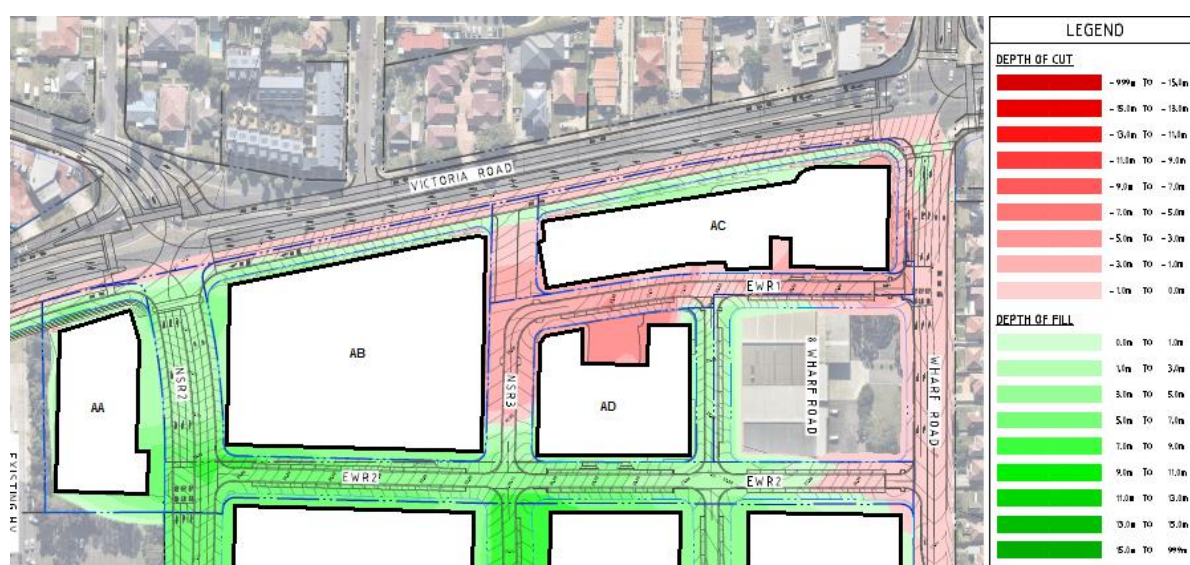


Figure 6. Cut and Fill Plan of non-basement areas within site (Darker the Green = More Fill, Darker the Red = More Cut).

The mapped height limit for the site under clause 4.3 of the Parramatta LEP 2011 is 28m above *existing* ground level.

The original concept plan site included 6 envelopes which exceeded the allowable height limit up to 10 storeys (~35m). These envelopes were supported by a Clause 4.6 variation request which outlined the following justification:

- The amenity impacts of these non-compliances are generally internalised within the site;
- These buildings provide an urban design benefit in terms of identifying entries and a varied sky line;
- The siting of these buildings addressing Victoria Road is appropriate on urban design grounds;
- The development is compliant with the site's floor space control;
- A high proportion of the site is taken up with roads and public open space which reduces the area available to provide building footprints; and
- The site's current state and significant contamination status is a site-specific constraint and some weight should be given to the public interest benefits of remediation of the site.

The Clause 4.6 request was accepted by the SCCPP and the variation was approved. The approved concept plan approved approximately 5,170sqm of footprint (in plan) which exceeded the height limit up to a 10 storeys.

Modification DA/1157/2016/A, which also included increases to the building envelopes, resulted in approximately 5,580sqm of footprint which would exceed the height limit up to a height of 10 storeys.

The subject application results in approximately 5,295sqm exceeding the height limit by up to 12 storeys.

As such, while the proposal results in two buildings up to 12 storeys in height, the area covered by the tallest non-complying buildings will actually be reduced.

The proposal also includes other minor breaches of the height limits as well as height increases to other envelopes which would remain below the height limit. A comparison of the approved versus proposed breaches is outlined in the figures below.

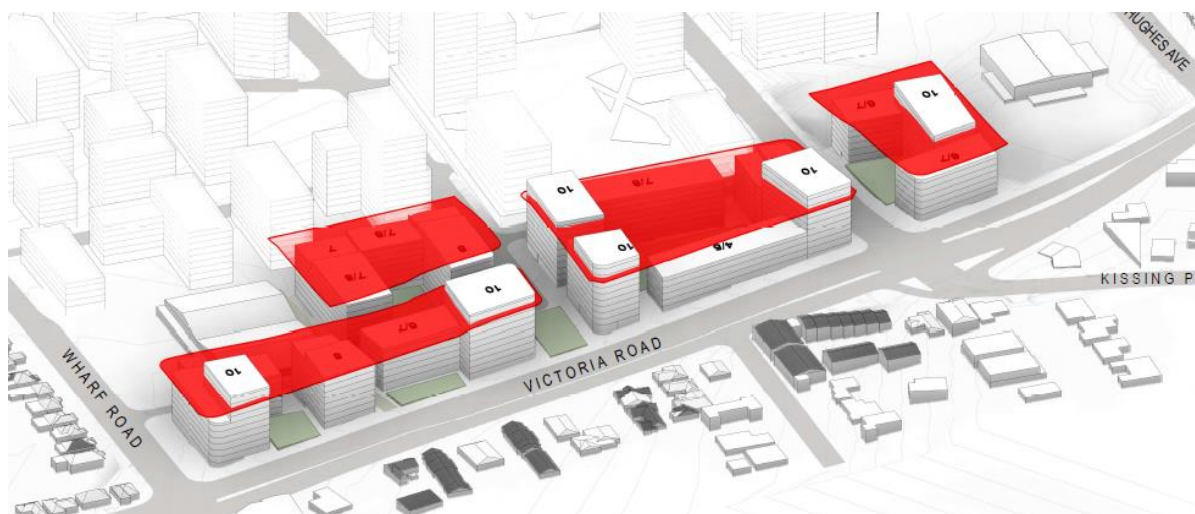


Figure 7. Building Envelope Height Breaches as originally approved (28m building height plane in red).



Figure 8. Building Envelope Height Breaches as proposed (28m building height plane in red).

The modification is considered to be acceptable for the following reasons:

- The original justifications for the height non-compliance outlined in the Clause 4.6 request submitted with the original application continue to have merit.
- The proposal achieves a discernible variance in height across the site. Complying envelopes may be able to accommodate the allowable floor space but this would result in monotonous and unbroken rows of 8 storey buildings.
- Council's Urban Design team and DEAP support the changes.
- The proposed 9-12 storeys elements constitute just 11.1% of the site area.
- The applicant has demonstrated that the revised envelopes do not prejudice the ability of the future applications to provide sufficient deep soil planting and landscaped open space (see Section 6.1.5 below).
- The proposal does not result in unacceptable amenity impacts on adjoining or nearby properties (see more detail in Section 9 below) and does not prejudice the development potential of any adjoining sites.
- The separation distances between the envelopes are generally in keeping with the requirements of the ADG subject to detailed design. Notwithstanding, this approval does not exempt future applications from compliance with any aspect of the ADG.
- As outlined above, the mapped height limit for the site under clause 4.3 of the Parramatta LEP 2011 is 28m above *existing* ground level. In order to achieve appropriate street gradients in the precinct, significant fill is required around the Stage 4 site, particularly in the north-west corner (see image below). This results in the proposed ground level being higher than the existing ground level and thus exacerbates the height non-compliance. In other words the buildings will not look as tall as the height non-compliance suggests. In fact, if the regrading works were undertaken as part of a separate application and completed prior to submitting the associated detail application for Stage 4, the non-compliance would be less.

6.1.5 Reduction in Stage 4 Deep Soil

The applicant seeks to reduce the anticipated Stage 4 deep soil from 1,900m² to 983m² (-917m²);

The Apartment Design Guide, which will apply to the future detailed applications, recommends deep soil represent a minimum of 7% of the site area, with 15% desirable for larger sites.

The area of the 4 development lots is 32,306sqm, 7% of which is 2,261sqm, and 15% of which is 4,846sqm.

The concept plan, as proposed to be modified, would result in the following deep soil allocation:

- Stage 1 – 1330sqm
- Stage 2 – 1130sqm
- Stage 3 – 1037sqm
- Stage 4 – 983sqm
- Total – 4,480sqm (13.9%)

As such the concept plan would still anticipate delivery of a complying level of deep soil.

The increased supply of deep soil did not form basis for the original approval.

As such the revised deep soil provision is considered to be acceptable. Notwithstanding, this approval does not exempt future applications from compliance with any aspect of the ADG.

6.1.6 Delete Overshadowing Protection for Adjoining Town Centre

The applicant seeks to delete concept plan condition 3 which requires the following:

The Concept Plan is to be amended as follows:

- (a) *The building envelopes within super lots AD (Stage 2), AA (Stage 3) and AB (Stage 4) are to be amended so that new buildings provide direct sunlight to a minimum of 50% of any town centre communal open space for a minimum of 3 hours between 10am and 2pm on 21 June (mid-winter).*

The above amendments are to be provided for in subsequent detailed Development Applications for later stages of development on the site.

Reason: *To provide for the orderly development of the site.*

The applicant notes that the latest planning proposal documents for the adjoining site to the south now no longer includes a town centre adjacent the site (See Figure 5 above).

Deletion of the condition is considered to be acceptable for the following reasons:

- The latest planning proposal documents do show that the town centre will be located well south of the subject site.
- Regardless, the detailed design of the town centre is not likely to be confirmed for some time and as such it is unlikely that the design of Stage 4 (concurrently under assessment) would be able to respond with any certainty to such a condition.

6.1.7 Defer Undergrounding of Power Lines Along Victoria Road

The applicant seeks to amend concept plan condition 28, which currently requires undergrounding of the power lines along Victoria Road prior to *any* Occupation Certificate for Stage 4, to prior to a *final* Occupation Certificate for Stage 4.

Widening of Victoria Road south into the site is likely to be required only once the planning proposal currently under assessment to the south of the site is partly progressed.

New underground power lines must follow the kerb alignment of the road as per energy provider requirements.

It is not desirable to lay the power lines under the current kerb as they will need to be moved when the widening occurs.

It is not desirable to locate the power lines under the future kerb alignment prior to widening for the following reasons:

- The future kerb alignment has not yet been defined.
- The undergrounding would require the premature removal of a row of significant trees along the northern boundary of the site.

Council's Land Use planners have indicated that it is likely that the undergrounding will be secured as part of the Planning Proposal negotiations. The proposed modification would provide the applicant additional time to agree formally to defer this requirement to the Planning Proposal stage, while still providing Council with certainty that the works will ultimately be completed.

As such deferral of the works is considered to be acceptable.

6.2 Section 4.55(2): Evaluation

The development consent has been taken up (Stage 1 is complete) and as such the applicant can seek to benefit from Section 4.55(2) 'Other Modifications' of the EPAA Act 1979 subject to the following requirements:

Section 4.55(2)(a) - Substantially the same development

The proposal is considered to be substantially the same development in that the general function, location, scale and form of the precinct would not change.

Section 4.55(2)(b) - Consultation with public bodies

No concurrence was required from any minister, public authority or approval body as part of the original application. As such, no further consultation is required under this clause.

Section 4.55(2)(c) - Notification

Notification is addressed in Section 5 above.

6.3 Section 4.55(3): Evaluation

Under Section 4.55(3) of the EP&A Act 1979 in determining an application for modification, in addition to relevant matters under section 4.15, the consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified. The reasons for granting approval to the original development application as stated by the then) Sydney West Central Planning Panel are assessed below:

Reason for Approval	Consistency
1. The development will result in productive re-use and rehabilitation of a site formerly used for waste disposal purposes.	The application as modified continues to achieve this outcome.
2. There will be public benefit from both the provision of additional housing on the site and remediation to improve its currently contaminated state.	The application as modified continues to achieve this outcome. Provision of the allowable density of housing would be compromised without the additional height proposed.
3. The local and broader transport network can satisfactorily accommodate the forecast increase in travel demand.	The proposal results in a negligible change to the anticipated transport demand. As such the originally approved density is considered to be acceptable.
4. The proposal satisfies nearly all applicable development standard and guidelines, with the exception of minor variations to the maximum building height standard.	The application as modified continues to satisfy most development standards with the exception of the height limit. While the quantum of the height breaches are not themselves considered to be minor, given the limited site coverage of the non-compliant buildings, the overall impact is considered to be minor.
5. In regard to the building height breach, a request to vary the standard has been received. The Panel believes that adherence to the standard is unnecessary in this instance and that there are sufficient planning and public interest grounds to vary the standard (basically, that a superior built form will result). Overall, the Panel believes this written request is satisfactory and approves the variation.	As discussed above the proposed breaches of the height standard are considered to achieve a superior built form to a complying scheme.

7. Planning Agreements

The subject application is not subject to a planning agreement.

8. The Regulations

The proposed modifications would not impact on the relevant regulations, compliance with which are conditioned in the original consent.

9. The Likely Impacts of the Development

The likely impacts of the development have been considered in this report. On the topic of amenity impacts on adjoining properties, the following specific commentary is provided.

Privacy

The proposed buildings forms do not move closer to any existing or proposed dwellings.

The separation of the proposal to the nearest existing development is approximately 43m and to the nearest proposed development (within the wider concept plan site) is approximately 28m.

The commonly accepted standard for the protection of privacy is at least 24m of separation.

While the increase height will result in a slightly higher vantage point above adjoining properties, the significant distance is considered to adequately offset the perceived loss of privacy.

Overshadowing

The increased buildings heights will primarily increase overshadowing within the subject site itself.

The applicant has provided updated shadow diagrams which demonstrate that the additional height does not result in any adjoining facades within the wider concept plan from receiving less than 2 hours of solar access at mid-winter.

Views

The NSW Land and Environment Court maintains a long standing planning principle to assist in making a planning decision on view loss. The steps, as established in *Tenacity Consulting v Waringah* [2004] NSWLEC 140, are as follows:

1. *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*

The DCP identifies the views from Victoria Road as 'significant district views'. The adjoining residential properties opposite the site currently enjoy views of Wentworth Point, Olympic Park, Rhodes and the Parramatta River.

2. *The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more*

difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The views are obtained from living areas, sitting or standing, across the front boundary.

3. *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*

The view loss is likely to be severe.

4. *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

The proposal seeks up to 12 storeys, in an area zoned for 8 storeys. However, it is the complying part of the envelope which results in the view loss. In other words, the additional height does not result in further loss of views than already approved. A more skilful design would not result in less view loss. The applicant provided a view analysis from 2 vantage points which demonstrates that the complying envelopes result in the view loss.

As such the impact on views is considered to be reasonable.

10. Site Suitability

The site was determined to be suitable for the proposed uses as part of the original consent. The proposed modifications are not considered to affect the original decision.

11. Public interest

Subject to implementation of the modified conditions of consent outlined in the recommendation below, no circumstances have been identified to indicate this proposal would be contrary to the public interest.

12. Disclosure of Political Donations and Gifts

No disclosures of any political donations or gifts have been declared by the applicant or any organisation / persons that have made submissions in respect to the proposed development.

13. Development Contributions

The proposal does not result in a change to the cost of works for Stage 1 and the Concept Plan itself does not include any works. As such there is no requirement to modify the original condition relating to Development Contributions.

14. Summary and Conclusion

The application has been assessed relative to Sections 4.15 and 4.55 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls.

The height non-compliances are considered to be acceptable as they are necessary to addresses site-specific constraints and result in a preferable urban design outcome in comparison to a height compliant scheme. Council's Urban Design team and Design Excellence Advisory Panel support the revised building envelopes.

On balance the modifications are considered to be satisfactory and approval is recommended subject to revised conditions.

15. Recommendation

That, pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act 1979, the Sydney Central City Planning Panel grant consent to modify Consent reference DA/1157/2016 (as modified) as shown on the plans submitted with the modification application and subject to modified conditions of consent as outlined in **Appendix 1**.