



SYDNEY CENTRAL CITY PLANNING PANEL

COUNCIL ASSESSMENT REPORT

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| Panel Reference | PPSSCC-103 |
| DA Number | DA/295/2020 |
| LGA | City of Parramatta Council |
| Proposed Development | Construction of 4 x 6-11 storey residential flat buildings and 2 x 10-12 storey mixed use buildings containing 412 residential units, supermarket, retail shop; 3 basement levels providing 521 car parking spaces; earthworks; landscaping; tree removal; signage zones; strata, stratum and Torrens title subdivision. The proposal constitutes stage 4 of concept plan approval DA/1157/2016. |
| Street Address | 659 Victoria Road, MELROSE PARK NSW (Lot 11 DP1238936) |
| Applicant | M Projects Pty Ltd (on behalf of PAYCE) |
| Owner | Tyriel Developments Pty Ltd |
| Date of DA lodgement | 25 May 2020 |
| Number of Submissions | Three |
| Recommendation | Approval subject to conditions |
| Regional Development Criteria (Schedule 7 of SEPP SRD 2011) | Pursuant to Clause 2 of Schedule 7 of State Environmental Planning Policy (State and Regional Development) 2011, the development has a capital investment value of more than \$30 million. |
| List of all relevant s4.15(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 No. 64 – Advertising and Signage• 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 this report for the Panel's consideration | Attachment 1 – Architectural Drawings Attachment 2 – Landscape Report & Drawings Attachment 3 – Design Report Attachment 4 – Subdivision Plans Attachment 5 – DA/1157/2016/H Concept Plan Conditions (as proposed to be modified) Attachment 6 – DA/1157/2016/H Concept Plan Drawings (as proposed to be modified) |

| | |
|-----------------------------------|---|
| Clause 4.6 requests | <ul style="list-style-type: none"> • Parramatta Local Environmental Plan 2011 • Clause 4.3 – Height of Buildings • Clause 4.4 – Floor Space Ratio • B4 Mixed Use |
| Summary of key submissions | <ul style="list-style-type: none"> • View Loss / Loss of Outlook • Height Non-Compliance • Visual Impact / Bulk • Loss of Privacy • Out of Character with Area • Traffic Impact • Loss of Green Space • Loss of Ventilation • Loss of Solar Access • Construction Amenity Impacts (Noise, Vermin) |
| 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**

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**

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

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

Conditions

Have draft conditions been provided to the applicant for comment? **Yes**

1. Executive Summary

The proposal provides for construction of 4 x 6-11 storey residential flat buildings and 2 x 10-12 storey mixed use buildings around a central communal landscaped courtyard. The application includes 412 residential units, a supermarket, and a retail shop above a 3 storey shared basement. The development represents the fourth and final stage in a larger concept plan approval.

The proposed buildings generally follow the form for the site envisaged by the approved Concept Plan, Parramatta LEP 2011 and Parramatta DCP 2011. While the proposal includes height non-compliances, they are considered to be appropriate as they result in a superior urban design and result from site-specific constraints including fill required, overland flow flooding, and the provision of public roads and open space in the wider concept plan area.

The development has been subject to review by Council's Design Excellence Advisory Panel (DEAP) and is considered to be consistent with State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide (ADG), providing future occupants with good amenity.

The site constraints include contamination and overland flow flooding. The applicant has demonstrated that the design adequately accounts for and addresses these risks.

The amenity impacts on adjoining and nearby properties are considered to be reasonable based on the high-density character envisaged for the area. It is considered that the proposed increase in traffic would not compromise the efficient function of the local road network.

The application has been assessed relative to section 4.15 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant State and local planning controls. On balance, the proposal has demonstrated a satisfactory response to the objectives and controls of the applicable planning framework. Accordingly, consent is recommended subject to conditions.

2. Key Issues

Concept Plan

• **Front Setbacks –**

- Control: 3m (east, south), 5m (north, west)
- Proposed: As little as 1.4m
- Assessment: Non-compliances are primarily isolated incidents. However, western setback to NSR-2 is less than 5m in parts, which may set a precedent for a reduced setback on future lots in the Planning Proposal site to the south.

Parramatta Local Environmental Plan 2011

• **Height of Buildings (cl. 4.3)** – Acceptability of clause 4.6 variation request:

- Control: <28m
- Proposed: Up to 40.3m (44% variation)
- 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.

Apartment Design Guide

- **Pedestrian Access and Entries (cl. 3G)** – Poor Amenity to Building 2 entrance. A condition is included requiring that this entrance be improved.

- **Acoustic Privacy (cl. 4H) –**
 - The proposal include a unit directly adjacent the service vehicle entrance including a window to it. A condition is recommended requiring that this unit be deleted.
- **Façade (cl. 4M) –** Southern façade lacks articulation. On balance not considered to be sufficient justification to refuse application.

Parramatta Development Control Plan 2011

- **Views (cl. 2.4.1) –** The proposal results in loss of district views from adjoining properties. The view loss is considered to be acceptable as the view loss would still exist with a compliant proposal and there is no reasonable alternative location for the proposed buildings.

3. Site Description, Location and Context

3.1 Site

The site is located in the centre of the wider concept plan site. The total site area is approximately 14,275m². The site slopes down significantly, a total of approximately 12m, from a height of 41m AHD to the north-west and a low of 29m AHD to the south-east.



Figure 1. Locality Map (concept site in blue, area of proposed works in red)

3.2 Site Improvements & Constraints

The area the subject of the proposed works contains a single storey temporary exhibition home building and associated car park. The wider concept plan site is currently subject to building, remediation and earthworks. The adjoining lots to the south contain industrial buildings and associated offices.

The site is contaminated due to its previous use as a Council rubbish tip. A remediation action plan was approved as part of the Concept Approval. The land is likely to contain Class 5 acid sulphate soils.

The preferred route of Parramatta Light Rail – Stage 2, at the time of writing, is along Hope Street, 600m to the south of the site.

3.3 Site History

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.

3.4 Statutory 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:

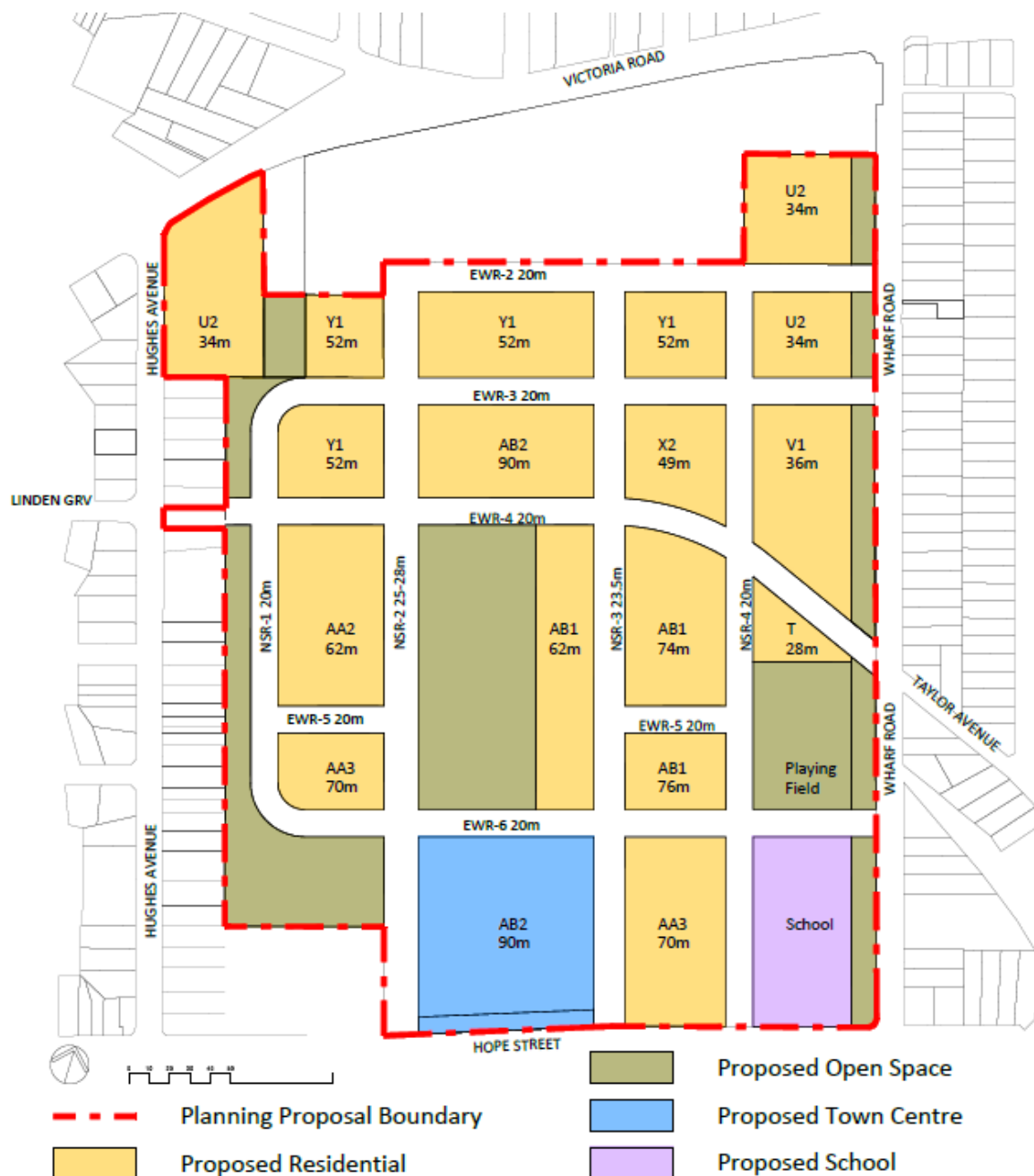


Figure 2. Draft Masterplan envisaged by Melrose Park North Planning Proposal.

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.

East West Road 2 (DA/337/2018)

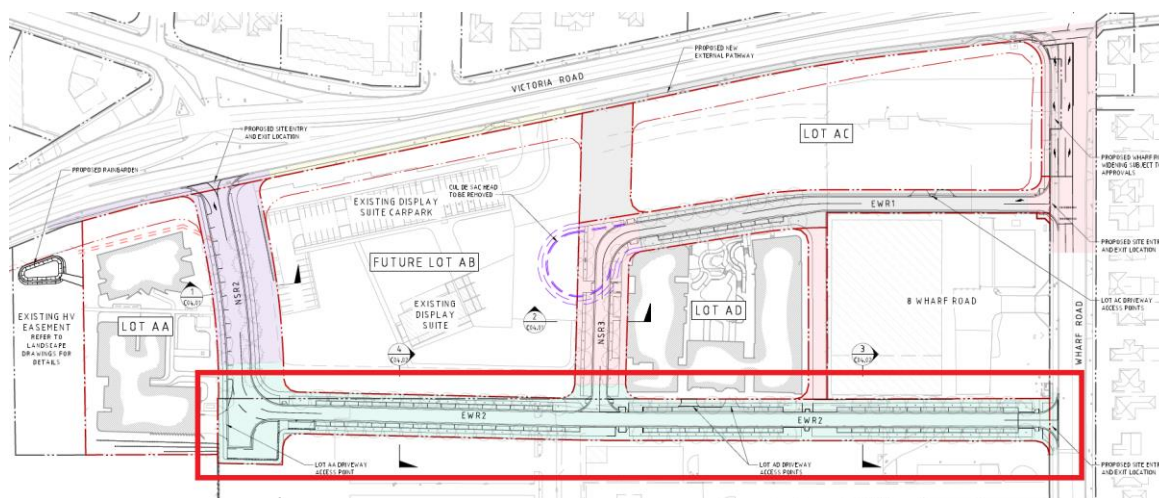


Figure 3. Approved 'East West Road 2' (EWR-2) to south of site.

East West Road 2 (EWR-2), Council DA Ref: DA/337/2018, was granted deferred commencement consent by the Parramatta Local Planning Panel on 21 August 2018 and became operational on 11 September 2019. The road is currently under construction. The subject application relies on EWR-2 for vehicular access and drainage. As such a condition is also included requiring this road be completed prior to occupation of the proposal.

3.5 Application History

The original Stage 4 application (DA/389/2019) was withdrawn by the applicant in response to concerns raised by Council officers. Subsequently, the proposal has been through design development in response to pre-lodgement advice issued by Council officers and Council's Design Excellence Advisory Committee.

4. Approved Concept Plan

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 concept plan, as proposed to be modified, is outlined in Figure 4 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, subject application)

The concept application has been modified several times. A further modification to the concept plan is currently under concurrent assessment (DA/1157/2016/H). The modification seeks to make changes in particular to the approved building envelopes to provide greater consistency with the subject application.

The concept plan as proposed to be modified is outlined below:

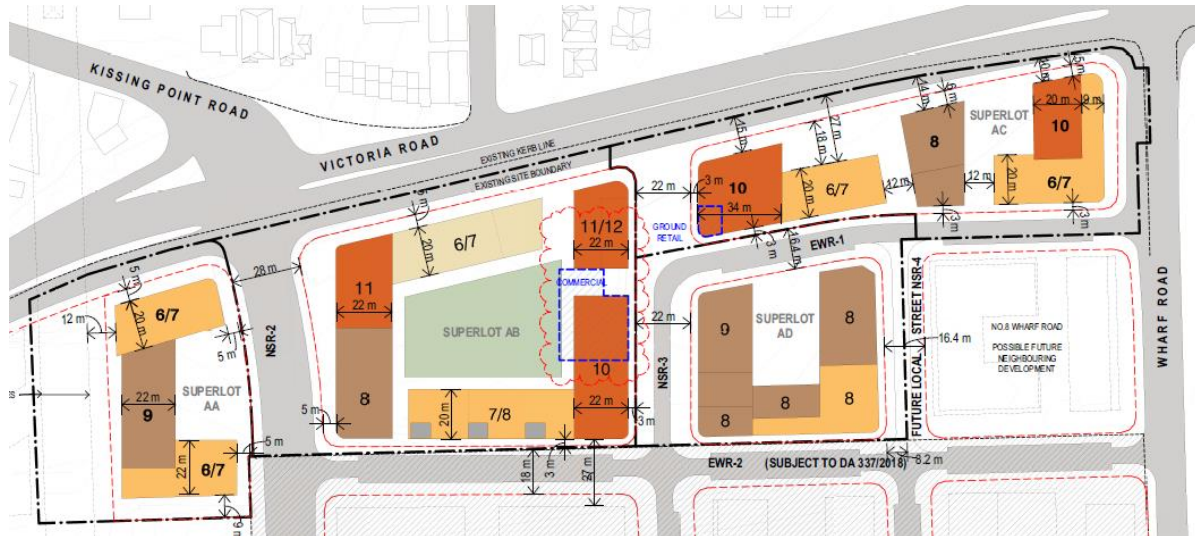


Figure 4. Concept Plan as proposed to be modified by DA/1157/2016/H.

5. The Proposal

The proposal involves the following:

- Excavation of 3 basement levels comprising:
 - 521 below ground car parking spaces (46 accessible);
 - 412 residential occupant
 - 52 residential visitor
 - 47 commercial/retail spaces
 - 10 car share bays
 - 33 motorcycle parking spaces;
 - 206 bicycle parking spaces; and
 - Storage.
- Construction of 6 x 6 - 12 storey buildings comprising:
 - 412 residential units, comprising:
 - 16 x studio;
 - 154 x 1-bed;
 - 201 x 2-bed;
 - 41 x 3-bed;
 - (inclusive of 42 adaptable units and 83 liveable units).
 - 2 x Retail Premises (1,050m²), comprising:
 - Supermarket
 - Pharmacy
- Communal open space;
- Removal of 39 trees;

- Landscaping;
- Signage zones (7 x Business Identification);
- Torrens Title subdivision into 2 lots:
 - Development Lot (12,935m²)
 - Victoria Road Widening Lot (1,230m²)
- Stratum subdivision of development lot into 3 parts:
 - Lot 1 – Residential
 - Lot 2 – Retail (Supermarket)
 - Lot 3 – Retail (Pharmacy)
- Strata subdivision of residential stratum.

The applicant has provided a Groundwater Management Plan to justify not constructing a waterproof basement. The Plan outlines how intercepted groundwater will be reused on site.

The applicant seeks to construct the development in 3 stages:

- Stage A: Earthworks, excavation, construction of basements and up to podium, construction of Buildings 1 and 2 (151 units) and construction of retail unit and supermarket;
- Stage B: Construction of Buildings 3 and 4 (128 units) and construction of communal open space
- Stage C: Construction of Buildings 5 and 6 (133 units).

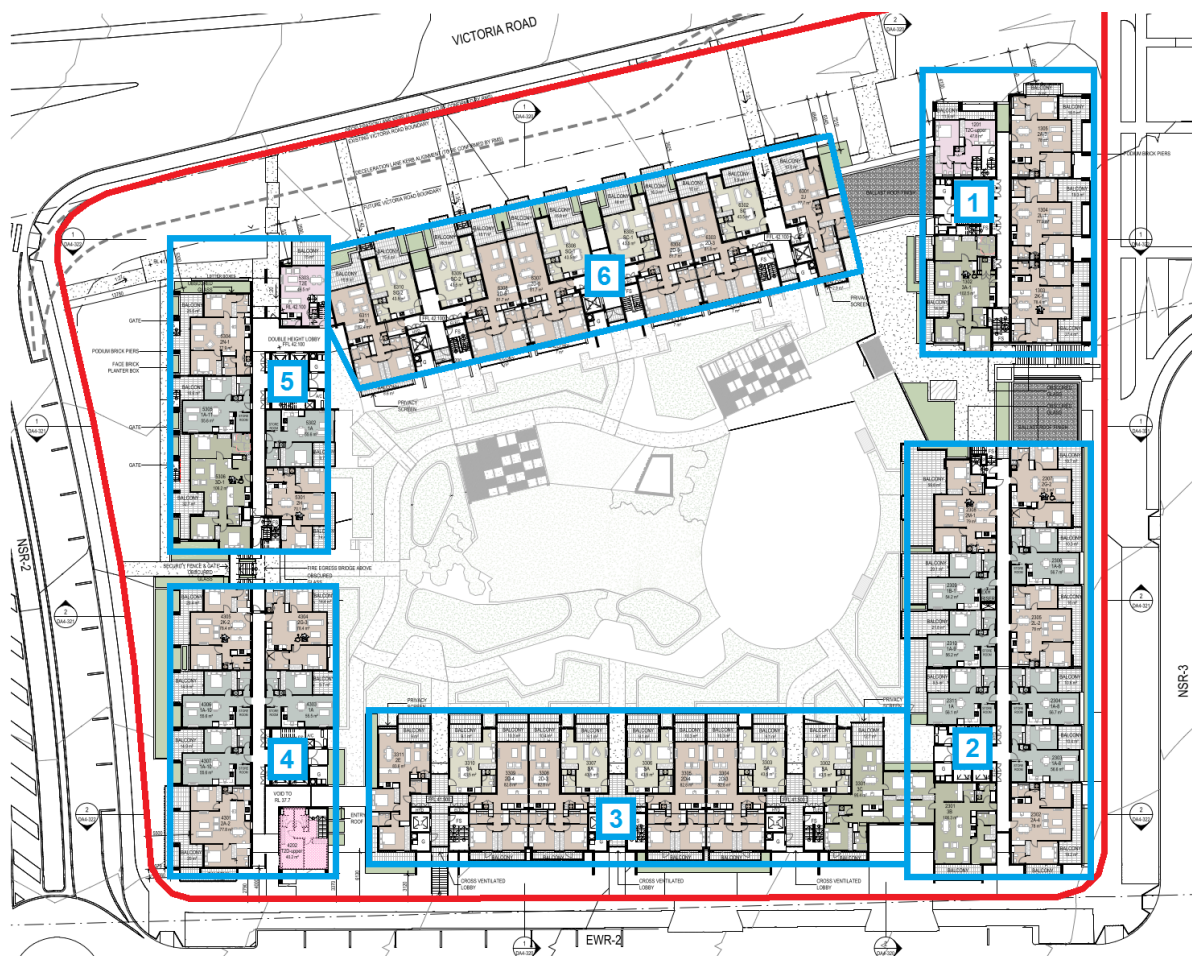


Figure 5. Proposed level 3 floor plan (blue lines defining buildings, red defines the development lot).



Figure 6. Photomontage of proposal as viewed from the corner of proposed streets NSR-3 and Victoria Road looking south-west.

5.1 Summary of Amended Proposal

During the course of assessment the applicant submitted revised drawings in response to concern's raised by Council officers, the Sydney Central City Planning Panel (SCCPP) and the Design Excellence Advisory Panel (DEAP):

- Building 6 front setback (to Victoria Road) increased by 1.13m and large tree planting proposed in Victoria Road setback;
- Supermarket relocated from basement of Building 1 to ground level of Building 2 in order to minimise flood risk;
- Reconfiguration of ground level of Building 1 to reduce conflicts between uses and provide increased setback to the adjacent park.
- Direct communal and private access from Victoria Road to Building 6 to improve wayfinding;
- Wintergardens provided for Building 6 to improve occupant amenity (reduce noise from Victoria Road);
- Façade changes, including introduction of additional materials and colours, to improve visual interest.

Other unsolicited amendments include the following:

- Reduction in car parking from 565 to 521 spaces (-44 retail spaces);
- Deletion of medical centre;
- Deletion of 1 of 2 retail units;
- Increase in motorcycle parking;
- Minor changes to dwelling mix;

6. Referrals

The following referrals were undertaken during the assessment process:

6.1 Design Excellence Advisory Panel

Parramatta's Design Excellence Advisory Panel reviewed the application on a total of 3 occasions. The applicant proactively responded to the Panel's recommendations at each stage. The Panel are now largely supportive of the proposal. Their latest comments are provided in full at Appendix 3. The jury's remaining concerns are addressed via draft conditions of consent.

6.2 Sydney Central City Planning Panel

The matters raised by the Panel at its briefing meeting 1 July 2020 are addressed below:

| Issues Raised | Comment |
|---|---|
| Differentiation of building design across a development of this scale. Materials, colours and articulation of building facades in general and the southern façade in particular. | Subsequent to the briefing, the applicant submitted a revised design seeking to address these concerns. The revised design was reviewed by DEAP and found to be acceptable (see Section 6.1 above) |
| Design advice to be received from Council's DEAP. | |
| Proposed setbacks to Victoria Road in relation to internal amenity, landscaping potential and implications for additional building heights. | Subsequent to the briefing, the applicant submitted a revised design that included increased setbacks from Victoria Road, additional large tree planting in that setback, as well as wintergardens for most single aspect units facing the road. The height of these buildings did not increase as a result of these revisions. |
| Wayfinding and accessibility from the street to Building 6, and a street address for the building. | Subsequent to the briefing, the applicant submitted a revised design which included direct communal access to Building 6 from Victoria Road. |
| Amenity of some apartments, including units with undefined windowless rooms, potential acoustic issues for a unit directly adjacent to the service vehicle entrance, and studio units with single orientation to Victoria Road. | <p>Subsequent to the briefing, the applicant submitted a revised design to include wintergardens to most of the single aspect units to Victoria Road.</p> <p>The applicant did not delete the unit adjacent the service vehicle entrance but rather sought to justify with recommendations from an acoustic consultant. Notwithstanding, for the reasons outlined in the report below, it is recommended that this unit be deleted and the space used to provide a more appropriate communal entrance to Building 2.</p> <p>The proposal still includes a considerable number of units with windowless rooms. The applicant has indicated that these will be storage rooms. As these rooms are small a condition is recommended requiring that storage joinery be built into these rooms, to reduce the likelihood they will be misused as habitable rooms.</p> |
| Widths of internal roads in relation to streetscape design and functionality for parking, service vehicles etc. | The application does not include any internal roads. Notwithstanding, Council's traffic team are actively engaged in reviewing the surrounding road network design. The applicant submitted perspectives of the proposal in the context of the approved buildings to the east and west. DEAP found these to be helpful in coming to their conclusions. |

| | |
|---|--|
| Neighbours' submissions in relation to character, building height, views and privacy. | Submissions are considered in detail in Section 15 below. The applicant provided view analyses that demonstrated that the non-compliances did not contribute to loss of significant views. The character and amenity impacts are considered to be acceptable as outlined in Section 7 below. |
|---|--|

6.3 External

| Authority | Comment |
|---|--|
| Roads and Maritime Services | Acceptable, subject to conditions. |
| Endeavour Energy | Acceptable, subject to conditions. |
| Office of Premier & Cabinet (Archaeology) | Acceptable, subject to conditions. |
| Sydney Water | Acceptable, subject to conditions. |
| Quantity Surveyor | The proposed cost of works are considered to reasonably relate to the proposed development. |
| Water NSW | No objection in principle to dewatering. Noted applications have been received for Water Access Licenses for the site. |

6.4 Internal

| Authority | Comment |
|--|---|
| Development/Catchment Engineer | Acceptable, subject to conditions. |
| Tree & Landscape Officer | Sought to retain trees along Victoria Road setback. However, accepted applicant's argument that the regrading necessary to accommodate urban design and flooding outcomes would not enable retention of these trees. It is anticipated that Victoria Road will be widened in the medium term future, which would require removal of these trees regardless. Sufficient setbacks are provided to allow for permanent and temporary replacement trees. Otherwise acceptable, subject to conditions. |
| Traffic and Transport | Raised concern with regard to under provision of off-street parking. As outlined in Section 10.1 below, the provision of car parking is considered to be acceptable, in keeping with the previous approvals under the concept plan. Otherwise acceptable, subject to conditions. |
| Environmental Health – Acoustic | Insufficient justification provided for acoustic treatment of unit adjacent service vehicle entry. Otherwise acceptable, subject to conditions. |
| Environmental Health – Contamination | Acceptable, subject to conditions. |
| Environmental Health – Waste | Acceptable, subject to conditions. |
| Public Domain | No public domain proposed. Made recommendations with regard to on-site matters that have been addressed by the applicant and in this report. |
| Urban Design | Acceptable. |
| Social Outcomes | No objection. |
| Civil Assets - Waste | Acceptable, subject to conditions. |
| Heritage | Acceptable. |
| Accessibility | Acceptable, subject to conditions. |
| Environmental Sustainable Design | Acceptable, subject to conditions. |
| Strategic Planning (assessing adjoining Planning Proposal) | Acceptable. |

7. Environmental Planning and Assessment Act 1979

The sections of the Environmental Planning and Assessment Act 1979 (the Act) which require consideration are addressed below:

7.1 Section 1.7: Application of Part 7 of Biodiversity Conservation Act 2016

The site is not known to be inhabited by any threatened species, populations or ecological communities, or their habitats.

7.2 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 \$30 million.

7.3 Section 4.15: Evaluation

This section specifies the matters that a consent authority must consider when determining a development application, and these are addressed in the Table below:

| Provision | Comment |
|---|---------------------|
| Section 4.15(1)(a)(i) - Environmental planning instruments | Refer to section 8 |
| Section 4.15(1)(a)(ii) - Draft environmental planning instruments | Refer to section 9 |
| Section 4.15(1)(a)(iii) – Development control plans | Refer to section 10 |
| Section 4.15(1)(a)(iiia) - Planning Agreement | Refer to section 11 |
| Section 4.15(1)(a)(iv) - The Regulations | Refer to section 12 |
| Section 4.15(1)(a)(v) - Coastal zone management plan | Not applicable. |
| Section 4.15(1)(b) - Likely impacts | Refer to section 13 |
| Section 4.15(1)(c) - Site suitability | Refer to section 14 |
| Section 4.15(1)(d) – Submissions | Refer to section 15 |
| Section 4.15(1)(e) - The public interest | Refer to section 16 |

Table 2: Section 4.15(1)(a) considerations

7.4 Section 4.24(2): Compliance with Concept Approval

Section 4.24(2) of the Act requires that,

While any consent granted on the determination of a concept development application for a site remains in force, the determination of any further development application in respect of the site cannot be inconsistent with the consent for the concept proposals for the development of the site.

The proposal constitutes Stage 4 of concept approval DA/1157/2016. As such, the proposal must be consistent with the requirements of this consent.

The assessment below relates to the concept plan as proposed to be modified (see concurrent modification application DA/1157/2016/H).

An assessment of the proposal against the concept plan conditions of the consent is provided below:

| Concept Plan Condition ¹ | Assessment of Stage 4 Compliance | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|---|---------|----------|------|-----------|-----------|-----------|-----|---------------|-----|-----|-----|----------------|----------|----------|-----|------------------------|----|--|------|-------------------------|----|--|------|------------------------|----|---|------|-------------------------|----|--|------|-------------------------|-------|----|------|---------------|------|------|-----|-------------------------|----|-------|------|---------------|------|------|-----|-------------------------|-----|-----|-----|---------------|---------------------|------------------------------|------|-------------------------|---|---|-----|---------------|------|-------|-----|-------------------------|----|----|-----|---------------|------|------|-----|-------------------------|-----|-----|-----|---------------|------|------|-----|
| <div>1. Approved Concept Plan</div> <div>B = Basement P = Podium T = Tower</div> | <div>The proposal is not considered to be inconsistent with the footprints, setbacks and envelopes set out in the approved concept plan. See Figure 4 above.</div> <table><tr><th>MEASUREMENT</th><th>CONCEPT</th><th>PROPOSED</th><th>PASS</th></tr><tr><td>Total GFA</td><td>36,420sqm</td><td>36,414sqm</td><td>Yes</td></tr><tr><td>Approx. Units</td><td>426</td><td>412</td><td>Yes</td></tr><tr><td>Commercial GFA</td><td>1,070sqm</td><td>1,050sqm</td><td>Yes</td></tr><tr><td>Street Setbacks (East)</td><td>3m</td><td>B: 1.6m – 3.2m P: 1.5m – 2.9m T: 3.0m – 4.0m</td><td>Part</td></tr><tr><td>Street Setbacks (South)</td><td>3m</td><td>B: 5.8m - 6.2m P: 1.7m – 9.6m T: 2.0m – 9.6m</td><td>Part</td></tr><tr><td>Street Setbacks (West)</td><td>5m</td><td>B: 2.9m – 13.7m P: 1.4m – 13.7m T: 4.1m – 15.0m</td><td>Part</td></tr><tr><td>Street Setbacks (North)</td><td>5m</td><td>B: 4.2m – 8.6m P: 2.6m – 6.4m T: 3.7m – 7.4m</td><td>Part</td></tr><tr><td>Core 1 Height (Storeys)</td><td>11/12</td><td>12</td><td>Part</td></tr><tr><td>Core 1 Max RL</td><td>74.5</td><td>74.3</td><td>Yes</td></tr><tr><td>Core 2 Height (Storeys)</td><td>10</td><td>10-11</td><td>Part</td></tr><tr><td>Core 2 Max RL</td><td>68.2</td><td>68.1</td><td>Yes</td></tr><tr><td>Core 3 Height (Storeys)</td><td>7-8</td><td>7-8</td><td>Yes</td></tr><tr><td>Core 3 Max RL</td><td>61.15 / 64.6 (lift)</td><td>63.0 (pergola) / 64.6 (lift)</td><td>Part</td></tr><tr><td>Core 4 Height (Storeys)</td><td>8</td><td>8</td><td>Yes</td></tr><tr><td>Core 4 Max RL</td><td>65.7</td><td>65.45</td><td>Yes</td></tr><tr><td>Core 5 Height (Storeys)</td><td>11</td><td>11</td><td>Yes</td></tr><tr><td>Core 5 Max RL</td><td>78.0</td><td>78.0</td><td>Yes</td></tr><tr><td>Core 6 Height (Storeys)</td><td>6-7</td><td>6-7</td><td>Yes</td></tr><tr><td>Core 6 Max RL</td><td>62.5</td><td>62.5</td><td>Yes</td></tr></table> <div>For the most part the non-compliances are minor, relate to isolated areas, and do not constitute inconsistency with the concept envelopes.</div> <div>However, the western setback to NSR-2 is less than 5m on the southern side of Building 4. It is proposed to include this setback for NSR-2 in the draft DCP to the south of the site and as such the possible precedent for reduced western setbacks on future lots in the Planning Proposal site to the south should be considered. Stepping Building 4 back to the east by itself is not ideal as it would affect solar compliance of the units within the building. Further, the western setback of Building 5 complies, and as such there is minimal justification to seek a more significant western setback for both buildings together. As such the non-compliance in this case is not considered to be reason to refuse the application.</div> <div>On balance it is considered that the site characteristics at this location are such that the encroachments produced by this development could not automatically be justified further south where separate detailed precinct design work has informed the appropriateness of the proposed controls.</div> | MEASUREMENT | CONCEPT | PROPOSED | PASS | Total GFA | 36,420sqm | 36,414sqm | Yes | Approx. Units | 426 | 412 | Yes | Commercial GFA | 1,070sqm | 1,050sqm | Yes | Street Setbacks (East) | 3m | B: 1.6m – 3.2m P: 1.5m – 2.9m T: 3.0m – 4.0m | Part | Street Setbacks (South) | 3m | B: 5.8m - 6.2m P: 1.7m – 9.6m T: 2.0m – 9.6m | Part | Street Setbacks (West) | 5m | B: 2.9m – 13.7m P: 1.4m – 13.7m T: 4.1m – 15.0m | Part | Street Setbacks (North) | 5m | B: 4.2m – 8.6m P: 2.6m – 6.4m T: 3.7m – 7.4m | Part | Core 1 Height (Storeys) | 11/12 | 12 | Part | Core 1 Max RL | 74.5 | 74.3 | Yes | Core 2 Height (Storeys) | 10 | 10-11 | Part | Core 2 Max RL | 68.2 | 68.1 | Yes | Core 3 Height (Storeys) | 7-8 | 7-8 | Yes | Core 3 Max RL | 61.15 / 64.6 (lift) | 63.0 (pergola) / 64.6 (lift) | Part | Core 4 Height (Storeys) | 8 | 8 | Yes | Core 4 Max RL | 65.7 | 65.45 | Yes | Core 5 Height (Storeys) | 11 | 11 | Yes | Core 5 Max RL | 78.0 | 78.0 | Yes | Core 6 Height (Storeys) | 6-7 | 6-7 | Yes | Core 6 Max RL | 62.5 | 62.5 | Yes |
| MEASUREMENT | CONCEPT | PROPOSED | PASS | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Total GFA | 36,420sqm | 36,414sqm | Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Approx. Units | 426 | 412 | Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Commercial GFA | 1,070sqm | 1,050sqm | Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Street Setbacks (East) | 3m | B: 1.6m – 3.2m P: 1.5m – 2.9m T: 3.0m – 4.0m | Part | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Street Setbacks (South) | 3m | B: 5.8m - 6.2m P: 1.7m – 9.6m T: 2.0m – 9.6m | Part | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Street Setbacks (West) | 5m | B: 2.9m – 13.7m P: 1.4m – 13.7m T: 4.1m – 15.0m | Part | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Street Setbacks (North) | 5m | B: 4.2m – 8.6m P: 2.6m – 6.4m T: 3.7m – 7.4m | Part | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Core 1 Height (Storeys) | 11/12 | 12 | Part | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Core 1 Max RL | 74.5 | 74.3 | Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Core 2 Height (Storeys) | 10 | 10-11 | Part | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Core 2 Max RL | 68.2 | 68.1 | Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Core 3 Height (Storeys) | 7-8 | 7-8 | Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Core 3 Max RL | 61.15 / 64.6 (lift) | 63.0 (pergola) / 64.6 (lift) | Part | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Core 4 Height (Storeys) | 8 | 8 | Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Core 4 Max RL | 65.7 | 65.45 | Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Core 5 Height (Storeys) | 11 | 11 | Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Core 5 Max RL | 78.0 | 78.0 | Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Core 6 Height (Storeys) | 6-7 | 6-7 | Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Core 6 Max RL | 62.5 | 62.5 | Yes | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <div>2. Development Sequence</div> | <div>This condition specifies that remediation works must be completed prior to works. Separate conditions are included in the recommendation to reinforce this requirement.</div> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

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| 3. Design Modifications | This condition protected any town centre to be built immediately to the south of this site. The concurrent modification application seeks to delete this condition as the proposed town centre will now be provided further south (see latest plan for adjoining site to south at Figure 2 above). |
| 4. The Approved Building Envelopes | The application is assessed against SEPP 65 below and found to be acceptable. Regarding the 5m setback to NSR-2 see discussion under 'Approved Concept Plan' section above. |
| 5. Road Widening | This condition requires widening of Wharf Road prior to Stage 4 occupation certificate. The Wharf Road works are subject to a separate application (DA/1025/2017). |
| 6. Lots to be Dedicated for Public Use | This application include Torrens title subdivision of the development lot from the Victoria Road widening lot. A condition is included requiring restrictive covenants be placed on the road widening lot stating its public nature and that its floor space allocation has been exhausted. |
| 7. Site Floor Space | The Concept Plan outlined a maximum of 36,420m ² for Stage 4. The proposal includes 36,414m ² GFA and as such complies with the requirement. |
| 8. Electromagnetic Radiation | Does not relate to Stage 4. |
| 9. Public Safety | This condition is a construction stage requirement that will continue to apply. |
| 10. Maximum Height | See Condition 1 above. |
| 11. Concept Drainage Plan | This condition requires a Concept Drainage Plan be prepared for the entire site prior to release of construction certificate Stage 1. A drainage plan for the site was subsequently approved. The proposal is considered to be consistent with the drainage plan. |
| 12. Site Audit Statement Prior to any Building Works | Council's Environmental Health officer is satisfied that the site can be made appropriate for the proposed use subject to conditions of consent. |
| 13. Site Investigation & Site Audit Statement | This condition is a construction stage requirement that will continue to apply. |
| 14. Hazardous/Intractable Waste Disposed Legislation | This condition is a construction stage requirement that will continue to apply. |
| 15. Imported Fill | This condition is a construction stage requirement that will continue to apply. |
| 16. Signage Contamination – | This condition is a construction stage requirement that will continue to apply. |
| 17. Requirement to Notify About New Contamination Evidence | This condition is a construction stage requirement that will continue to apply. |
| 18. Discharge of Contaminated Groundwater | This condition is a construction stage requirement that will continue to apply. |
| 19. Contaminated Waste to Licensed EPA Landfill | This condition is a construction stage requirement that will continue to apply. |
| 20. Wayfinding Signage Strategy | This condition requires wayfinding signage for the wider concept plan site prior to Stage 4 occupation certificate. |
| 21. Road and Transport Design – General | Does not relate to DA approval for Stage 4 as no roads are proposed. |

¹ For full wording of conditions see Attachment 6.

| | |
|--|--|
| 22. Environmental Performance | The proposal meets the Environmental Performance targets outlined in the concept plan as it includes: a) A BASIX energy score >35; b) A BASIX water score >48; c) Commitment to dual water piping (to be confirmed prior to OC); d) Provision of 5 electric car share spaces; and e) Use of sustainable timber (to be confirmed prior to OC). |
| 23. Road Dedications | Requires dedication of road reserves at a mutually agreeable time. A condition is included to this effect for the road widening lot. |
| 24. Drainage Easement | See below. |
| 25. Overland Flow | The applicant has proposed temporary OSD tanks in EWR-2 to the south of the site to manage overland flow from the wider concept plan site. Council officers approved this temporary strategy on 07/08/2020. This solution means a drainage easement for downstream properties is not required. A condition is included requiring completion of this road (and its associated drainage infrastructure) prior to any OC. |
| 26. Consistency with Concept Plan | Subject of this table. |
| 27. Landscaping | This condition requires landscaping be completed prior to occupation certificate. |
| 28. Power Lines | This condition requires power lines be undergrounded prior to any OC for Stage 4 Occupation Certificate. The associated concept plan modification application (DA/1157/2016/H) seeks to defer this requirement to final OC. This condition will continue to apply regardless of the subject application. |
| 29. Land Dedications (Open Space) | Does not relate to DA approval for Stage 4. |

8. Environmental Planning Instruments

8.1 Overview

The instruments applicable to this application comprise:

- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Infrastructure) 2007
- SEPP (State and Regional Development) 2011
- SEPP (Sydney Harbour Catchment) 2005
- SEPP No. 55 (Remediation)
- SEPP No. 64 (Advertising and Signage)
- SEPP No. 65 (Design Quality of Residential Apartment Development)
- Parramatta Local Environmental Plan 2011

Compliance with these instruments is addressed below.

8.2 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application is accompanied by BASIX certificates that list sustainability commitments. The concept plan conditions outline increased score requirements of at least 35 for energy and 48 for water. The BASIX certificate achieves these increased standards. The requirements outlined in the BASIX certificates have been appropriately outlined on the plans. Council's sustainability consultant is of the view that the NatHERS modelling must be revised to better align with the proposed design. A condition is included to this effect. A condition is included to ensure the BASIX commitments are fulfilled during the construction of the development.

8.3 State Environmental Planning Policy (Infrastructure) 2007

The proposal is considered to constitute 'traffic generating development' as it proposes more than 200 car parking spaces. As such, the proposal was referred to Roads and Maritime Services (RMS), who did not raise any objection, subject to conditions of consent.

8.4 State Environmental Planning Policy (State and Regional Development) 2011

As this proposal has a Capital Investment Value of more than \$30 million, Part 4 of this Policy provides that the Sydney Central City Planning Panel is the consent authority for this application.

8.5 State Environmental Planning Policy (Sydney Harbour Catchment) 2005

This Policy, which applies to the whole of the Parramatta local government area, 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 planning principles and controls for the catchment as a whole. 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 would be achieved through the imposition of suitable conditions to address the collection and discharge of water during construction and operational phases.

8.6 State Environmental Planning Policy No. 55 – Remediation of Land

Phase 1 and 2 site investigations, submitted with the concept plan application (DA/1157/2016), outlined that contamination was present on the site at levels which required remediation prior to the proposed use. A remedial action plan (RAP) was also submitted outlining a remediation strategy.

The concept approval included a deferred commencement condition requiring a revised RAP for the whole concept plan site (which included the subject site), and review of the suitability of the RAP by an accredited site auditor. This information was subsequently submitted to Council's Environmental Health team who found the remediation information sufficient to ensure the site could be made suitable for the proposed use of the site.

The site would need to be validated with a site audit statement at the completion of remediation works and prior to any building works commencing. A condition is included to this effect. As such, the proposal is considered to satisfy the requirements of SEPP 55.

8.7 State Environmental Planning Policy No. 64 – Advertising and Signage

SEPP 64 was gazetted on 16 March 2001 and aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high-quality design and finish. The SEPP applies to all signage and requires that development consent must not be issued unless the consent authority has had regard to the relevant matters for consideration.

The proposed development includes the following 7 business identification signage zones:

- East Elevation –
 - 2 x wall signs: 2.3m (L) x 0.6m (H)
 - 2 x wall signs: 4.3m (L) x 0.6m (H)
- North Elevation – 1 x wall sign: 2.3m (L) x 0.6m (H)

- South Elevation –
 - 1 x wall sign: 2.3m (L) x 0.6m (H)
 - 1 x wall sign: 4.3m (L) x 0.6m (H)

Clause 8 of SEPP 64 requires assessment of the signage zones against Schedule 1 Assessment Criteria. An assessment is provided below:

| Assessment Criteria | Assessment |
|--|---|
| 1. Character of the Area | |
| Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? | Yes. The site is located in an area zoned for mixed use development. Signage zones are considered to be compatible with the zoning. |
| Is the proposal consistent with a particular theme for outdoor advertising in the area or locality? | N/A. There is no identifiable or legislative theme for advertising in the area. |
| 2. Special Areas | |
| Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas? | The site adjoins a site containing a heritage item. However, due to the large size of both sites, the proposal is not in the visual catchment of the heritage items and as such is not considered to be a reason to limit the signage. |
| 3. Views and Vistas | |
| Does the proposal obscure or compromise important views? | No. The signs are within the envelope of the building. |
| Does the proposal dominate the skyline and reduce the quality of vistas? | No. The signs are within the envelope of the building. |
| Does the proposal respect the viewing rights of other advertisers? | Yes. The proposal will not block any other signs. |
| 4. Streetscape, setting or landscape | |
| Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape? | Part. The number of signs is considered to be excessive given the streetscape is mostly residential. The following signs are considered to be reasonable in that they identify the businesses pedestrian and vehicular entries: North elevation sign, East elevation 2 x larger wall signs, South elevation larger wall sign. The other signage zones are considered to be excessive and as such a condition is included deleting them. |
| Does the proposal contribute to the visual interest of the streetscape, setting or landscape? | Subject to future detail application. |
| Does the proposal reduce clutter by rationalising and simplifying existing advertising? | N/A. There is no existing signage to rationalise. |
| Does the proposal protrude above buildings, structures or tree canopies in the area or locality? | No. The signs are a maximum of 10m above the adjacent ground level |
| 5. Site and building | |
| Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located? | Part. The number of signs is considered to be excessive given the scale and use of the proposed buildings; further justification for the condition deleting 3 of the signage zones. |
| Does the proposal respect important features of the site or building, or both? | Yes, the signage zones are appropriately located on the podiums of the buildings. |
| Does the proposal show innovation and imagination in its relationship to the site or building, or both? | Subject to future detail application. |

| 6. Associated devices and logos with advertisements and advertising structures | |
|---|---------------------------------------|
| Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed? | Subject to future detail application. |
| 7. Illumination | |
| Would illumination result in unacceptable glare? | Subject to future detail application. |
| Would illumination affect safety for pedestrians, vehicles or aircraft? | Subject to future detail application. |
| Would illumination detract from the amenity of any residence or other form of accommodation? | Subject to future detail application. |
| Can the intensity of the illumination be adjusted, if necessary? | Subject to future detail application. |
| Is the illumination subject to a curfew? | Subject to future detail application. |
| 8. Safety | |
| Would the proposal reduce the safety for any public road? | Subject to future detail application. |
| Would the proposal reduce the safety for pedestrians or bicyclists? | Subject to future detail application. |
| Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas? | Subject to future detail application. |

As such the size and location of 4 of the 7 proposed signage zones are considered to be acceptable. A condition is included deleting 3 of the signs and requiring a future DA for the detailed signage design.

8.8 State Environmental Planning Policy No. 65 (Design Quality of Residential Apartment Development)

SEPP 65 applies to the development as the proposal is for a new building, is more than 3 storeys in height and would have more than 4 units. SEPP 65 requires that residential flat buildings satisfactorily address 9 design quality principles, be reviewed by a Design Review Panel, and consider the recommendations in the Apartment Design Guide.

Design Quality Principles

A design statement addressing the quality principles prescribed by SEPP 65 was prepared by the project architect and submitted with the application. The proposal is considered to be consistent with the design principles for the reasons outlined below:

| Requirement | Council Officer Comments |
|---|--|
| Principle 1: Context and Neighbourhood Character | <p>The area is currently characterised by industrial and low-density residential uses. The site is zoned B4 mixed use and its planning controls envisage high density mixed use development. The proposal is consistent with this desired future character of the area.</p> <p>The concept plan is comprised of varied building typologies – courtyard, perimeter block, and row apartments. These typologies are consistent with the current planning for the adjoining planning proposal site to the south.</p> <p>The buildings have been reviewed by Council's Design Excellence Advisory Panel, a trio of architectural and landscaping experts, and have been generally found to be acceptable. As such the proposal is considered to establish a good precedent for the future neighbourhood character.</p> <p>The proposal provides for high quality landscape treatments that would provide for an up-grade to the neighbourhood character.</p> |

| Requirement | Council Officer Comments |
|--|--|
| Principle 2: Built Form and Scale | <p>The height and location of the proposed buildings are not inconsistent with the built form approved under the concept plan building envelopes (as proposed to be modified).</p> <p>The buildings are considered to be sufficiently modulated to add visual interest and reduce apparent bulk.</p> |
| Principle 3: Density | <p>The density of the proposal is consistent with the floor space distribution approved under the concept plan (as proposed to be modified).</p> |
| Principle 4: Sustainability | <p>Condition 22 of the concept plan approval sets out the environmental performance requirements for all stages of development. The requirements exceed the minimum requirements set out by the relevant legislation.</p> <p>The proposal includes a BASIX certificate which demonstrates that the proposal would satisfy the more stringent criteria defined by the concept plan (i.e. Energy score of 35 proposed versus 25 usually required and Water score of 48 proposed versus 40 usually required). The certificates require sustainable development features to be installed into the development inclusive of water efficient fixtures and energy saving devices. The proposal also includes photovoltaics at roof level and central hot water systems.</p> <p>The proposal also groups A/C condensers on the roof space which would reduce the visual impact of individual condensers on balconies.</p> <p>The proposal include 5 electric car charging spaces and 10 car share spaces.</p> <p>The other requirements of the concept plan, including dual water piping and use of sustainable timber will continue to apply to this stage.</p> |
| Principle 5: Landscape | <p>This development proposed is consistent with the objectives of the Parramatta DCP and provides on-structure planting and setback planting to create an appropriate landscape setting.</p> |
| Principle 6: Amenity | <p>Generally, the proposal as amended is considered to be satisfactory in this regard, optimising internal amenity through appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, outlook, efficient layouts and service areas.</p> <p>Several conditions are included to optimise amenity, including storage joinery for windowless rooms, and deletion of the unit adjacent the service vehicle entrance. See further discussion below.</p> |
| Principal 7: Safety | <p>The proposal is considered to provide appropriate safety for occupants and the public for the following reasons:</p> <ul style="list-style-type: none"> · The proposal provides additional passive surveillance to the surrounding street network. · The central open space is appropriately demarcated with gates to outline public and communal space. · The vehicular entries have security gates. · The entry lobbies will provide appropriate access. · Landscaping is used to demarcate public and private spaces. |
| Principal 8: Housing Diversity and Social Interaction | <p>The proposal provides additional housing choice in close proximity to public transport.</p> <p>The large and varied communal open spaces would provide for social interaction. A gym and meeting rooms are also provided.</p> <p>No affordable housing is proposed within the development. The proposed development is compliant with the density (FSR) control under the LEP for the wider concept plan site and there is no statutory or policy requirement to provide affordable housing as part of the development.</p> |

| Requirement | Council Officer Comments |
|--------------------------------|--|
| Principle 9: Aesthetics | The proposed development is considered to be appropriate in terms of the composition of building elements, textures, materials and colours and reflect the use, internal design and structure of the resultant building. The proposed building is considered aesthetically to respond to the environment and context, contributing in an appropriate manner to the desired future character of the area. |

Design Review Panels

The proposal was referral to Council's Design Excellence Advisory Panel. See Appendix 3 for their comments.

Apartment Design Guide

The relevant provisions of the ADG are considered within the following assessment table:

| Guidance | Requirement | Proposal | Compliance |
|---|--|---|--|
| Part 3 | | | |
| 3B: Orientation | The buildings are laid out in a perimeter block shape with a lower building to the north to limit overshadowing to the central open space and internal facing units. Overshadowing of the adjoining industrial land to the south is minimised by the buildings stepping down to the south. | | |
| 3C: Public Domain Interface | The public domain interface is considered to positively contribute to the streetscape. The separation between the private and public domains is established by stairs, level changes, low walls/fences, and planting. Direct access to ground floor residential units is provided where possible. | | |
| 3D: Communal & Public Open Space | Min. 25% of site area (3,234m ²) | 4,100m ² of communal open space inclusive of central courtyard (3,425m ²) and Building 3 rooftop open space (675m ²). | Yes |
| | Min. 50% direct sunlight to main communal open space for min. 2hrs 9am & 3pm, June 21 st (1,617m ²) | While the central courtyard does not meet the 50% requirements (~38%), the rooftop open space of Building 3, which receives almost uninterrupted sunlight, accounts for the difference. | Yes (subject to condition requiring all units to have access to Building 3 rooftop open space) |
| | <p>The proposal includes a central communal open space area, raised slightly above grade, which includes a planted area, an open lawn, fitness equipment, a children's climbing wall and a pergola containing BBQs and a picnic setting. This communal area is accessible internally from all lift cores.</p> <p>A gym and meeting rooms are also provided internally at ground level. Within the gym is a WC which will also be available to users of the communal open space.</p> <p>The proposal also includes a landscaped roof terrace to Building 3 which includes a pergola with BBQ, planting, picnic areas and a WC.</p> <p>Overall, these areas are considered to provide good amenity to residents and their visitors. A condition is included requiring that these areas be accessible to all tenants.</p> | | |
| 3E: Deep Soil | Min. 7% with min. dimensions of 6m (905m ²) | 967m ² (dim. >6m) (7.5%) +648m ² (dim. 3m-6m) | Yes |
| | While it is noted that the applicant seeks to rely on part of the central communal open space, this area has not been included in the above calculation as it is located above the basement and as such is not considered to constitute deep soil. | | |

| Guidance | Requirement | Proposal | Compliance |
|--|---|---|---------------------------------|
| 3F: Visual Privacy | Tower 1 – Tower 2 Floor 2-3: 12m Floor 4-7: 18m Floor 8+: 24m | 13.5m | Yes (subject to privacy screen) |
| | Tower 2 – Tower 3 Floor 2-3: 12m Floor 4-7: 18m Floor 8+: 24m | 6m | Yes (subject to privacy screen) |
| | Tower 3 – Tower 4 Floor 2-3: 12m Floor 4-7: 18m Floor 8+: 24m | 5.6–6.5m | Yes (subject to privacy screen) |
| | Tower 4 – Tower 5 Floor 2-3: 12m Floor 4-7: 18m Floor 8+: 24m | 4.8m | Yes (subject to privacy screen) |
| | Tower 5 – Tower 6 Floor 2-3: 12m Floor 4-7: 18m | 5-6.5m | Yes (subject to privacy screen) |
| | Tower 6 – Tower 1 Floor 2-3: 12m Floor 4-7: 18m | 12.6m | Yes (subject to privacy screen) |
| | <p>The required privacy screens are clearly outlined on the drawings.</p> <p>The proposal is setback more than 24m from all adjoining and nearby residential occupiers and as such is not considered likely to have an unacceptable privacy impact.</p> | | |
| 3G: Pedestrian Access and Entries | <p>Each building has one or more pedestrian entries with direct access to an adjacent street.</p> <p>While the direct entrance to the western core of Building 3 is step only, alternative step-free access is provided via the internal courtyard. The applicant's Access Report did not raise concern with this approach. Regardless, the applicant must comply with the requirements of the Disability Discrimination Act.</p> <p>The entrance to Building 2 is considered to have low amenity as it is recessed from the street frontage by 10.5m down a narrow 1.8m path. Owing to the south facing nature of this entry it will be dark and uninviting. As the adjacent unit is also considered to have unacceptable amenity (see discussion under Guidance 4H below) it is recommended that a condition be included deleting the unit and required a revised larger and more inviting entry.</p> <p>Separate entries have been provided for pedestrian and vehicles.</p> | | |
| 3H: Vehicle Access | <p>The proposal incorporates two driveways on the south side of the site off EWR-2. One services the underground parking spaces and the other services the loading dock. Two driveways for a block of this size is considered to be acceptable. The vehicular entry points are separated from pedestrian entry points by more than the recommended 3m to improve pedestrian safety and comfort. Waste collection is made from the loading dock.</p> | | |
| 3J: Bicycle and car parking | The site is not located within 800m of a railway station or light rail stop and as such local parking controls apply. | N/A | N/A |
| Part 4 | | | |
| 4A: Daylight / Solar Access | Min. 2hr for 70% of apartments living & POS 9am & 3pm mid-winter (≥ 289); | 265 out of 412 (64%). However, 303 out of 412 (74%) if window extended to 3:30pm. | No (minor) |

| Guidance | Requirement | Proposal | Compliance |
|--|---|--|---|
| | Max 15% apartments receiving no direct sunlight 9am & 3pm mid-winter (<=61) | 18 out of 412 (4%) | Yes |
| | <p>While the proposal includes a minor non-compliance in units achieving the required solar access between 9am and 3pm, more than necessary receive 2 hours of solar access if the assessment window is extended to 3:30pm. This is considered to be acceptable.</p> <p>The applicant has provided a solar study which demonstrates that redevelopment of the adjoining blocks to the south can be achieved with compliant solar access. See further assessment under Section 10.1 below.</p> | | |
| 4B: Natural Ventilation | Min. 60% of apartments below 9 storeys naturally ventilated (>=224) | 222 out of 373 apartments (60%) | No (minor) |
| | Building depth (glass line to glass line): <=18m | <16.3m | Yes |
| | Condition is included requiring that the units which rely on a skylight to achieve cross ventilation have an operable roof light. | | |
| 4C: Ceiling heights | Min. 2.7m habitable Min 2.4m non-habitable Min 3.3m commercial | 2.7m 2.7m 3.4m-5.1m | Yes Yes Yes |
| 4D: Apartment size & layout | 0B – Min 35m ² 1B – Min 50m ² 2B – Min 71m ² (1 bath) 2B – Min 75m ² (2 baths) 3B+ – Min 95m ² (2 baths) | 0B – >35m ² 1B – >50m ² 2B – >70m ² 2B – >75m ² 3B – >95m ² | Yes Yes Yes Yes Yes |
| | All rooms to have a window in an external wall with a total minimum glass area not less than 10% of the floor area of the room. | Significant number of 1-bed units (i.e. 2311) and some 3-bed units (i.e. 2301) have rooms without windows. | No |
| | Habitable room depths max. 2.5 x ceiling height (6.75m) | Up to 6m | Yes |
| | Max. habitable room depth from window for open plan layouts: 8m. | Up to 8.9m | Part (Minor) |
| | Min. internal areas: Master Bed - 10m ² Other Bed - 9m ² | >10m ² >9m ² | Yes Yes |
| | Min. 3m dimension for bedrooms (excl. wardrobe space). | All bedrooms have a minimum dimension of 3m excluding wardrobes. | Yes |
| | Min. width living/dining: 0B – 3.6m 1B – 3.6m 2B – 4m 3B – 4m Cross-through: 4m | >3.6m >3.6m >3.9m >34m >3.9m | Yes Yes No (Minor) Yes No (Minor) |
| | The dimensional non-compliances relate only to a small percentage of units. The non-compliances are considered to be minor and not unacceptably compromise the amenity of future occupants. A condition is included requiring that the windowless rooms be fitted with storage joinery to reduce the likelihood that they are used as habitable rooms. | | |

| Guidance | Requirement | Proposal | Compliance |
|---|---|--|---|
| 4E: Private open space & balconies | Min. area/depth: 0B - 4m ² 1B - 8m ² /2m 2B - 10m ² /2m 3B - 12m ² /2.4m Ground Floor - 15m ² /3m | >4m ² >8m ² /2m >9.5m ² /2m (3 fail) >12m ² /2.4m >15m ² /2.5m (1 fails) | Yes Yes Part (Minor) Yes Part (minor) |
| | <p>While the proposal is slightly non-compliant in the dimensions of some of the balconies, the provision of an excess of good quality communal open space areas is considered to be sufficient to ensure acceptable amenity for future applicants.</p> <p>Access is provided directly from living areas and where possible, secondary access is provided from primary bedrooms.</p> <p>The separation between the private and public domains is established by walls, fences and planters.</p> | | |
| 4F: Common circulation & spaces | Max. apartments off circulation core on single level: 8 - 12 | 3 - 11 | Yes |
| | Corridors >12m length from lift core to be articulated. | While the corridors longer than 12m from the lift core are not articulated, they have openings at both end to provide natural light. | No (acceptable) |
| 4G: Storage | 0B – Min 4m ³ (x16) 1B – Min 6m ³ (x154) 2B – Min 8m ³ (x201) 3B+ – Min 10m ³ (x41) Total – 3,006m ³ Min. 50% required in Basement (1,503m ³) | <p>Store rooms are provided on the below ground sections of Level 2. Details of individual cages are not specified on drawings. Most 1-bed units have dedicated storage rooms.</p> <p>There is significant additional space in the basement which can be used to accommodate storage.</p> <p>A condition is included requiring provision of the appropriate storage volumes for each unit.</p> | Yes, subject to condition. |
| 4H: Acoustic Privacy | <p>The proposal has generally been designed so that like-use areas of the apartments are grouped to avoid acoustic disturbance of neighbouring apartments where possible. Noisier areas such as kitchens and laundries are also located away from bedrooms when possible.</p> <p>The proposal includes a unit (#2101) directly adjacent the service vehicle entrance including a window to it. The ADG recommends at least a 3m separation between units and driveways. Council's Acoustic consultant is of the view that the applicant's acoustic report does not adequately demonstrate internal noise levels within the unit will be acceptable subject to the treatment proposed. The unit is also one of the units which receives no direct solar access. As such, the unit is considered to have unacceptable amenity on merit. A condition is included recommended that the unit be deleted.</p> | | |

| Guidance | Requirement | Proposal | Compliance |
|------------------------------------|---|----------|------------|
| 4J: Noise and pollution | <p>The application is accompanied by an acoustic report which includes testing of existing noise levels and recommended amelioration measures. North facing units, which are exposed to Victoria Road noise, require secondary acoustic glazing to comply. A condition is included requiring the recommendation of the report be implemented.</p> <p>An air quality report submitted with the concept plan application confirmed that air quality levels will be within standard criteria.</p> | | |
| 4K: Apartment Mix | <p>The proposed units vary in size, amenity, orientation and outlook to provide a mix for future home owners. A variety of apartments are provided across all levels of the apartment building. Further consideration of the residential mix is provided under Section 10.1 below.</p> | | |
| 4L: Ground Floor Apartments | <p>Direct access to ground floor units is provided where gradients allow. Ground floor units are raised above the adjacent ground level to provide privacy and security. The landscape plan outlines screen planting along street walls to provide additional privacy for occupants.</p> | | |
| 4M: Facades | <p>The facades are primarily composed of an expressed brick podium with lighter framed balcony elements above. Balcony walls are generally used at lower levels to provide an architecturally solid base and privacy to units. Open balustrades are used at upper levels for architectural lightness and to maximise occupant views.</p> <p>Vertical breaks and framed balconies are provided in the longer facades to add articulation.</p> <p>The colour palette is primarily staid, consisting of light brick and paint, and thus relies on the articulation to provide interest. However, colour is used on the southern elevation of Building 3 to assist in reducing the long length of this façade. While relying on colour to provide visual interest is not ideal, it is limited to Building 3 and as such is not considered to be reason to refuse the application.</p> <p>To maximise depth in the facades a conditions is included requiring that all windows have minimum 150mm reveals.</p> <p>To ensure the facades are appropriately detailed a condition is included requiring submission of 1:50 sections for review by Council officers prior to CC.</p> <p>Subject to the above conditions the proposed facades are considered to be sufficiently visually interesting.</p> | | |
| 4N: Roof design | <p>The proposed buildings are to have flat roofs which is considered to be appropriate given the building typology and the height non-compliances. Rooftop plant and lift overrun are suitably setback to ensure they would not be readily visible from the street. Solar photovoltaics are provided to several of the roofs. A roof top communal open space has been incorporated into building 3, increasing the amenity for occupants.</p> | | |
| 4O: Landscape Design | <p>The application includes a landscape plan which demonstrates that the proposed building would be adequately landscaped given its high density form. The proposal includes well landscaped ground floor and rooftop spaces which would provide ancillary open space for occupants. The proposed landscaping would also adequately provide habitat for local wildlife; contributing to biodiversity.</p> | | |
| 4P: Planting on structures | <p>The drawings outline that planting on structures would have adequate soil depth to accommodate good quality planting. Notwithstanding, a condition is included specifying requirements for planters.</p> | | |
| 4Q: Universal Design | 20% Liveable Housing Guidelines Silver Level design features (>83) | 84 | Yes |
| | <p>The site is considered to be appropriately barrier free with level and lift access and lift access from the basement and to the upper residential floors of the development. Vehicular and pedestrian entries are well separated. It is considered that more than 20% of units as set out can achieve the Liveable Housing silver standards. A condition is included to this effect.</p> | | |

| Guidance | Requirement | Proposal | Compliance |
|---------------------------------|---|----------|------------|
| 4T: Awnings and Signage | No awnings are proposed which is considered to be appropriate given the primarily residential nature and ground levels setbacks of the proposed buildings. Subject to a condition limiting their quantity, the proposed signage zones are considered to be appropriate for identifying the businesses on site. | | |
| 4U: Energy Efficiency | The BASIX Certificate demonstrates the development surpasses the pass mark for energy efficiency in compliance with the concept plan requirements. | | |
| 4V: Water management | The BASIX Certificate demonstrates the development surpasses the pass mark for water conservation in compliance with the concept plan requirements. | | |
| 4W: Waste management | All units are provided with sufficient areas to store waste/recyclables internally before disposal. Waste chutes, with associated collection rooms in the basement, are provided in each building core. From there waste will be transported to the main waste storage room adjacent the service bay. Recycling bins will be located on each floor, adjacent each waste chute. From there recycling will be transported to the main waste storage room adjacent the service bay. Waste will be collected off-street from the servicing area. Appropriate conditions are included to ensure smooth maintenance and operations of the waste management system. A construction waste management plan is required via condition. | | |
| 4X: Building maintenance | The proposed materials are considered to be sufficiently robust, sufficiently minimising the use of render and other easily stained materials. | | |

8.9 Parramatta Local Environmental Plan 2011

The relevant objectives and requirements of the Parramatta Local Environmental Plan 2011 have been considered in the assessment of the development application and are contained within the following table.

| Development standard | Proposal | Compliance |
|--|---|------------|
| 2.3 Zoning B4 – Mixed Use | The proposed uses, outlined below, are permissible with development consent in the zone. <ul style="list-style-type: none"> Residential Flat Building Shop Top Housing Commercial Premises Business Identification Signs Subdivision | Yes |
| Zone Objectives | The proposal is considered to be in keeping with the objectives of the B4 Mixed Use zone for the following reasons: <ul style="list-style-type: none"> The proposal provides an appropriate mix of compatible land uses The proposal provides additional residential accommodation and commercial floor space in an accessible area. The commercial floor space will add to the vibrancy of the area. The proposal provides new informal public pedestrian links. The proposal will not detract from the unique qualities or character of special areas. | Yes |
| 4.1 Minimum Subdivision Lot Size No minimum specified for site | N/A | N/A |

| Development standard | Proposal | Compliance |
|---|--|--|
| 4.3 Height of Buildings Concept Plan (RL): Core 1: 74.5m Core 2: 68.2m Core 3: 61.15m/64.6m Core 4: 65.7m Core 5: 78.0m Core 6: 62.5m Map Control (Above Existing Ground Level): 28m | 74.4m 68.1m 63.0m / 64.6m (lift) 65.45m 78m 62.5m Up to 40.3m | Part (as per concept) No, (12.3m, 44% breach) [see below] |
| 4.4 Floor Space Ratio Concept Plan: 36,420m ² Map Control: 2:1 (28,550m ²). | 36,414m ² 36,414m ² The Concept Plan outlined a maximum of 36,420m ² for Stage 4. The proposal states 36,414m ² GFA which would comply with the requirement. The proposal includes 'naturally ventilated lift lobbies' to Building 3. In order for these to be excluded from GFA the applicant proposes open louvered security doors. A condition is included requiring these spaces remain open to the elements. | Yes (as per concept) No (see below) |
| 4.6 Exceptions to Development Standards | Clause 4.3 'Height' – The concept plan approval as proposed to be modified allows height breaches across the site. As outlined under Section 7.4 above, the proposal is not considered to be inconsistent with the Concept plan approval. However, some minor non-compliances with the concept plan are proposed. Specifically, the pergola at roof level of Building 3. Clause 4.4 'FSR' – The concept plan overall complies with the allowable GFA across the wider site. While the proposal 'exceeds' the allowable FSR based on the area of the site, it is consistent with the distribution of floor space approved in the concept plan. A Clause 4.6 variation request is not considered to be strictly necessary but is provided for abundant caution should the consent authority be of the view that one is necessary. The Clause 4.6 variation requests are considered to be well founded in that it has demonstrated that there are site-specific reasons for contravening the development standards. | Yes |
| 5.10 Heritage conservation | The site of the proposed development is not individually heritage listed. However, it adjoins the listed item 'Landscaping' at 38-42 Wharf Road. The adjoining listing relates to remnant trees and two moveable heritage items. The proposal does not impact on these trees and is well separated from the two moveable items. As such the proposal is not considered to have an unacceptable impact on the heritage significance of the adjoining item. | Yes |

| Development standard | Proposal | Compliance |
|--|--|------------|
| 6.1 Acid Sulfate Soils Class 5 | The proposal is above 5m AHD and is not likely to lower the water table. | N/A |
| 6.2 Earthworks | <p>A significant drop in elevation occurs between Victoria Road and Hope Street. The intervening block, of which the subject site is a part, has historically been locally flattened into a series of steps to provide for large warehouses and factory buildings. The desired future character of mixed use and residential development, and the associated road network, requires that this stepping be flattened to achieve a consistent shallower gradient to maximise accessibility. The applicant has provided block wide cut and fill diagrams demonstrating the proposed cut and fill on the subject site is consistent with this wider objective.</p> <p>The proposal includes cut of up to 3m and fill of up to 7m not including the proposed basement (See Figure 7 below).</p> <p>The applicant has demonstrated that the proposal would have an acceptable impact on drainage patterns.</p> <p>The works will maximise accessibility by minimising gradients on the adjoining streets.</p> <p>The fill is sufficiently setback from the nearest adjoining residential properties so as not to impact their amenity. The closest residential properties are located on Hughes Avenue over 175m from the western extent of the site and Wharf Road over 200m from the eastern extent of the site. As such, the proposal is considered to have an acceptable impact on the amenity of adjoining and nearby properties.</p> <p>The potential for disturbing archaeology relics is covered by the recommended condition of consent provided by the Office of Environment and Heritage.</p> <p>The proposal includes the relevant sediment controls plans. Further sediment control conditions are included in the draft consent.</p> | Yes |
| 6.3 Flood Planning | <p>The site is not directly affected by fluvial flooding but is subject to overland flow.</p> <p>The applicant has undertaken overland flow analysis and has designed the proposed floor levels to be at or above the adopted flood planning level. As such the proposal is considered to adequately respond to the risk.</p> <p>The proposal contributes to additional overland flow flooding. In-road stormwater detention tanks are approved on EWR-2 to the south as part of a separate application. Council's engineers consider these tanks would appropriately manage overland flows.</p> | Yes |

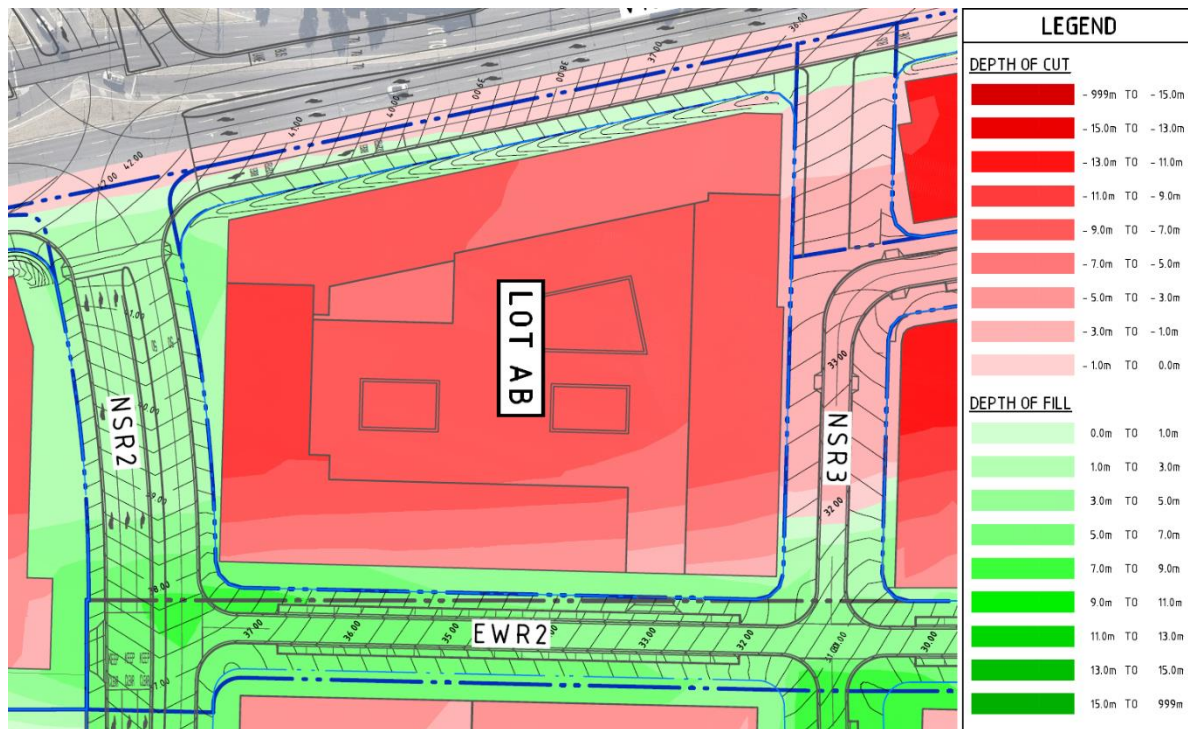


Figure 7. Proposed earthworks cut and fill diagram for Stage 4 (listed here as 'Lot AB').

8.9.1 Clause 4.6 Variation Assessment - Height

Clause 4.6 of PLEP 2011 allows the consent authority to provide an appropriate degree of flexibility in applying certain development standards, where flexibility would achieve better outcomes.

Clause 4.6(1) – Objectives of clause 4.6

The objectives of this clause are:

- “(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances”

Clause 4.6(2) – Operation of clause 4.6

The operation of clause 4.6 is not limited by the terms of Clause 4.6(8) of this LEP, or otherwise by any other instrument.

Height of Building Variation Request

The proposal does not comply with the Clause 4.3 'Height of Buildings' development standard, as outlined in the table above and figure below, and as such the applicant has submitted a request to vary the height standard under Clause 4.6 of the PLEP 2011.



Figure 8. Exceedance beyond height standard as depicted on western facade (lower red line represents existing ground level, upper red line represents 28m height standard).

Clause 4.6(3) - The Applicant's written request

Clause 4.6(3) requires that the applicant provide a written request seeking to justify contravention of the development standard. The request must demonstrate that:

- “(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.”*

The applicant has provided the following environmental planning grounds to justify the non-compliance with the development standard (relevant extracts provided). The full request is included at Appendix 1.

The proposed increases in height are considered appropriate and provide for a superior development compared to a compliant development. The tallest components of the site are strategically located to the north of the site. The proposal results in a scale of development that is appropriate within the emerging Melrose Park Precinct and provides an acceptable built form transition to existing neighbouring residential and public domain and internal road developments.

The variation to the height standard will not result in a breach of the approved overall GFA or FSR for the [concept plan site] with the additional population required to ensure the success of the proposed supermarket and retail uses.

The proposal is consistent with the strategic direction for the site. The proposal will provide for 412 dwellings within the Melrose Park Growth Precinct and GPOP in line with housing targets and the Parramatta Local Strategic Planning Statement. The proposal will also generate up to 120 jobs through the provision of additional commercial uses.

The proposed development is considered to better satisfy the objectives of the height of buildings development standard and the B4 Mixed Use zone by delivering a more appropriate development outcome for the site and the broader area.

The proposed increase in building height should be supported as the:

- increase in building height will not result in unacceptable environmental impacts*
- proposal results in a superior urban design outcome*
- proposal results in a superior public domain outcome*
- proposal achieves a high level of residential amenity*

- *proposal appropriately responds to the site's constraints*
- *proposal provides the density required to support the proposed commercial uses in the B4 Mixed Use Zone approved overall GFA and FSR for the [concept plan site] is maintained*
- *proposal better aligns with the building heights endorsed by Council for the adjoining Melrose Park North Precinct*

An assessment to determine whether compliance with the standard is 'unreasonable and unnecessary' has been undertaken. It is considered that there are 'sufficient planning grounds' to support the variation and recommend the variation be approved for the following reasons:

Unreasonable and Unnecessary

An assessment against the relevant case law established in the NSW Land and Environment Court has been undertaken below. These cases establish tests to assist in determining whether a variation under Clause 4.6 of an LEP is acceptable and whether compliance with the standard is unreasonable or unnecessary.

Wehbe v Pittwater Council

Case law in the NSW Land & Environment Court has considered circumstances in which an exception to a development standard may be well founded. In the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827 the presiding Chief Judge outlined the following five (5) circumstances:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*

| Height of Building Objectives | Proposal |
|--|---|
| <i>(a) to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan,</i> | The adjoining R2 low-density residential area to the north has a height limit of 9m. The adjoining IN1 industrial area to the south has a height limit of 12m. As such, the site's height limit, of 28m, was already inconsistent with this objective. However, the planning proposal to the south, which has gateway approval, currently anticipates heights of up to 90m. As such, the proposed non-compliances would still result in buildings that provided the recommended transition if the planning proposal were to be adopted. |
| <i>(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,</i> | Council's DEAP panel found the visual impact of the proposal to be acceptable. The visual impact of the development will, from most viewpoints, be less than is suggested by the quantum of non-compliance owing to the fill proposed on site (building height is measured from existing ground level). Amenity impacts on adjoining and nearby properties are considered to be acceptable for the reasons outlined in this report. |
| <i>(c) to require the height of future buildings to have regard to heritage sites and their settings,</i> | The site is adequately separated from the adjoining heritage fabric such that it would have negligible impact on its setting. |

| Height of Building Objectives | Proposal |
|--|---|
| <i>(d) to ensure the preservation of historic views,</i> | As outlined in Section 10.1 below, the proposal is considered to adequately share views. |
| <i>(e) to reinforce and respect the existing character and scale of low density residential areas,</i> | While the site is not located in a low-density residential area, it is adjacent to one. The site is separated from the adjoining low-density area to the north by a major road with at least 40m between the existing low-density buildings and the proposed buildings. It is considered that the proposed separation is sufficient to respect the adjacent low-density area. |
| <i>(f) to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes.</i> | The site is not located within a commercial centre. The proposal for taller buildings results in smaller building footprints and wider gaps between buildings and as such allows greater sky exposure and daylight to the public domain, including the park adjoining Building 1. |

2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

The applicant does not challenge that the underlying objectives are not relevant.

3. *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable*

If compliance was required the same density of development could be provided in a series of 8 storey buildings (see Figure 9 below). However, it is considered that such an outcome would have a worse visual impact (contrary to Objective b) as it would be monotonous and there would be less gaps between the buildings. Further, applying a consistent height with less building breaks, would likely result in less sky exposure (contrary to Objective f).

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable*

The applicant does not contend that the height standard has been abandoned.

5. *The zoning of particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.*

The applicant does not challenge that the zoning is inappropriate or that the standard is unreasonable or unnecessary.

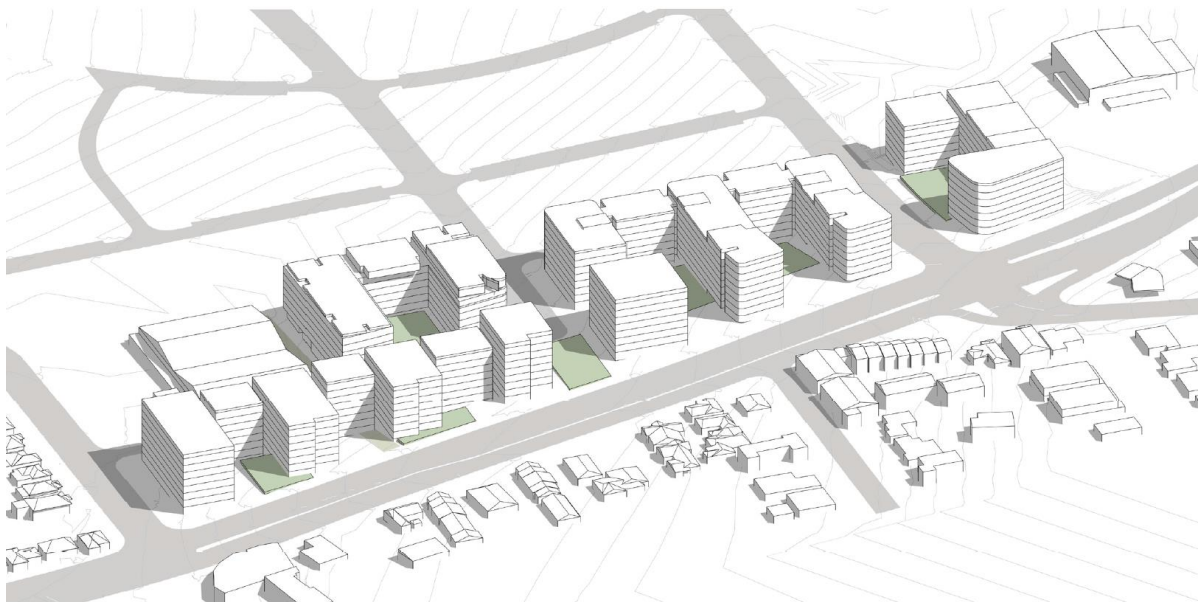


Figure 9. Demonstration of concept plan option with compliant height.

Four2Five Pty Ltd v Ashfield Council

The decision in the Land & Environment Court case of *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90*, suggests that 'sufficient environmental planning grounds' for a Clause 4.6 variation is more onerous than compliance with zone and standard objectives. The Commissioner in the case also established that the additional grounds had to be particular to the circumstances of the proposed development, and not merely grounds that would apply to any similar development.

In this case, the following site-specific planning grounds are considered sufficient to justify contravening the standards:

- The site is affected by overland flow flooding, which requires that the ground floor be raised 0.5m – 0.7m above the adjacent ground level. This exacerbates the height non-compliances.
- The site requires significant earthworks, including up to 7m of filling, to provide for the orderly development of the land. This significantly exacerbates the height non-compliance in parts of the development.
- The wider concept plans site includes significant areas (which generate significant allowable floor space) that cannot accommodate buildings due to the following:
 - Widening of Victoria Road
 - Western open space (encumbered by high voltage power lines)
 - Provision of a park between Stages 1 and 4 buildings.
 - Provision of an internal road network.
- The proposal exceeds the minimum sustainability requirements:
 - Water BASIX Score – Minimum 40 – Provided 50
 - Energy BASIX Score – Minimum 25 – Provided 35
 - NatHERS Rating – Minimum 6 – Provided 6.8 (average)
- The applicant has demonstrated that a more compliant envelope is less desirable than the proposal. The figure above outlines the potential massing with complying envelopes. The complying form results in the following poor urban design outcomes:
 - A monolithic street wall
 - Poor building proportions - Taller and skinnier buildings matched with lower long buildings are preferable
 - Poorer communal open spaces,
 - Poorer permeability both visually and for pedestrians, and
 - Poorer building separation.

Further to the above, and as outlined in Section 3.4 of this report, the adjoining Planning Proposal to the south of the site envisages significantly taller buildings than those proposed in this application. However, while that proposal has received gateway approval from the Department of Planning, it is yet to be advertised and as such is considered to have negligible weight.

Initial Action Pty Ltd v Woollahra Municipal Council

Chief Judge Preston, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 clarified, at paragraph 87, that, “*Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development*”. While it is considered that the proposal does have several benefits over a compliant scheme, the Panel does not have to be satisfied with regard to such a test.

Clause 4.6(4) - Consent Authority Assessment of Proposed Variation

Clause 4.6(4) outlines that development consent must not be granted for development that contravenes a development standard unless:

- “a) *the consent authority is satisfied that:*
- i) *the applicant’s written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- b) *the concurrence of the Secretary has been obtained.*”

The matters of clause 4.6(4)a)i) have been dealt with in the preceding section. Clause 4.6(4)a)ii) and Clause 4.6(4)b) have been assessed as follows:

Public Interest

As outlined above, the proposal is considered to be consistent with the objectives of the height standard. The proposal is consistent with the objectives of the zone as set out in the table below:

| B4 Zone Objective | Proposal |
|--|---|
| <i>To provide a mixture of compatible land uses.</i> | The proposal includes uses (residential, supermarket and retail) which are considered to be compatible. |
| <i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i> | The proposed integrates appropriate uses along Victoria Road which benefits from a number of bus routes to major centres within Greater Sydney. The proposal provides minimal car parking, car share parking, bicycle parking and includes a green travel plan. As such the proposal is considered to maximise use of public transport, walking and cycling. |
| <i>To encourage development that contributes to an active, vibrant and sustainable neighbourhood.</i> | The proposal maximises, but does not exceed, the Floor Space Ratio in the wider concept plan site. This maximises the viability of the commercial uses on site, and thus the vibrancy and sustainability of the neighbourhood. |

| B4 Zone Objective | Proposal |
|--|---|
| <i>To create opportunities to improve the public domain and pedestrian links.</i> | The proposal does not include public domain elements. The proposal provides a 'road-widening' lot to the north of the site to improve Victoria Road. The proposal includes an informal through site link around building 1. |
| <i>To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.</i> | The site is not located in the vicinity of a B3 zone. The proposal includes a supermarket and supplementary retail unit which will provide for the daily needs of residents in the vicinity. |
| <i>To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.</i> | N/A. The site is not within the Parramatta City Centre. |

Table 9: Assessment of the proposal against the B4 – Mixed Use zone objectives.

Concurrence

'The concurrence of the Secretary has been obtained'

Assumed concurrence is provided to regional planning panels (such as the SCCPP) as per NSW Department of Planning Circular '*Variations to development standards*' Ref: PS 18-003 dated 21/02/2018. There is no limit to the level of non-compliance for which concurrence can be assumed.

Conclusion

In summary, it is considered that breaching the building height standard is appropriate and achieves a preferable outcome for the following reasons:

- The proposal is consistent with the objectives of both the zone and height standard, including not resulting in any greater impact on the amenity of adjoining/nearby properties than a compliant scheme.
- A number of site-specific constraints limit the proposal's ability to comply with the height limit, including the need for significant fill, overland flow flooding, and the areas occupied by significant public roads, road widening and public open space.
- The applicant has demonstrated that the proposal has a preferable urban design outcome to a compliant scheme, as supported by Council's Urban Design Team and the Design Excellence Advisory Panel.
- The proposal significantly exceeds the minimum sustainability targets.

It is considered that the applicant's written request has adequately addressed the matters required to be demonstrated and that the request to vary the height development standard within Parramatta LEP 2011 can be supported as the proposal continues to achieve the objectives of the height development standard and the zoning and is in the public interest. In reaching this conclusion, regard has been given to the relevant Judgements of the LEC.

8.9.2 Clause 4.6 Variation Assessment – Floor Space Ratio

The concept plan as a whole will comply with the FSR for the wider site. However, the proposal in isolation exceeds the FSR based on the site area. As such, the applicant has submitted a FSR Clause 4.6 request for abundant caution. The concept plan allows for an appropriate distribution of the allowable floor space across the wider site. As such, it is considered that the applicant's written request has adequately addressed the matters required to be demonstrated and that the request to vary the FSR development standard within Parramatta LEP 2011 can be supported as the proposal continues to achieve the objectives of the FSR development standard and the zoning and is in the public interest.

9. Draft Environmental Planning Instruments

PLANNING PROPOSAL - DRAFT CONSOLIDATED CITY OF PARRAMATTA LOCAL ENVIRONMENTAL PLAN

The site is subject to a Planning Proposal to create a consolidated City of Parramatta Local Environmental Plan. It is noted that the Planning Proposal has received a Gateway determination and is currently being publically exhibited, and therefore is a formal matter for consideration for the purposes of section 4.15 of the Act. The primary focus of the Planning Proposal is harmonisation (or consolidation) of the existing planning controls that apply across the City of Parramatta. It does not propose major changes to zoning or increases to density controls. However, in order to create a single LEP, some changes are proposed to the planning controls applying to certain parts of the LGA. This draft LEP does not propose any changes to the controls for this site and as such, further consideration of this document is not necessary.

PLANNING PROPOSAL – MELROSE PARK NORTH

The planning proposal relating to the adjoining sites, as outlined in the Section 3 above, has not progressed sufficiently to be considered imminent and/or certain and as such is not a material consideration in the assessment of this application.

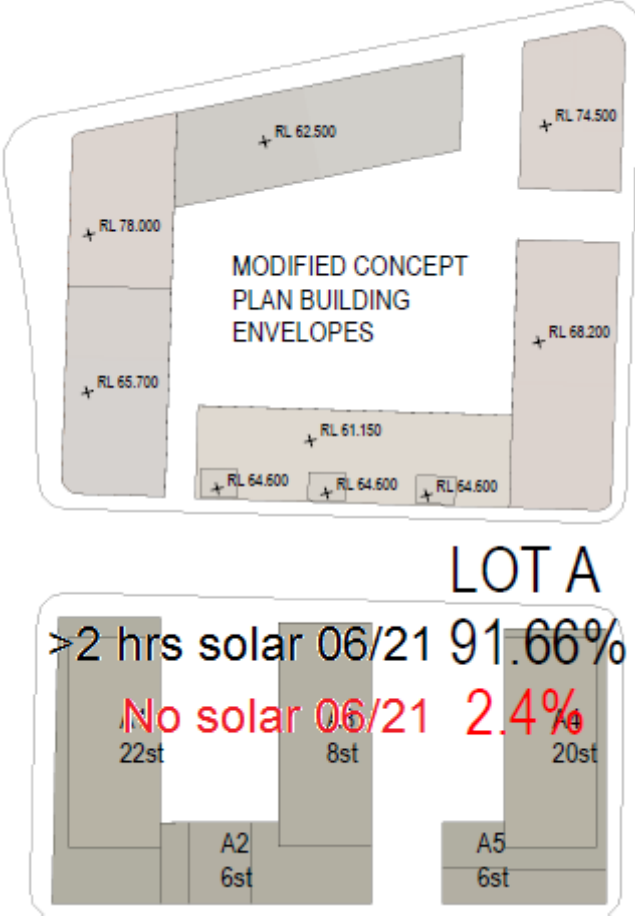
10. Development Control Plans

10.1 Parramatta Development Control Plan 2011

An assessment of the proposal against the relevant controls in the Parramatta Development Control Plan 2011 is provided below:

| Development Control | Proposal | Comply |
|-----------------------------------|--|--------|
| 2.4 Site Considerations | | |
| 2.4.1 Views and Vistas | A significant district view from Victoria Road, over the site, is identified in the DCP. This view is protected, in part, by the provision of north-south roads throughout the wider concept site. | Yes |
| | The proposal impacts on private views from the dwellings opposite the site on Victoria Road. This impact is considered to be acceptable. See more discussion at the end of this table. | Yes |
| 2.4.2.3 Protection of Groundwater | Protection of groundwater is secured via conditions. | Yes |
| 2.4.3.1 Sedimentation | The erosion and sediment control plan submitted with the application is considered to be sufficient. | Yes |
| 2.4.3.3 Salinity | The site is identified as being of moderate salinity potential. As such no special measures are required. | N/A |
| 2.4.5 Air Quality | The proposed buildings are adequately setback, and screened, from Victoria Road and as such are not considered likely to be subject to raised levels of air pollution. | Yes |
| 2.4.6 Development on Sloping Land | The development steps down with the site. | Yes |
| | While significant fill is proposed across the site, this is considered to be acceptable as it provides a consistent transition to the future development to the south. | |

| Development Control | Proposal | Comply |
|--|---|--------|
| 2.4.7 Biodiversity | <p>The proposal requires the removal of 39 trees, many of high retention value, along the northern boundary of the site adjacent Victoria Road.</p> <p>While the buildings themselves do not necessitate removal of the trees, the site regrading required to accommodate the most appropriate flood protection and urban design outcomes for the building requires removal of the trees.</p> <p>While this is still not ideal, the road widening envisaged for Victoria Road would ultimately require removal of the trees regardless.</p> <p>The landscape plan outlines temporary planting of the setback area prior to road widening. A condition is included requiring planting of these trees prior to occupation.</p> <p>The applicant has submitted landscape plans and reports demonstrating significant replacement planting in the setback areas as well as the central communal open space.</p> | Yes |
| 2.4.8 Public Domain | <p>The proposal does not include any updated to the public domain. Public domain works are to be provided as part of adjoining approvals to the east, west and south. Conditions are included requiring that these elements of public domain are completed prior to occupation.</p> <p>The proposed buildings are considered to appropriately address the public domain, providing passive surveillance and activation.</p> | Yes |
| 3.1 Preliminary Building Envelope (Table 3.1.3.11) | | |
| Minimum Site Frontage: >18m | 85m west, 142m north, 113m east, 127m south | Yes |
| Front Setback: 3m | See assessment under Concept Plan Assessment above (Section 7.4) | No |
| Rear Setback: 15% (Avg ~10m) | No rear setbacks | N/A |
| 3.3 Environmental Amenity | | |
| 3.3.1 Landscaping | As outlined above, the proposal is considered to provide sufficient landscaping. | Yes |
| 3.3.5 Solar Access Adjoining properties receive a minimum of 3 hours sunlight to habitable rooms and 50% of their private open space areas between 9am and 3pm on 21 June | <p>As the adjoining land to the south is currently industrial the proposal would not overshadow any existing residential units or open space. However, there is currently a Planning Proposal under assessment for the site to the south. The current layout shows a double horseshoe arrangement for the adjoining block to the south (see extract below).</p> <p>The applicant has provided a solar access analysis which demonstrates that the adjoining site to the south will be able to achieve compliant solar access.</p> | Yes |

| Development Control | Proposal | Comply |
|---|---|-----------------------|
| |  | |
| Cross Ventilation | See ADG assessment above. | N/A |
| 3.3.6 Water Sensitive Urban Design | A 5kL Rainwater Tank to irrigate open space and water efficient fixtures is proposed. | Yes |
| 3.3.7 Waste Management | The applicant submitted a comprehensive operational waste management plan which demonstrates that the building can safely, quickly, and quietly store and remove waste. | Yes |
| 3.4 Social Amenity | | |
| 3.4.1 Public Art | The applicant has developed a public art plan as part of the wider concept plan which has been signed off under the proceeding detailed DA stages. No further public art is required. | Yes |
| 3.4.4 Safety and Security | <p>The proposal does not contribute to the provision of any increased opportunity for criminal or anti-social behaviour. Natural surveillance of the public domain would be provided.</p> <p>The proposal includes a publicly accessible through site link. The link is well defined by landscaping and is overlooked by a significant number of units.</p> | Yes |
| 3.4.5 Housing Diversity and Choice <ul style="list-style-type: none"> • 3 bed 10% - 20% • 2 bed 60% - 75% • 1 bed 10% - 20% • 10% adaptable units | <ul style="list-style-type: none"> • 41 x 3 bedroom apartments (10%) • 201 x 2 bedroom apartments (49%) • 170 x 0-1 apartments (41%) • 42 x adaptable (10%) | No (minor) Yes |

| Development Control | Proposal | Comply |
|---|---|-----------------------------------|
| 3.5 Heritage | | |
| 3.5.1 General | As outlined under Section 5.10 of the PLEP assessment above, the proposal is considered to have an acceptable impact on the adjoining heritage item. | Yes |
| 3.5.2 Archaeology | The application was referred to the Heritage NSE (Archaeology division) who had no objection subject to a condition that work cease if relics are found during works. | Yes, subject to conditions |
| 3.5.3 Aboriginal Cultural Heritage | The site is identified as having low Aboriginal sensitivity. | N/A |
| 3.6 Movement and Circulation | | |
| 3.6.1 Sustainable Transport | | |
| Car Share | | |
| 1 car share if over 50 units | 10 | Yes |
| 3.6.2 Parking and Vehicular Access | | |
| Car Parking Control | | |
| 0.6 / 0 bed unit (9.6) 1 / 1 bed unit (154) 1.25 / 2 bed unit (251.25) 1.5 / 3 bed unit (61.5) -2 / car share (-20) Occupant: 457 Visitor: 0.25 / unit (103) Retail: 1/30m ² (35) Total: 595 | 412 residential occupant 52 residential visitor 47 retail 521 | Part, see discussion below. |
| Accessible Resident: 43 | 43 | Yes |
| Car Wash Bay | 2 | Yes |
| Bicycle Parking | | |
| 1 space per 2 dwellings (206) | 206 (across 2 storerooms) | Yes |
| 1 space per 200m ² commercial (6) | 0 | No, condition requires compliance |
| 3.6.3 Accessibility and Connectivity | | |
| Through Site Links | The DCP does not explicitly require a through site link on the site. Notwithstanding, it encourages such links to provide connectivity. The proposal includes a through site link adjacent to Building 1. Landscaping clearly defines public and private areas. As the link is not explicitly required, an easement is not considered necessary. | Yes |
| 3.7 Residential Subdivision | | |
| Torrens | The proposed subdivision includes creating a road widening lot and a primary development lot. Given the narrow shape of the widening lot, and that floor space has been derived from the lot, it would not be capable of accommodating further residential development. A condition is included requiring a restriction be placed on the lot noting it cannot accommodate any buildings. The primary development lot is appropriately defined, protecting in particular the required northern setback to the future widened road. | Yes |

| Development Control | Proposal | Comply |
|---------------------|---|--------|
| Stratum | There are no specific controls related to stratum subdivision. Notwithstanding, stratum subdivision of the proposed uses is considered to be appropriate. The boundaries defined by the draft stratum subdivision plan ensure associated elements, such as car parking and storage, are provided in keeping with the proposal. Conditions are included requiring a subdivision certificate application. | Yes |
| Strata | There are no specific controls related to strata subdivision. Notwithstanding, strata subdivision of the proposed residential use is considered to be appropriate. Conditions are included requiring a subdivision certificate application. | Yes |

Parking

A comparison of the proposed parking levels to the DCP controls and the approved stage rates is provided below:

| | Occupant | Visitor | Car Share |
|----------------------------|-----------------|-----------------|-----------------|
| Required by DCP | 457 | 103 | 1 |
| Stage 1 rate (as approved) | 1/unit | 0.119/unit | 0.025/unit |
| Stage 2 rate (as approved) | 1.02/unit | 0.128/unit | 0.021/unit |
| Stage 3 rate (as approved) | 1 / unit | 0.128/unit | 0.025/unit |
| Stage 4 rate (as proposed) | 412 (1.00/unit) | 52 (0.126/unit) | 10 (0.024/unit) |
| Consistent? | Yes | Yes | Yes |

The proposed parking provision is considered to be acceptable for the following reasons:

- The proposal is consistent with the approved rates for the previous stages of the concept plan. The Stage 1 application was assessed by an independent planner who found the reduced parking levels to be acceptable.
- The proposal provides more car share parking than required by the DCP.
- The site has good access to high frequency buses during peak periods on Victoria Road.
- Parramatta Light Rail Stage 2, while not yet confirmed, would provide additional public transport.
- An additional basement level, to accommodate more parking, would further impact on groundwater flows.

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 (See pages 42 and 43 of the applicant's Clause 4.6 height variation request at Appendix 2 below).

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

11. Planning Agreements

The subject application is not subject to a planning agreement.

12. The Regulations

The recommendation of this report includes conditions to ensure the provisions of the Regulations, such as the Building Code of Australia, would be satisfied.

13. The Likely Impacts of the Development

Groundwater Reuse

The detailed DA approvals for Stages 1 – 3 of the concept plan originally included a requirement that basements be fully waterproofed to protect from ingress of groundwater. Subsequently a modification was approved for each of these developments allowing basements to not be waterproofed and for incoming groundwater to be collected, treated and used on site for irrigation and toilet flushing. As part of those assessments, the applicant submitted groundwater modelling and management reports for the wider concept plan site which demonstrated that the subject basement would intercept approximately 1 mega litre of water a year, and that this water could be used on site for toilet flushing and irrigation. Council's engineer supports this approach and Water NSW have indicated that they have no objection to the proposal. As such, conditions of consent are included to secure this outcome².

Staging

The applicant seeks to construct the development in stages. The proposed staging is considered logical, in that the relevant ancillary services will be available at an appropriate time. The adjacent park to the east will provide interim open space for occupants of Stage A while Stage B is being completed. Conditions are included allowing for the staging as proposed.

Other

Fire safety is addressed by way of appropriate conditions. The other likely impacts of the development have been considered in this report.

14. Site Suitability

The subject site and locality are affected by overland flow flooding. Council's engineers have assessed the application and consider the proposal to be satisfactorily designed to minimise risk to human safety and property.

Suitable contamination investigations and planning has been provided to demonstrate that the site can be made suitable for the proposed uses subject to remediation works and subsequent validation.

The proposal is considered to have an acceptable impact on biodiversity and the heritage significance of the adjoining site.

No other natural hazards or site constraints are likely to have a significant adverse impact on the proposed development. Accordingly, the site is considered to be suitable for the proposed development subject to the conditions provided within the recommendation to this report.

15. Submissions

The application was notified and advertised in accordance with Appendix 5 of DCP 2011. The advertisement ran for a 21-day period between 10 June and 1 July 2020. Three (3) submissions were received. The public submission issues are summarised and commented

² For a detailed assessment on groundwater dewatering please refer to assessment reports for applications DA/1157/2016/B, DA/1025/2017/A and/or DA/1042/2017/A.

on as follows:

| Issues Raised | Comment |
|---|---|
| View Loss and loss of outlook (sky views, district views and Parramatta river views from main living areas) | The proposal is not considered likely to result in unacceptable view loss or loss of outlook. See assessment above. |
| Privacy Loss (in private open space) | The proposal is not considered likely to result in unacceptable loss of privacy. See assessment above. |
| Construction Amenity impacts (Noise, Vermin) | Conditions are included requiring a construction noise management plan to minimise impacts on adjoining and nearby occupiers. The impact of vermin is not considered sufficiently likely to warrant special conditions. |
| Height non-compliance (particularly as it occurs on highest part of site) | The proposed height non-compliances are considered to be acceptable. See assessment above. |
| 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 above. |
| Loss of open space | The site was formerly part of Bartlett Park, a Council owned informal open space, previously used as a tip. Council found the land to be surplus to open space requirements and resolved to rezone and sell the property for mixed-use development. The subject concept plan provides for provision of sufficient public open spaces as part of the wider development. |
| Loss of ventilation | The proposal is considered to be adequately separated from adjoining properties so as not to affect their passive ventilation. |
| Negative visual impact, bulk | Council's Design Excellence Advisory Panel consider the proposal is acceptable and as such will have an appropriate visual impact and bulk. |
| Traffic impact (congestion) | The proposal provides a residential density anticipated by the planning controls. Further, the proposal provides less than the required parking and as such is likely to depend less on private vehicles. The wider concept plan includes requirements to upgrade road infrastructure, including widening Wharf Road. The proposal also allows for the potential future widening of Victoria Road to provide a priority bus lane. |
| Loss of solar access | The site is located to the south of the nearest adjoining properties and is sufficiently setback from adjoining properties to the south-west and south-east such that they will experience negligible overshadowing. |

16. Public interest

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

17. 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.

18. Developer Contributions

Section 7.12 'Fixed Development Consent Levies' of the Environmental Planning and Assessment Act 1979 allows Council to collect monetary contributions from developers towards the provision, extension or augmentation of public amenities or public services in accordance with a contributions plan. The Parramatta Development Contributions Plan (Amendment No. 5) requires the payment of a levy equal to 1% of the cost of a development. A detailed Cost Estimate was provided outlining the development cost to be \$166,650,000.00. An independent quantity surveyor verified that this figure is commensurate with the scale of works proposed. As such, a monetary contribution of \$1,666,500 is required. A condition of consent has been imposed requiring the contribution to be paid.

19. Summary and Conclusion

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

Having regard to the assessment of the proposal from a merit perspective, Council officers are satisfied that the development is of an appropriate design and provides for acceptable levels of amenity for future residents.

It is considered that the proposal successfully minimises adverse impacts on the amenity of neighbouring properties and does not compromise the redevelopment of adjoining sites.

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 design of the buildings.

Hence the development, irrespective of the departures noted above, is consistent with the objectives of the relevant planning controls and represents a form of development contemplated by the relevant statutory and non-statutory controls applying to the land.

The proposed development is located within a locality earmarked for high density mixed use redevelopment. The proposal would provide additional housing and commercial floor space in an area currently not accessible to the public.

The proposal is considered to adequately respond to the site constraints subject to conditions of consent.

For these reasons, it is considered that the proposal is satisfactory having regard to the matters of consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 and approval is recommended subject to conditions.

20. Recommendation

- A. **That** the Sydney Central City Planning Panel approve the variation to the building height standard in Clause 4.3 of Parramatta LEP 2011, being satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development will be in the public interest as it is consistent with the objectives of the particular standards and the objectives for development within the zone and the site specific reasons discussed;
- B. **That** the Sydney Central City Planning Panel approve the variation to the floor space ratio standard in Clause 4.4 of Parramatta LEP 2011, being satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by Clause 4.6 of that Plan, and the proposed development will be in the public interest as it is consistent with the objectives of the particular standards and the objectives for development within the zone and the site specific reasons discussed;
- C. **That** the Sydney Central City Planning Panel as the consent authority grant **Consent** to Development Application No. DA/295/2020 for construction of 4 x 6-11 storey residential flat buildings and 2 x 10-12 storey mixed use buildings containing 412 residential units, supermarket, retail shop; 3 basement levels providing 521 car parking spaces; earthworks; landscaping; tree removal; signage zones; strata, stratum and Torrens title subdivision at 659 Victoria Road, MELROSE PARK NSW (Lot 11 DP1238936) for a period of five (5) years from the date on the Notice of Determination subject to the conditions under Schedule 1 of Appendix 2.
- D. **That** submitters be notified of the decision.

DESIGN EXCELLENCE ADVISORY PANEL RECOMMENDATIONS

City of Parramatta



Address 657 - 661 Victoria Rd, MELROSE PARK
Date 22nd October, 2020

Application Summary

| | |
|--------------------------------------|---|
| Application Number | DA/295/2020 |
| Assessing Officer | Alex McDougall |
| Applicant/Proponent | M Projects Pty Ltd (on behalf of PAYCE) |
| Architect and Registration Number | Rob Doak – Reg No: 7507 (AJ+C) |
| Urban Designer | |
| Landscape Architect | Nicole Wilson (Scott Carver) |
| Planner | Michael Woodland – Keylan Consulting Rebecka Groth – Keylan Consulting |
| Others in attendance | Miled Akle (M Projects) |

| | |
|--------------------------------|--|
| DEAP Members | Jon Johannsen, Andrew Stanic, Oi Choong |
| Chair | Jon Johannsen |
| Other Persons in attendance | Jay Ahmed – Project Officer Urban Design |
| Apologies | - |
| Item No | 3 of 3 |
| DEAP Meeting Number | 2 nd DA Referral |

General Information

The Parramatta Design Excellence Advisory Panel's (DEAP or The Panel) comments are provided to assist both the applicant in improving the design quality of the proposal, and the City of Parramatta Council in its consideration of the application.

The Design Excellence Advisory Panel is an independent Panel that provides expert advice on applications relating to a diverse range of developments within the Parramatta Local Government Area.

The absence of a comment related directly to any prescribed principles does not necessarily imply that the Panel considers the particular matter has been satisfactorily resolved.

Proposal

Construction of 4 x 6-11 storey residential flat buildings and 2 x 10-12 storey mixed use buildings containing 412 residential units, supermarket, retail shop; 3 basement levels providing 521 car parking spaces; earthworks; landscaping; tree removal; signage; public domain works; strata, stratum and Torrens title subdivision. The proposal constitutes stage 4 of concept plan approval DA/1157/2016. The application is to be determined by the Sydney Central City Planning Panel.

Panel Comments

The nine SEPP65 design principles were considered by the Panel in discussion of the development application. These are: **Context and Neighbourhood Character, Scale and Built Form, Density, Sustainability, Landscape, Amenity, Safety, Housing Diversity and Social Interaction, and Aesthetics.**

The Design Excellence Advisory Panel makes the following comments in relation to the scheme:

1. This project has previously been reviewed by the Panel as a DA submission on 25 June 2020, and the DEAP report recommended a number of amendments. On the whole the Panel appreciated the improvements that have resulted. However, while the Proponent has responded to most of the areas that required attention, further consideration is still recommended on a few points raised previously.
2. The Panel had raised concerns about the public realm context and built form interfaces with other stages of Melrose Park and in particular for the stage 2 DA for lot AD on the opposite side of NSR-3.

Updated sections and CGI views now provide a better indication of the relationship of the overall urban form. Given the extent of this overall development the Panel recommended this approach be undertaken for all future stages. This is to ensure that there is a consistent and coordinated approach to desired future character for both the urban form and public realm spaces to establish quality benchmarks for future stages.

3. Further *improvements requested to the DA scheme* have resulted from the revisions presented, and the Panel's responses are noted below:

4. *It was recommended that the Applicant explore ways to provide access along this Victoria Road frontage that could be achieved with paired access stairs up to balconies of Units 6301-10, and thereby assist street activation.*

Direct access is now shown for the 3 foyers from Victoria Road with internal connection at Level 2 and the Panel supports this approach for improved access and street activation. It was noted by the Applicant that there are now 20 separate entry points (excluding vehicles) to the complex, and the Panel agreed this would greatly improve perimeter street activation and surveillance.

However, a further issue was raised on the matter of mail collection and need for storage to assist in the increasing bulky parcel deliveries post COVID-19. The Applicant advised that the building management would address this and space allocated in various communal spaces at ground level.

5. N/A
6. N/A
7. N/A
8. N/A
9. N/A
10. N/A

11. *The roof terrace to Building 3 now provides for more communal open space. However, the Panel recommends that a universal access unisex WC be located on the roof and that this space be accessible to all residents of all buildings due to the overshadowing of much of the primary communal courtyard in mid-winter.*

The Panel noted the improved amenity provision for the Building 3 roof terrace, and a condition that would ensure residents in all buildings gain equitable access to that roof top space.

12. *The Panel is however concerned that the CGI renderings of the proposal along Victoria Road present a generous public domain complete with a wide band of landscape and street trees. The reality will be substantially different if the road widening is undertaken as indicated on the drawings given the landscape buffer will not be possible with little room for appropriate street trees.*

Increased set back from Victoria Road has been provided with basement now aligned with the building footprint, and this has enabled a more generous deep soil provision to support the mature tree planting needed.

Whilst the Panel notes that this road widening may not occur (or may not occur for some time) it is important for the proponent to present an option showing a revised streetscape and landscape strategy to reflect this possibility. In fact more detail from a pedestrian perspective taken at eye level from of the footpath is also recommended to provide a better understanding of the quality of the building / streetscape interface, and with inclusion of possible access along this frontage as noted above.

There are cross sections and additional CGI images provided that the Panel agrees will ensure the anticipated quality of public domain interface and access provisions.

Given the above the Panel also has amenity concerns regarding the proposed studio apartments along this edge given the proximity to a potential wider

Victoria Road. The possible introduction of wintergardens to these street front units should be explored to ameliorate any resultant acoustic impacts.

Wintergarden balconies have been introduced and the Panel supports their integration into the northern elevation of Building 6.

13. *The current setback from this northern boundary also contributes to the issues noted above. The original setback was 6m and this was reduced to 5m in the previous submission and is currently proposed to be 4m with a further reduction to 3.3m due to overhead balcony projections. The Panel notes that solar diagrams of the central courtyard suggest that it may be possible to shift Building 6 to the south to increase the setback. The Proponent noted that it could be possible to shift the building south by approx. 1m and the Panel recommends this be done to achieve the optimum outcome along this edge, particularly given the height increases proposed for Buildings 1 and 5.*

Revised setbacks have achieved the intended result with diminishing the quality of the internal courtyard, but the Panel recommends that relatively generous ground floor balconies or terraces should be reduced in depth to align with the building footprint and maximise the communal landscape zone.

14. *Direct access to the lobbies along Victoria Road was discussed as the Panel considers this would potentially improve street activation along this edge. The proponent noted that lobby floor levels are raised here to deal with the flood free board requirements, and it was considered a clear visual connection to these spaces from the street was sufficient. Regardless the Panel considers direct access is still worthy of consideration.*

This has been addressed as noted above.

15. *The Panel raised amenity concerns regarding the isolated north- eastern corner apartment 1201 on Level 2 in Building 1 given its proximity to the medical centre, the entry to the central courtyard, the adjoining plant room and to Victoria Road. The Proponent noted the concern however had retained its residential status and location to “signpost” the residential precinct. Whilst it is understood that the residential use allows for outdoor spatial connections and landscaping that enhance this corner location the amenity impacts are not insubstantial. Consideration could be given to this space being a professional medical consulting suite whose function could align with the general unit layout.*

The Panel supports the various changes to the unit configuration, legibility and entry spaces into the complex that have also improved the commercial space allocations and public domain interface.

16. *The Panel raised similar concerns regarding the proposed south facing townhouse Unit 2101 given its proximity to the adjacent service entry. A non residential function could also be considered for this space.*

While the Panel appreciated the Applicant's case for retention of Unit 2101 and supporting acoustic advice, there is still disagreement with the need for this unit in an inferior location and resultant loss of opportunity to improve the foyer entry space off EWR-2.

17. Note Panel responses above.

18. *The Panel believes that the finely scaled masonry frames proposed along the eastern and western edges currently do not provide a sufficient definition between the base and upper levels of the building. The masonry podiums should increase in solidity thereby allowing for improved delineation between the base and upper levels and for expression of “punched openings” to be read instead of frames surrounding recessed fenestration.*

Reconsideration of the approach to the podium with a more solid masonry base and ‘punched openings’ has resulted in an improved façade expression that is supported by the Panel. There is potential for improvement to the vertical gap on the western elevation to make the access bridge more open, and the Panel recommends consideration of a fire engineered approach to achieve this.

19. *The random projecting boxes and the rationale for the proposed colour palette on the southern elevation of Building 3 has been discussed at a previous panel session and this appears to not have been substantially altered. Given the similar nature of material palette and finishes used throughout this extensive precinct the Panel suggested that this building could have an alternative materiality. It is understood that the building language needs to be complementary, however an alternative treatment would provide for some differentiation and a more distinctive “personality” to this component of the scheme. The Proponent made no comment in response to this suggestion.*

The Panel notes the introduction of more colour variation on the south elevation, but the base and articulation projections remain as previously. These colours may date, and there is still scope for more considered variation in the material palette.

20. *In this regard the Panel reiterated that it would be useful to see this Stage 4 DA of the development in context with the other stages to provide a better understanding of the relationship of the various architectural expressions and language used.*

The CGI perspectives help show the DA intentions within a view of ‘desired future character’ of the precinct, and the Panel supports the results and encourages similar consideration of this approach for subsequent stages.

21. *The Panel is keen to see minimised flatness in the façades and recommends that the Proponent looks to maintaining an approximate 200mm reveal depths to avoid this occurrence. The provision of external solar control devices and screening particularly on the western façades would further assist in ameliorating this while improving energy efficiency.*

While detail on the façade relief has been included and can be conditioned, there was not any indication of the requested solar screening where needed for west facing elevations. It is noted that most units have deep balconies that will provide relief, but there are cases where some windows to bedrooms and living areas remain unprotected and this needs to be addressed.

22. *The Panel discussed the potential to relocate the stair core at the northern end of Building 2 to allow glazing at either end of the 25m long corridor to improve amenity. The Proponent agreed this would be an improvement and will consider revising this.*

This has been addressed to the Panel’s satisfaction.

23. *The Panel discussed general apartment layouts and noted that a number had been planned with windowless rooms located at the rear of the units. It is recommended that these be reconsidered so as to open to the general space.*

Internal rooms have now been noted as storage and the Panel also saw the potential of these spaces for work from home areas.

24. *In addition, it is recommended that the general apartment layouts be reviewed to minimise the number of apartments that show bedrooms opening directly into living and dining spaces. It is considered the current configuration does not provide optimum amenity.*

Changes to unit configuration have not been made but the Applicant clarified that these units are all either adaptable or universal and therefore require layouts to enable mobility access.

25. *Units 5503, 5603, 5703 and 5803 currently show a southern facing balcony set between Building 5 and Building 6 that offers an outlook onto a blank wall that is in close proximity. The Panel suggests that this be reconsidered to improve amenity for these apartments.*

These units have been amended to the Panel's satisfaction.

26. *The Panel notes a ballast treatment to the roof Building 6 and suggests a green roof to this building would enhance general amenity to all other residents in the development that overlook this roof.*

The Applicant noted that there were a minimal number of units overlooking this roof, and that there was landscape treatment to the south facing terraces of the Building 5 L8 units that would provide some visual relief to address this concern. The ballast will comprise a number of coloured stones arranged in a decorative pattern.

27. *Active ESD provisions such as rainwater re-cycling, solar power initiatives and solar hot water were not discussed at the meeting, however it is assumed that at a minimum these measures will be included in the development.*

These services are integrated within the BASIX certification and are to the Panel's satisfaction.

28. *The Panel strongly recommends that annotated 1:20 scale cross-sections and details of all proposed façade types and materials are included with the DA submission and form part of the consent documentation. Numerous ground level 3D views of the proposal providing a user experience, both around the entire perimeter and to the internal courtyard are recommended to allow for further review and evaluation.*

A range of well-presented plans, elevations and sections have been included at critical locations, and together with the further 3D CGI views these provide very clear explanations for the design intentions to the Panel's satisfaction. However, there is still need for detailed 1:20 façade sections for the range variable elevation treatments, and these should be submitted prior to CC.



29. *In relation to detailed design and layout of private balconies, the Panel recommends that:*
- a) *HVAC equipment should preferably be grouped within designated screened plant areas either on typical floors or on roof-tops as indicated.*
 - b) *Wall mounted equipment (e.g. instantaneous gas HW heaters) and associated pipework is concealed into wall cabinets and ducts*
 - c) *If service equipment is located on private balconies, additional area above ADG minimums should be provided.*


- d) *Rainwater downpipes and associated services must be thoughtfully designed and integrated into the building fabric.*
- e) *The above items should be positioned so that they are not visible from common areas or the public domain adjacent to the development.*
- f) *Balustrade design must address visual screening of large items typically stored on balconies (eg. BBQ's, clothes drying devices and bicycles).*

Noted to be conditioned.

30. The updated landscape plans (Sept 2020) provide a comprehensive summary of the design intent. The landscape palette should be expanded and refined during the documentation stage in order to:
- i) Improve privacy between the adjacent apartments and the central communal open space by incorporating a greater variety of taller screening shrubs around the perimeter of the space.
 - ii) Select and expand on plant varieties that will respond to the contrasting environmental conditions (eg. prolonged shade, exposure to afternoon sun, built form microclimate etc.) across the different elevations and spaces in the central courtyard
 - iii) Ensure that the landscape and public domain details are consistent and co-ordinated, and seamlessly integrated with other stages of the development (refer Item 2)

Panel Recommendation

| Selected Recommendation | Description | Action |
|--|--|--|
| <p>Green</p>  | <p>The Parramatta Design Excellence Advisory Panel (The Panel) supports the proposal in its current form. The Panel advises that this is a well-considered and presented scheme and that the architectural, urban design and landscape quality is of a high standard.</p> | <p>Only minor changes are required as noted and provided these changes are incorporated, and presented to the City Architect, the Panel Does not need to review this application again</p> |
| <p>Amber</p>  | <p>The Parramatta Design Excellence Advisory Panel (The Panel) generally supports the proposal in its current form with caveats that require further consideration.</p> <p>The Panel advises that this is a reasonably well considered and presented scheme and that the architectural, urban design and landscape quality are of a reasonable standard.</p> | <p>Once the applicant and design team have addressed the issues outlined, the panel looks forward to reviewing the next iteration</p> |

| | | |
|--|--|--|
| <p>Red</p>  | <p>The Parramatta Design Excellence Advisory Panel (The Panel) does not support the proposal in its current form. The Panel advises that there are a number of significant issues with the proposal.</p> | <p>The Panel recommends that the applicant/proponent contact the Council to discuss.</p> |
|--|--|--|

Clause 4.6 Request – Height of Building

657-661 Victoria Rd and 4-6 Wharf Rd, Melrose Park
Stage 4 (Superlot AB) Development Application



submitted to the City of Parramatta Council
on behalf of:
Sekisui House Australia Pty Ltd

24 September 2020 (Updated 23 October 2020)

Contact



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Cover image: **the site** (Source: Applicant)

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1 Introduction

This is a written request (the Request) to seek a variation to a development standard in accordance with the provisions of Clause 4.6 Exception to Development Standards of the *Parramatta Local Environmental Plan 2011* (PLEP 2011).

This Request supports a Development Application (DA) for the construction of residential flat buildings and commercial space comprising of a supermarket and other retail spaces and subdivision on proposed Superlot AB (Stage 4) which is part of the site at 657-661 Victoria Road and 4-6 Wharf Road, Melrose Park known as the Victoria Road Site (VRS). This Clause 4.6 Report also responds to Council's letter dated 16 October 2020.

1.1 The site

The current site is referred to as Stage 4 and is part of the larger site known as the VRS. The VRS is a large prominent site fronting Victoria Road (a strategic transport corridor), which acts as a key linkage from Parramatta CBD to Sydney CBD. The site is located between the suburbs of Ermington to the west and West Ryde to the east.

Stage 4 is located in the centre of the site, fronting Victoria Road. It has an area of 17,970m² and is located in between Superlot AA and Superlot AC. It has an approximate frontage of 123 metres to Victoria Road. The VRS is elevated, sloping down from Victoria Road with views towards Sydney, Parramatta and Chatswood CBDs, the Parramatta River and general district views.

The surrounding area is characterised by a variety of industrial and commercial uses, including industrial and warehouse buildings in the Melrose Park industrial precinct to the south of the site, and established low density detached dwelling houses surrounding the site. There are several heritage items located nearby, six within Parramatta Local Government Area (LGA) and one within Ryde LGA. The closest heritage item is 8 and 38-42 Wharf Road, being the industrial area immediately south of the site, which is a local heritage item (I311) listed within Schedule 5 of the PLEP 2011. The VRS was identified as being contaminated in the Concept Plan approval. Remediation is underway to bring the VRS to a residential standard.

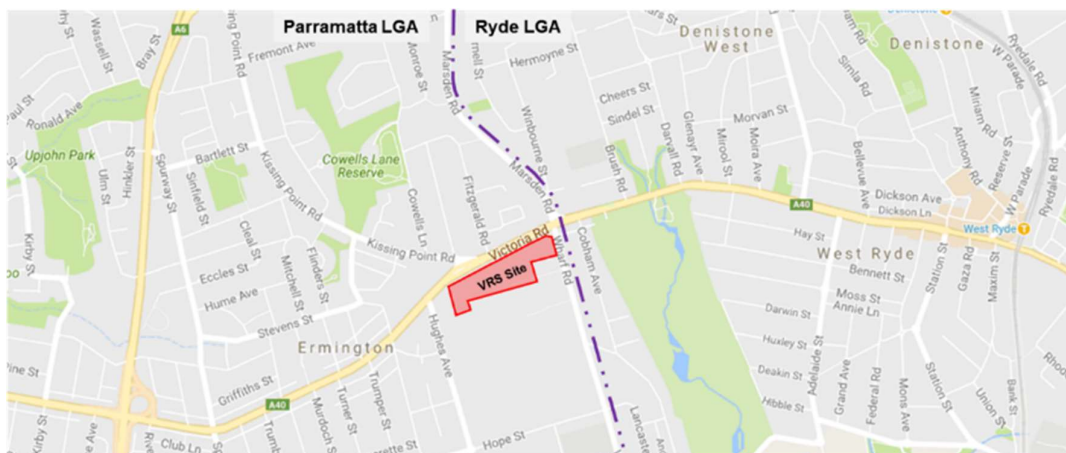


Figure 1: Location of the VRS Site (Source: Nearmap)

1.2 The CI 4.6 Request

This Request relates to Clause 4.3 Height of Buildings of the PLEP 2011.

This Request has considered the detailed guidance within the NSW Department of Planning, Industry and Environment (DPIE) guideline *Varying Development Standards: A Guide, August 2011* (DPIE Guide) and planning system circular PS 17-006 *Varying Development Standards, December 2017*, and addresses the findings and established principles (as relevant) of the following judgements of the Land and Environment Court:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and [2015] NSWCA 248; and
- *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112

1.3 Key Reasons to support the increase in building height

The proposed increase in building height should be supported as the:

- increase in building height will not result in unacceptable environmental impacts
- proposal results in a superior urban design outcome
- proposal results in a superior public domain outcome
- proposal achieves a high level of residential amenity
- proposal provides the density required to support the proposed commercial uses in the B4 Mixed Use Zone
- approved overall GFA and FSR for VRS is maintained
- proposal better aligns with the building heights endorsed by Council for the adjoining Melrose Park North Precinct
- on balance proposal results in an overall better planning outcome for the site

The following sections of this Request critically analyse the proposed increase in building height, its impact and reasonableness.

This analysis demonstrates that an exception to the Height of Buildings development standard is warranted in this instance and will provide for a significantly better planning outcome than a compliant scheme.

2 Planning Overview

The *Standard Instrument (Local Environmental Plans) Order 2006* was introduced to create a common format for local environmental plans across NSW and all councils have now adopted local environmental plans based on the Standard Instrument (SI).

The SI includes various development standards as a means to achieving environmental planning objectives and these standards can be numerical or performance based.

Clause 4.6 of the SI allows a consent authority to consider and grant consent to a development even in the circumstance where that development would contravene a development standard. Importantly, on land where a SI applies and Clause 4.6 is relevant, the powers *State Environmental Planning Policy No.1 – Development Standards* do not apply.

The DPIE Guide confirms that the NSW planning system allows for flexibility in planning controls, in certain circumstances, through the provisions of Clause 4.6 of the SI.

The DPIE Guide recommends that any Request to vary a development standard should confirm the planning context and relevant controls to assist the consent authority's assessment. The following table (Table 1) provides a summary of the relevant planning context and provides a key numerical overview of the proposed variation.

| Information Requirement | Comment |
|---|--|
| Relevant Applicable Planning Instrument | PLEP 2011. |
| Zoning of the Land | Zone B4 Mixed Use (refer to Figure 2). |
| Objectives of the Zone | <p>The objectives of zone B4 Mixed Use are:</p> <ul style="list-style-type: none"> • to provide a mixture of compatible land uses; • to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling; • to encourage development that contributes to an active, vibrant and sustainable neighbourhood; • to create opportunities to improve the public domain and pedestrian links; • to support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality; and • to protect and enhance the unique qualities and character of special areas within the Parramatta City Centre. |
| Development Standard to be Varied | Building height |
| Nature of the Development Standard | A numerical height control (RL). |
| Relevant Development Standard Clause | Clause 4.3 'Heights of Buildings' of the PLEP 2011. |
| Objectives of the Development standard | <p>The objectives of Clause 4.3 Heights of Buildings are:</p> <ul style="list-style-type: none"> • to nominate heights that will provide a transition in built form and land use intensity within the area covered by this Plan; |

| Information Requirement | Comment |
|--|--|
| | <ul style="list-style-type: none"> • to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development; • to require the height of future buildings to have regard to heritage sites and their settings; • to ensure the preservation of historic views; • to reinforce and respect the existing character and scale of low density residential areas; and • to maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes. |
| Development Standard Numeric Control for the Site | Maximum building height of 28 metres (refer to Figure 3). |
| Proposed Numeric Control | Maximum building height of 40.30 metres , exceedances above 28 metres are limited to 7 locations. |
| Percentage Variation Between the Proposal and the Planning Instrument | An increase of 12.3 metres represents a 43.9% increase over the PLEP 2011 building height control of 28 metres. |

Table 1: DPIE Guide recommended planning information and numeric overview



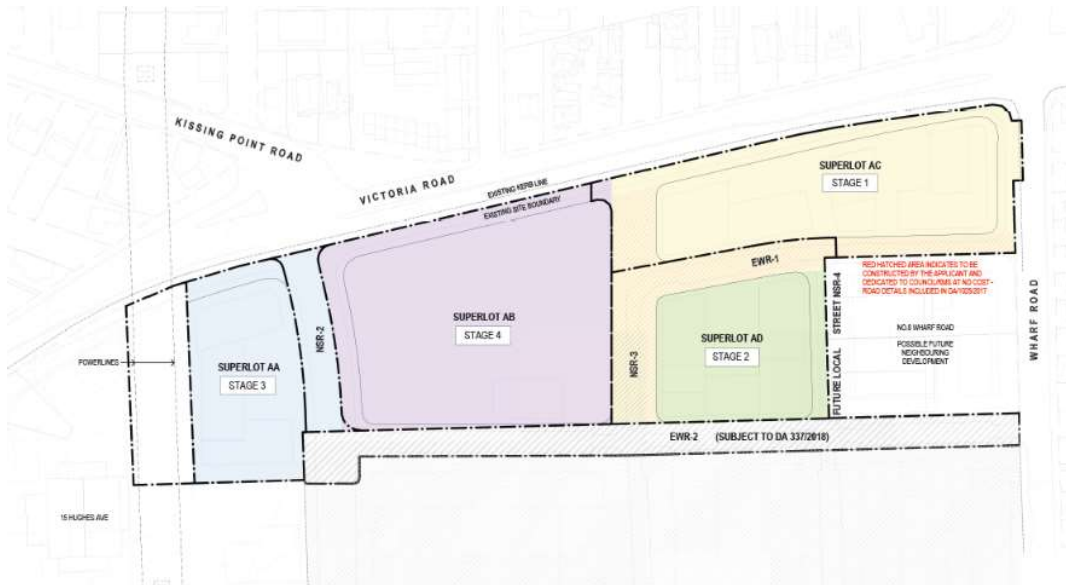


Figure 4: Approved staging Plan (Source: Council)

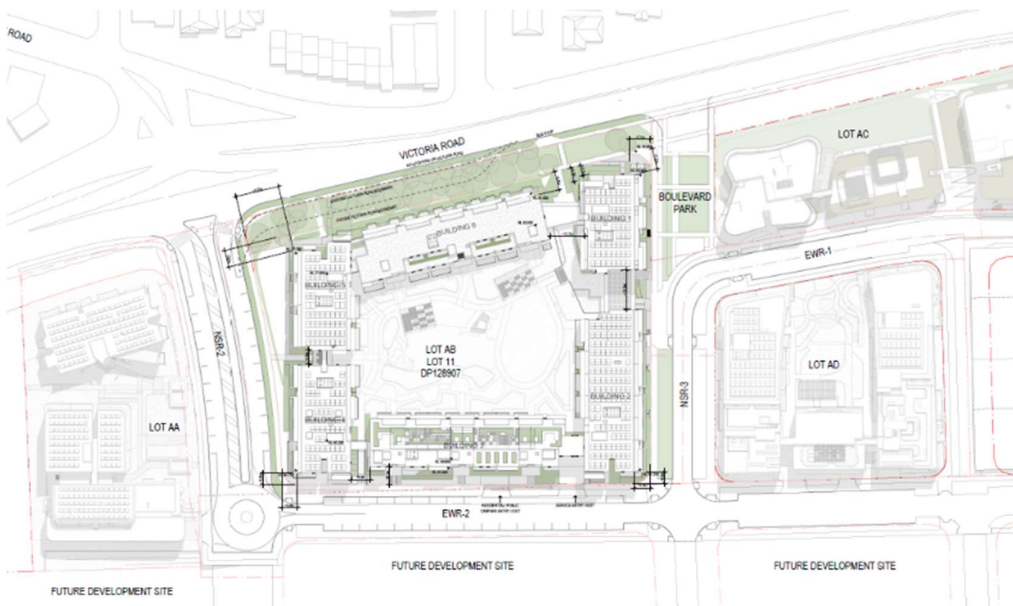


Figure 5: Location of Lot AB (Stage 4) within VRS (Source: AJC)

3 Background

The Applicant has undertaken extensive pre-DA consultation with Council officers, the Design Excellence Advisory Panel (DEAP) and the Council's Urban Design Team as part of the preparation of the current development application for Stage 4 of the VRS Site.

3.1 Previous VRS Stage 4 – Lot AB (DA 389/2019)

On 3 July 2019, a development application for Stage 4 was lodged with Council comprising construction of 4 x 6-11 storey residential flat buildings and 2 x 10-11 storey mixed use buildings containing 404 residential units, a supermarket, 80 space childcare centre and 2 retail shops; 3 basement levels providing 518 car parking spaces, earthworks, landscaping, public domain works including new roads, strata subdivision and Torrens title subdivision.

On 23 July 2019, the application was **withdrawn** following consultation with Council.

The development scheme for this final stage of VRS has continued to evolve as a result of the feedback received by Council since August 2019. This feedback has resulted in a superior scheme than the previous building height compliant scheme submitted in DA 389/2019.

3.2 Consultation and amendments

A brief summary of the meetings and recommendations made by Council officers, DEAP and the Urban Design Team in response to the evolving development scheme and the Applicant's response to the remaining key issues is provided below.

- On 7 August 2019 the Applicant attended a DEAP meeting. DEAP's recommendations dated 26 August 2019 were provided to the Applicant and included relationship with the overall Master Plan, perimeter access and street level activation, subterranean units, limited permeability in the design, colonnade treatments not encouraged and width of the proposed vehicular access.
- On 6 September 2019, the Applicant attended a further pre-lodgement application meeting with Council officers.
- On 18 September 2019, Council provided a list of issues to be addressed prior to DA lodgement which include building heights, compliance with the ADG, vehicular access, the facades and the consistency with the Concept Plan.
- On 24 September 2019, the Applicant met with Council officers to discuss Council's concerns as detailed in its letter dated 18 September 2019.
- On 26 September 2019, the Applicant provided a preliminary response and preliminary revised plans to address the key issues raised in Council's correspondence including building heights, vehicular access and consistency with the Concept Plan.
- On 8 November 2019, the chair of DEAP and Council officer's provided further comments to the Applicant in response to further design refinements (dated 26 September 2019).
- on 14 July 2020 a Request for Additional Information was issued by Council. This letter was later supplemented by:
 - recommendations by Council's Design Excellence Advisory Panel (DEAP) and
 - comments from the Sydney Central Committee Planning Panel (SCCPP) following a Council briefing on 1 July 2020.
 - Email correspondence from Council dated 27 August 2020

- on 24 September 2020 the Applicant provided a formal response to Council's Request
- for Additional Information which included revised plans to address the key issues raised
- by Council, the DEAP, the SCCPP and public submissions.
- on 16 October 2020 a further request for additional information was received which recommended, amongst other items, that the Clause 4.6 request for Height is updated. In response, the Applicant has prepared this updated Clause 4.6 Request.

The current design responds to the issues raised made in the pre-lodgement minutes, the recommendations made by the DEAP and the Urban Design Team and Council Officers as detailed in the table below and in the Design Report submitted with the concurrent detailed Development Application (Appendix 2).

| Key issues raised by DEAP and Council | Design Response |
|--|---|
| <i>Support for additional building height subject to maintaining approved overall GFA and other built form amendments as detailed below</i> | <p>The proposal is generally consistent with the current modification to the Concept Plan currently being considered by Council.</p> <p>Additional building height for all buildings is proposed following extensive consultation with Council. The proposed additional building height is the result of the:</p> <ul style="list-style-type: none"> • relocation of the poor quality garden apartments (in the previous proposal referred to below by Council as subterranean) • relocated gaps between buildings including between Buildings 1 and 2 to align with EWR-1 and gap between Buildings 4 and 5 to improve proportions, and the gap between Buildings 3 and 4 is widened and opened to the sky. The design changes were as requested by Council • raising the floor level for all buildings to be above the 0.5m freeboard (to mitigate overland flow and drainage issues identified by Council engineers) • increased floor level of Buildings 1, 2 and 3 by 0.7m to facilitate direct pedestrian access to Buildings lobbies • inclusion of rooftop communal open spaces in Building 3 (as requested by Council) with shade structures for sun protection |
| <i>Remove Subterranean apartments</i> | <ul style="list-style-type: none"> • The proposal relocates garden apartments (garden apartments) previously situated at the lower levels to an additional levels within the building. • This redesign moves the apartments to Buildings 4, 5 and 6 and in part results in the additional building heights. |
| <i>Increased street activation</i> | <ul style="list-style-type: none"> • The proposal incorporates increased street activation with inclusion of Building 3 lobbies at street level and direct entry to ground floor apartments in Building 5. |
| <i>Delete Colonnades</i> | <ul style="list-style-type: none"> • The podium level facades of Buildings 2, 4 and 5 are redesigned to avoid the appearance of colonnades. The colonnade is retained in Building 1 which has a retail uses at ground floor level and pedestrian access is provided via the colonnade. |

| Key issues raised by DEAP and Council | Design Response |
|--|---|
| <i>Increased site permeability</i> | <ul style="list-style-type: none"> The proposal incorporates further permeability to permit views from within the site to the surrounding public domain and into the site from public places. The addition of pedestrian pathways at Level 2 to the internal communal courtyard from Victoria Road, NSR-3, EWR-2, EWR-1 and NSR-2 assist to establish the visual connection between internal courtyard and surrounding public domain The proposal incorporates generous gaps within the eastern and western facades through the break between Buildings 1 and 2 and Buildings 3 and 4 respectively. These gaps permit views from the public domain into the site. The increased gap and building entry of the east elevation between Buildings 1 and 2 aligns with EWR-1. Notably, views toward the internal communal open space are possible from NSR-3/EWR-1 to the east of the site. |
| <i>Improve proportions of Buildings 4 and 5</i> | <ul style="list-style-type: none"> To improve the massing, lower the scale and the perceived density of the development, a clear distinction between narrower and higher buildings with longer and lower buildings has been developed. Council requested that the gap between Buildings 4 and 5 be relocated to create better building proportions. This has been achieved in the current proposal and results in both Buildings 4 and 5 being shorter in length than the previous DA proposal. Building 5 is proposed to be marginally longer in length than Building 4. The requested gap between Buildings 4 and 5 is not included on the approved Concept Plan, however the location of the change in the building height is shown in the approved Concept Plan. The current design is generally consistent with the Concept Plan (as amended). |
| <i>Length of southern façade and minimal articulation</i> | <ul style="list-style-type: none"> The design also responds to the length and articulation of the previous scheme of the southern façade. The proposal includes a physical setback between Buildings 3 and 4 of 6.5m. The design response also includes further articulation along the southern façade and a reduced driveway width fronting EWR-2. The replanning of the car and service access fronting EWR-2 has allowed two additional building entries directly from this street. All building lobbies in Buildings 2, 3 and 4 are now directly accessed from EWR-2 (five pedestrian access points are proposed). The replanning of the car and service access has also allowed for a significant increase in landscaped setback at street level along the southern façade. |
| <i>Roof terraces recommended</i> | <ul style="list-style-type: none"> Provision has been made for a roof terrace to Building 3 as recommended by the DEAP and is intended to be used as communal open space (note – the Building 3 parapet, lifts and stairs exceed the PLEP 2011 28 metre building height limit as a result of providing the roof terrace). The concept design for the roof terrace landscaping is detailed in Appendix 3. |
| <i>Lift covers for Buildings 3 and 6 recommended</i> | <ul style="list-style-type: none"> The lifts in Building 3 are interconnected via the roof terrace. The lifts in Building 6 are interconnected via the new Level 8 to provide lift redundancy. |

| Key issues raised by DEAP and Council | Design Response |
|--|---|
| Improved built form delineation - layering and emphasis as podium 1:3 ratio | <ul style="list-style-type: none"> The Parramatta DCP and the ADG do not provide design guidance on proportion of podium heights. It is noted that the elevations propose the following built form delineation: Building 1 east elevation – part 11 to part 12 storeys with 2-3 storey podium Building 2 east elevation – 10 storeys with 2-3 storey podium Building 4 west elevation – 7 storeys with 2 storey podium Building 5 west elevation – 11 storeys with 3 storey podium Each of the above podiums are less than 1 in 3 proportion as requested by Council. |
| ADG compliance | <p>Compliance with the relevant ADG design criteria is achieved:</p> <ul style="list-style-type: none"> Solar access: 74% (ADG: 70%) Units with no direct solar access: 4% (ADG max 15%) Cross ventilation: 60% (ADG: 60%) |
| Urban Design Outcome | <ul style="list-style-type: none"> The proposal is supported by a compliant 8 storey scheme envelope which demonstrates that the proposed envelope achieves a superior built form. A compliant scheme will be uniform in height as detailed in the attached image by AJC with limited ability for public domain improvements, benefits and provision of the required infrastructure. |

Table 2: Summary of design responses to issues raised by Council (Base Source: Applicant)

4 The Proposed Development

The proposed maximum heights of building envelopes across the site is varied and ranges from 6 to part 11 and 12 storeys for Superlot AB. The maximum building heights proposed are detailed in the table below.

| Planning Control | Approved Concept Plan RLs Lot AB | Proposed Modification RL's Lot AB |
|-------------------|-------------------------------------|--------------------------------------|
| Building Height | NW Building max RL 73.55 | NW Building max RL 77.70 |
| | NE Building max RL 70.75 | NE Building max RL 74.00 |
| | SE Building max RL 67.35 | SE Building max RL 67.80 |
| Number of storeys | 5 storeys to 10 storeys | 6 storeys to part 11 / 12 storeys |

Table 3: Comparison of concept plan (as amended) and the current modification

The proposed 11 storey components of the proposed building envelopes exceed:

- the approved building heights by 1 storey (7 m) (Figure 6)
- the PLEP 2011 height development standard (28 m) by up to 12.3 metres (Figure 7)

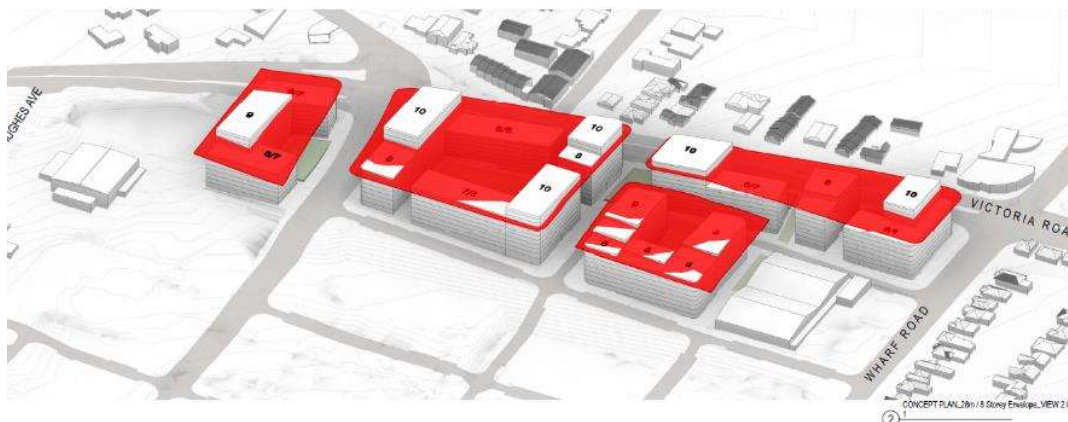


Figure 6: Concept Plan MOD A - PLEP building height (shown in red) & building above LEP in white (Source: Council)

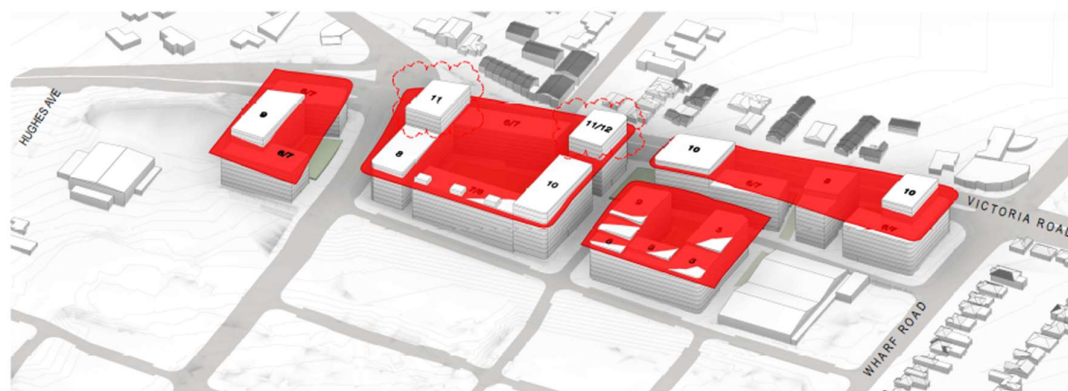


Figure 7: Proposed scheme - PLEP 2011 height (shown in red) & building above LEP in white (Source: AJC)

Importantly, the current proposed modification only seeks an additional storey from the current Concept Plan Approval AND does not seek to increase the approved GFA or FSR under the Concept Plan.

The proposed modification is the result of detailed design analysis and consultation with the DEAP and Council following the assessment of the DA for VRS Stage 4 which resulted in design changes and increased building height:

- the need to relocate the poor quality garden apartments and place these in Buildings 4, 5 and 6 results in increased building height
- increased and relocated gaps between buildings resulted in additional building height to Buildings 1 and 5
- raising the floor level for all buildings to be above the 0.5m freeboard (to mitigate overland flow and drainage issues identified by Council engineers)
- increased floor level of Buildings 1, 2 and 3 by 0.7m to facilitate direct pedestrian access to the Building lobbies
- the extension of lifts to the roof level of Building 3 to provide a roof terrace results in additional building height

The proposal maintains the overall approved GFA and FSR for the VRS.



Figure 8: Indicative South-East perspective, corner EWR-2 & NSR-3 (Source: Applicant)

5 Legislative Context

5.1 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the PLEP 2011 sets out key assessment criteria which enables Council to consider and grant development consent for a development that contravenes a development standard. The overarching objectives of this clause are contained in subclause (1) as detailed below:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Subclauses (3), (4) and (5) of Clause 4.6 are relevant and development consent can only be granted subject to their consideration.

5.1.1 Clause 4.6(3)

Clause 4.6(3) requires that development consent must not be granted for a development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *there are sufficient environmental planning grounds to justify contravening the development standard.*

5.1.2 Clause 4.6(4)

Clause 4.6(4) requires that development consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

5.1.3 Clause 4.6(5)

Clause 4.6(5) requires that in deciding whether to grant concurrence, the Secretary must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The written notification of assumed concurrence, dated 27.11.2017 states:

- (2) *Prior to assuming my concurrence Council must have consideration of the matters set out in subclause 4.6(5) of the SILEP or clause 8 of SEPP 1.*

These matters are outlined below.

5.1.4 Matters of significance for State or regional environmental planning

Not applicable.

5.1.5 The public benefit of maintaining the development standard

The development standard has previously been varied and was supported by Council and the SCPP. The proposed additional building height is the result of significant amendments to the building envelopes to:

- improve public domain outcomes
- improve permeability through the site both visually and from a pedestrian perspective
- allow for a better integrated commercial component and streetscape outcome
- allow for improved landscape outcomes
- permit the orderly and economic development of the site to allow the realisation of the approved GFA to support non-residential uses on the site

5.1.6 Any other matters

Not applicable.

5.2 Relevant Judgements - NSW Land and Environment Court

The following key Land and Environment Court (NSW LEC) judgements provide guidance on key considerations in the assessment of a Clause 4.6 variation Request.

These judgements focus on the degree to which a consent authority may be satisfied about the matters in Clause 4.6 and therefore further refine the requirements for variation Requests:

- *Winten Property Group Limited v North Sydney Council* [2001] NSWLEC 46;
- *Wehbe v Pittwater Council* [2007] NSWLEC 827;
- *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and [2015] NSWCA 248; and
- *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112

The key findings and established principles (as relevant) of the above judgements of the Land and Environment Court are summarised below.

5.2.1 Winten Property Group Limited v North Sydney Council (2001)

The *Winten Property Group Ltd v North Sydney Council* (2001) case posed the following questions to be addressed when considering objections to development standards:

- *Is the planning control in question a development standard?*
- *If so, what is the underlying object or purpose of the standard?*
- *Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?*
- *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (A related question is: would a development which complies with the standard be unreasonable or unnecessary?)*
- *Is the objection well founded?*

5.2.2 Wehbe v Pittwater Council (2007)

This case expands on the findings of *Winten Property Group Limited v North Sydney Council* (2001) case and establishes a five-part test 'Wehbe tests' to ascertain whether strict compliance with a development standard is unreasonable or unnecessary, as follows:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or*

5. *The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

It is noted that the DPIE Guide was formulated on the basis of the findings of the *Winten Property Group Limited v North Sydney Council (2001)* case and the Wehbe Tests.

5.2.3 Four2Five Pty Ltd v Ashfield Council (2015)

The outcome of these cases (initially heard and then upheld at appeal) concluded that in addition to considering the Wehbe Tests, Requests must also demonstrate that:

- *the grounds for departing from the development standard must be particular to the circumstances of the proposed development on the subject site; and*
- *compliance with the development standard is unreasonable or unnecessary, in addition to demonstrating that the proposal was consistent with the objectives of the development standard and/or land use zone.*

5.2.4 SJD DB2 Pty Ltd v Woollahra Council (2020)

The *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112* established greater flexibility in applying clause 4.6 to vary development standards where a better outcome would be achieved in the context of the site. The outcome of this case concluded the following questions should be asked in relation to the request to vary a development standard:

- *what was the desired future character?*
- *is the proposal consistent/compatible with that desired future character?*
- *has any visual intrusion been minimised?*
- *have the controls been previously abandoned?*

6 Assessment of the Variation to Building Height Development Standard

The PLEP 2011 contains a RL 28 metre (approximately 8 storeys) maximum building height development standard for the entire VRS. This maximum building height is higher than the existing nearby low-density residential areas of RL 9 metres (approximately 2 storeys).

The maximum building height development standard constitutes the built form baseline from which any variation request is measured and assessed.

The proposal seeks to increase the maximum building height development standard development control by 12.30 metres (from 28 metres to 40.30 metres) to accommodate localised increases in building height across the site, as shown in **Figure 7**, and to facilitate significant improvements to the development as discussed in the following sections.

It is important to note that the original Concept Plan Approval for the site was supported by a Clause 4.6 Request to allow an increase in building height to 10 storeys at selected buildings within the development based on urban design and planning grounds.

Council's Assessment Report for the Concept Plan (DA/1157/2016) found that the proposed building heights originally proposed would not result in unreasonable overshadowing:

...The non-compliant (10-storey) buildings, particularly the southern building in Stage 4, do contribute to unreasonable overshadowing on adjoining lots to the south that are planned for high-density development, specifically the town centre...

...There is suitable urban design merit to the 4 non-compliant (10-storey) buildings within Stages 1 and 4 that present directly to Victoria Road. This edge of the site is considered akin to a ridge line addressing a busy and wide road. These buildings do dramatize entries to the site and their physical impacts (mass and shadows) are suitably internalised within the site...

The Council's findings remain relevant to the proposed scheme as the proposed building envelopes:

- will not result in unreasonable overshadowing to properties south of the VRS
- have urban design merit as Superlot AB fronts Victoria Road and the proposed building envelopes assist to emphasise the VRS
- as detailed in Section 3 of this report, DEAP advised of its support for additional building height subject to maintaining approved overall GFA and other built form amendments such as new and increased gaps into building elements to create greater permeability into the site

The proposed increase in heights at the corner locations will facilitate the achievement of a landmark development that is respectful of the existing urban character, have a substantially positive urban design impact and acceptable amenity impacts.

Therefore, the increase in heights represent a significant improvement over a compliant scheme of uniform height and therefore better achieves the objectives of the Height of Buildings development standard.

The proposed modification is also considered to be consistent with the SCPP's findings of the proposed increased building heights in DA/1157/2016/A as detailed in the table below.

| SCPP finding | Proposed Modification Application |
|--|--|
| 1. <i>The development, as modified, will result in productive re-use and rehabilitation of a site formerly used for waste disposal purposes.</i> | <p>The proposed additional building height will enable the approved density for the VRS to be achieved to ensure the best use of this former tip site.</p> <p>The proposal will also support the additional retail and commercial uses proposed to support the site and surrounding area.</p> <p>The proposed increased intensification of the retail spaces is considered to be more aligned with the B4 Mixed Use zone than the approved scheme.</p> |
| 2. <i>There will be public benefit from the provision of additional housing on the site.</i> | <p>Additional residential development, which provides a high level of residential amenity, will be achieved within Superlot AB.</p> <p>The previous compliant height scheme included garden apartments which provided a poor level of amenity than the proposed apartments which are now located at higher levels in the development.</p> |
| 3. <i>The local and broader transport network can satisfactorily accommodate the forecast increase in travel demand.</i> | <p>The proposed modification results in acceptable impacts on the road network as demonstrated in section 6.2 of this report and in the supporting detailed DA.</p> |
| 4. <i>The modified proposal satisfies nearly all applicable development standard and guidelines, with the exception of minor variations to the maximum building height standard.</i> | <p>The proposal is consistent with the overall approved GFA and FSR for the VRS.</p> <p>The only variation being sought is <i>Clause 4.3 Building Height</i>.</p> |
| 5. <i>The building height breaches are commensurate with the permissible density, will not have an adverse impact on the amenity of any adjoining or nearby properties, will not prejudice the redevelopment of any adjoining sites and are consistent with the original reason for support (a superior built form).</i> | <p>As demonstrated in this report, the proposed additional building height and reconfigured building envelopes will not lead to adverse environmental impacts on adjoining residents or future community/public open spaces or the public domain.</p> |

Table 4: Comparison of SCPP findings and current modification

The proposed building heights are considered to be acceptable for the following reasons the:

- non-complying height will not result in any detrimental amenity impacts in terms of view loss, shadowing or loss of privacy
- areas of non-compliance are for portions of the residential units and roof elements which in part contribute to the overall urban design improvement to Victoria Road
- proposal achieves a discernible variance in height across the site and avoids monotonous and unbroken buildings
- revised envelopes do not prejudice the ability of the concurrent Stage 4 DA to provide sufficient deep soil planting and landscaped open space

- proposal does not result in any amenity impacts on adjoining or nearby properties and does not prejudice the development potential of any adjoining sites
- the proposal allows for improved permeability through the site and public domain outcomes
- proposal remains consistent with the maximum GFA / FSR permitted on Superlot AB to ensure the economic use of the land (required to be remediated due to its previous use) and support additional mixed uses to better align with the landuse zoning

The proposed modification to the Concept Plan is not associated with excessive site density or an overdevelopment of the site. The proposal remains consistent with the overall FSR for the site.

The following assessment comprehensively considers the provisions of CI 4.6 which has also been informed by an analysis of the relevant case law.

6.1 Clause 4.6(3)(a) – Compliance is Unreasonable or Unnecessary

The land south of the site is recognised by Council as being in transition and is currently the subject to the Melrose Park Northern Structure Plan Gateway Determination to facilitate its urban renewal. The Planning Proposal seeks to facilitate up to 5,500 dwellings, a minimum of 30,000m² employment uses and community uses.

The VRS site plays a critical role as effectively the first stage of the Melrose Park North Precinct.

The VRS site provides the entrance to the broader Melrose Park North Precinct with key frontage to Victoria Road, delivery of a landmark development, ability to create a suitable transition in ground levels to respond to the topography of the site and the variety of proposed employment and residential uses and open space network within the Precinct.

The VRS site will embrace world's best practice urban design and leading sustainability measures, will revitalise Melrose Park and the surrounding locality by developing a contemporary urban environment and includes new or improved green links, parks and streets.

Given the strategic importance of the VRS and its intrinsic link to the success of the broader Melrose Park North Precinct immediately to the south, the applicant contends that compliance with the Height of Buildings development standard is unreasonable and unnecessary for the following reasons:

- proposal will result in a significantly better planning outcome
- approved overall GFA and FSR for VRS is maintained
- increase in building height will not result in unacceptable environmental impacts
- proposal results in a superior urban design outcome
- proposal responds to overland flow
- proposal responds to adjoining approved public domain and EWR-2
- proposal achieves a high level of residential amenity

6.1.1 Urban Design Outcomes

The proposal leads to superior urban design outcomes for the site when compared to a compliant scheme. The applicant contends that compliance with the Height of Buildings development standard is unreasonable and unnecessary for the following reasons:

- the proposed building envelopes and built form has been carefully designed to integrate seamlessly with the broader Melrose Park Precinct envisaged by the Council's Northern Structure Plan and Planning Proposal
- the development achieves the objectives of the zone and the development standard
- the proposal provides for varied built form providing an interesting presentation to the street and other areas of public domain
- the proposal allows for a decreased footprint allowing for increased areas of internal private open space and other areas of publicly accessible open space and areas of public domain
- a strictly height compliant development would provide for uniform building heights across the site and would result in a substantially inferior urban design outcome (refer to Figure 12)

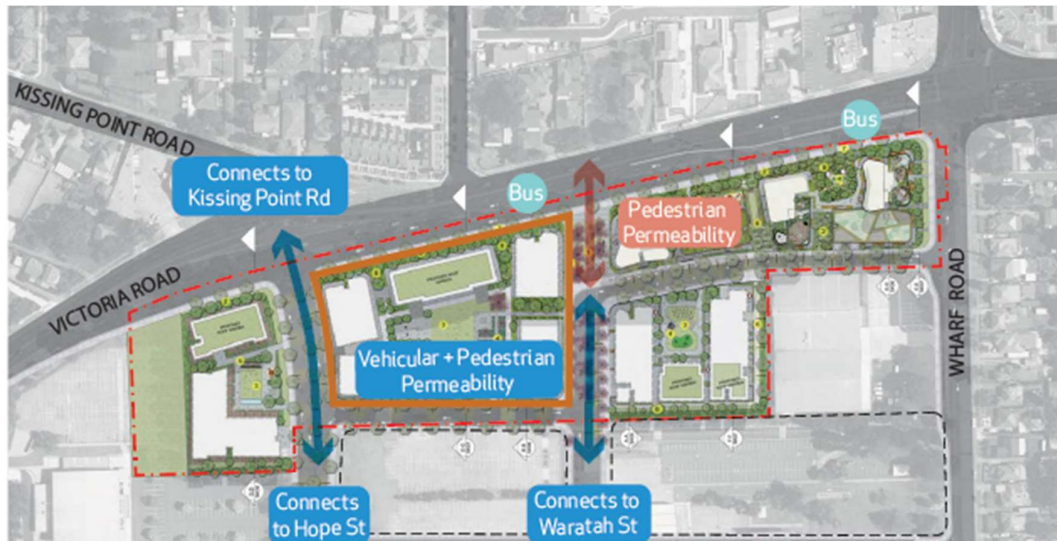


Figure 11: Improved site permeability (Source: AJC)



Figure 12: Top image PLEP 28m complaint scheme, bottom image indicative approved Scheme (Source: AJC)

6.1.2 Response to the topography of the site and required earthworks

The proposal directly responds to the existing sloping nature of the site, which requires significant earthworks to ensure connectivity both within the development and to the adjoining land. The applicant contends that compliance with the Height of Buildings development standard is unreasonable and unnecessary for the following reasons:

- the site is subject to extensive fill needed to appropriately grade the site in particular connectivity:
 - within the site to provide level and accessible access for future residents and visitors to the development from the proposed streets and areas of public domain
 - with the adjoining land subject to the Melrose Park North Planning Proposal, noting this site forms a critical part of the endorsed **Melrose Park Masterplan** as the gateway into the new urban precinct
- the fill was needed to ensure the site appropriately relates to the approved EWR-2 (DA 337/2018/A) immediately south of the site
- the proposed buildings are described as 11 / 12 storeys, however these will only be viewed as part 11 and part 12 storey buildings from the public domain, which is generally consistent with the Concept Plan (as amended)

6.1.3 Response to approved public domain and related infrastructure

The proposal results in superior public domain outcomes and provision of new public infrastructure to be dedicated to Council. The applicant contends that compliance with the Height of Buildings development standard is unreasonable and unnecessary for the following reasons:

- the site area includes significant infrastructure including internal roads, future road widening along Victoria Road, new open spaces and easements for electricity
- the proposal has been subject to significant consultation and negotiation with Council on the location and form of the proposed public domain and infrastructure requirements to service the proposed development as well as the broader community
- the recent design amendments following the DEAP comments, provide improved building amenity, interface and setbacks to Victoria Road, which has relocated approved floorspace from subterranean units (garden apartments) to higher level within parts of the proposal, requiring increased height in targeted locations
- the site is constrained by the significant infrastructure resulting in a reduce site area in which to design a height compliant development

6.1.4 Overland flow (Flooding)

The proposal has been significantly re-designed to accommodate overland flow, stormwater and flooding issues. The applicant contends that compliance with the Height of Buildings development standard is unreasonable and unnecessary for the following reasons:

- the proposed development requires the floor levels to be raised for all buildings by 0.5 metres to resolve overland flow (flooding)
- a development restricted to the PLEP building height standard would not achieve the intended density or nominated dwelling target on the site



| URBAN DESIGN City Strategy Unit | | Melrose Park master plan | | REVISION | DATE | DRAWN | CHECKED | DESCRIPTION | DRAFT / FINAL |
|--|--|--------------------------|-------------|----------|------------|-------|---------|-------------|---------------|
| 126 Church Street, Parramatta NSW 2150 | | drawn title | Master plan | | 22.09.2020 | AW | AW | | SCALE |
| PO Box 32 Parramatta NSW 2124 | | drawn revision | A01 | | | | | | 1:2500 @ A1 |
| www.cityofparramatta.nsw.gov.au | | drawn revision | | | | | | | 1:5000 @ A3 |

Figure 13: Endorsed Melrose Park Masterplan (Source COP)

6.1.5 Impact on Neighbouring Properties

The applicant contends that compliance with the Height of Buildings development standard is unreasonable and unnecessary for the following reasons:

- the location, setback and height of the proposed buildings has been designed to sympathetically respond to existing neighbouring development sites and ensures that the development potential of those sites is not jeopardised and is equitable in the context of the overall regeneration of Melrose Park
- the proposal has been extensively revised following comments from Council and the DEAP as discussed in Section 3 of this report. The revised scheme now provides for superior built form and resolves the previous key issues
- the site is located to the southern side of Victoria Road and the proposed increase in height would have no material impact on the neighbouring low-density residential properties to the north, east or west
- there would be no additional overshadowing impacts to residential properties east and west of the site compared with a height compliant scheme between the critical hours of 9am and 3pm at mid-winter
- the increase in height would not cause any additional overshadowing impacts when compared to a height compliant development
- building separation distances meet or exceed the minimum ADG building separation distances for visual privacy
- the increase in height will not obstruct the outlook or views from neighbouring residential properties, more than what will occur from a height compliant development. A detailed view analysis is provided in Section 6.4.3.

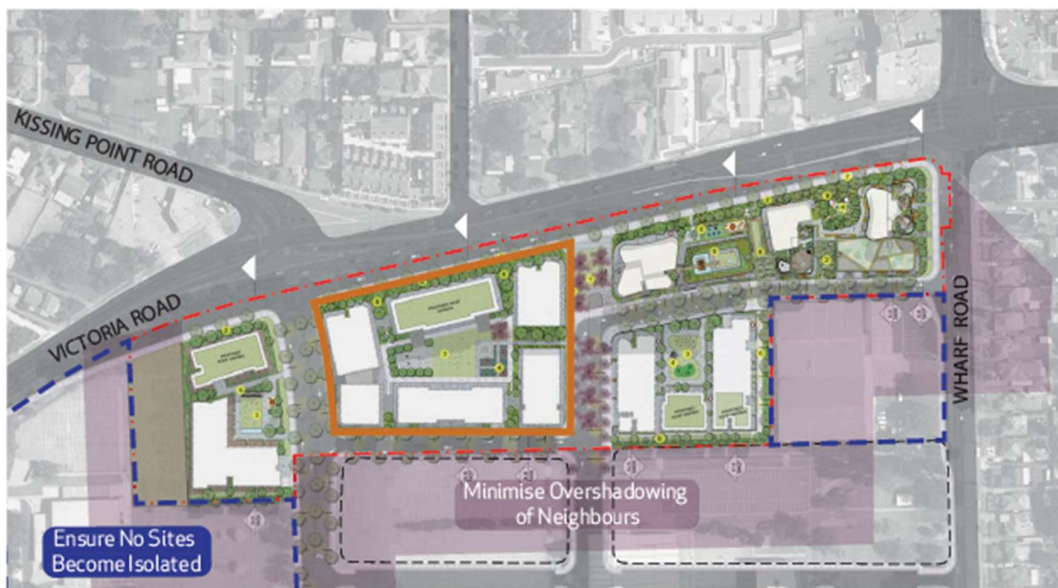


Figure 14: Proposal's relationship to neighbouring sites (Source: AJC)

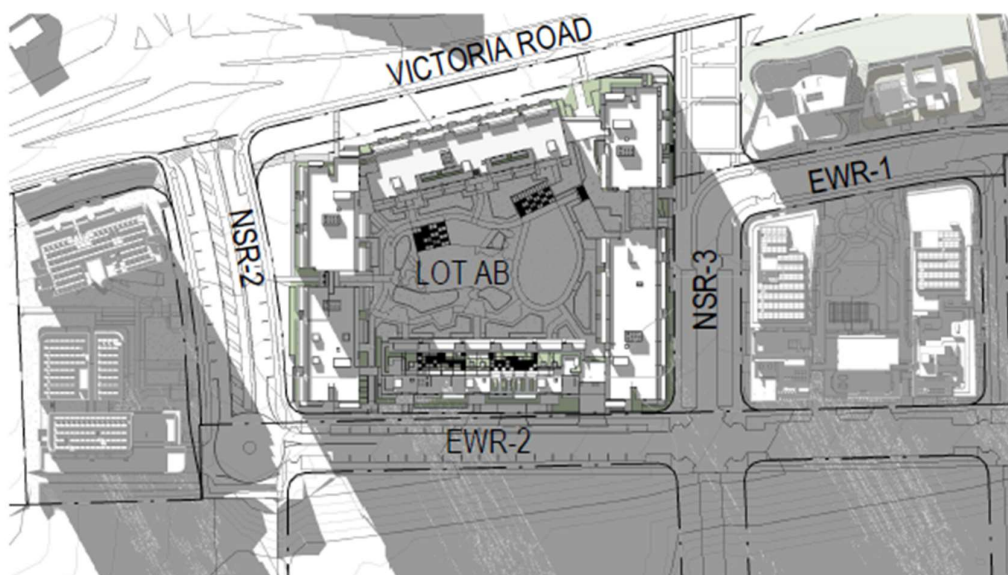


Figure 15: Shadows cast by the development at 3pm during mid-winter (Source: AJC)

6.1.6 Section 94 Contributions

The increase in height to maintain the approved quantum of development as approved in the Concept Plan will result in an increase in Section 94 development contributions, which will directly benefit the local community.

6.2 Clause 4.6(3)(b) – Grounds to Justify Contravening the Development Standard

The development of the VRS, including the localised increases in height, will provide for a landmark development of the highest standard of visual appearance and public benefit. In this context there are sound planning grounds and significant benefits to justify contravening the building heights development standard. In particular, the proposed built form and localised increases in height will present a significantly superior urban design outcome for the site as outlined below.

6.2.1 Consistency with the Strategic Planning Context and the Melrose Park North Planning Proposal

The proposed additional building heights will deliver superior built form outcomes to support new communities consistent with strategic planning objectives as detailed below:

Greater Sydney Region Plan

- the VRS is strategically located in an identified economic corridor between Parramatta and Sydney Olympic Park in the Central River City within the Greater Sydney Region Plan
- the proposal remains consistent with the Region Plan as Melrose Park is identified as a rapidly developing suburb
- the provision of publicly accessible pedestrian through-site links and new roads will significantly increase the permeability of the site and be instrumental in connecting Victoria Road to Parramatta River

Parramatta Local Strategic Planning Statement 2020

- the site forms part of the Melrose Park North Precinct which is specifically recognised a significant urban renewal site in Council's *Local Strategic Planning Statement* identified as a future Growth Precinct and Proposed Local Centre (Figure 14)
- the proposal will deliver an appropriate mix of dwellings, improved housing choice, increased retail and other non-residential uses and employment opportunities within a new vibrant mixed use neighbourhood
- the proposed buildings that exceed the Height of Buildings development standard are strategically located to provide improved urban design outcomes as discussed below

FIGURE 22 - CITY OF PARRAMATTA CENTRES HIERARCHY AND GROWTH PRECINCTS - AN EXPLANATION

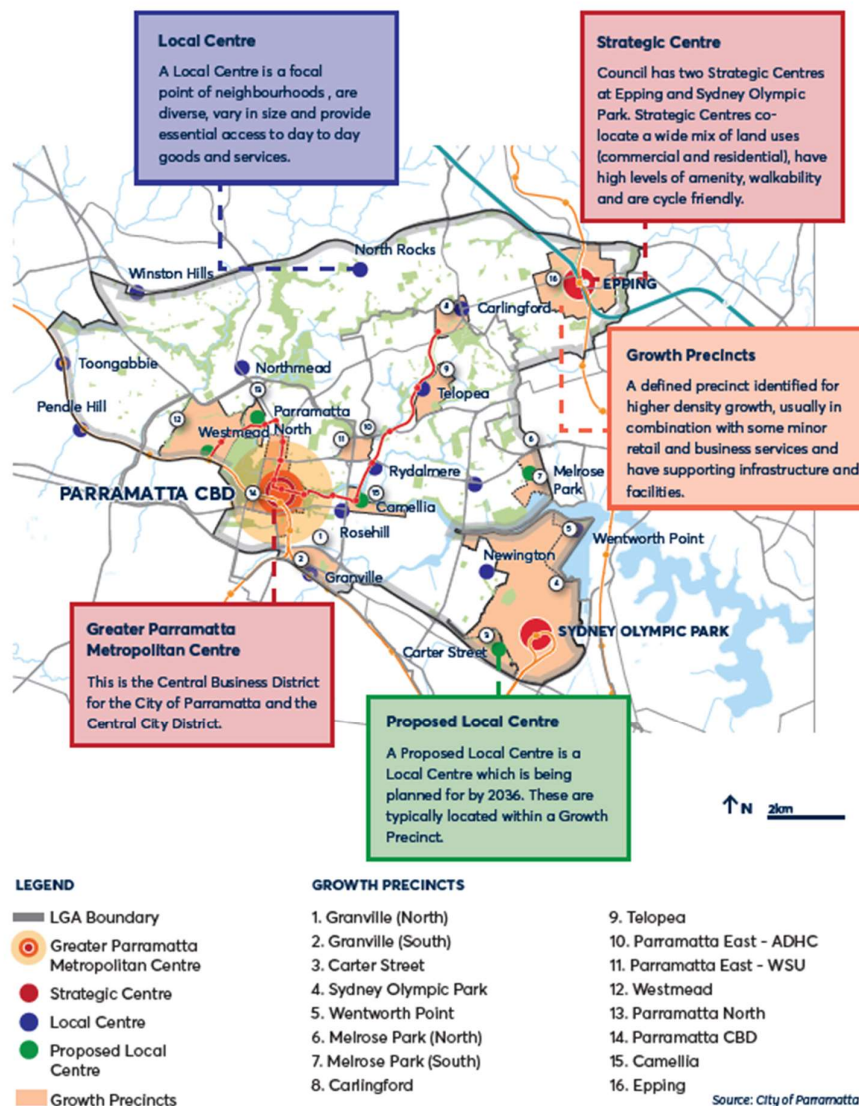


Figure 16: Parramatta LSPS identifies Melrose Park as a Growth Precinct and Local Centre (Source: COP)

Melrose Park North Endorsed Draft Masterplan (2019)

The site immediately adjoins the Council adopted Melrose Park Precinct. This identified growth precinct has the potential to deliver accelerated significant urban renewal outcomes by providing 5,500 new housing, foster housing choice, employment opportunities and other public benefits close to Parramatta and other strategic centres.

Following the approval of the Concept Plan, Council endorsed a Draft Masterplan 2019 which was the result of years of detailed investigation based on best practice urban design, landscape and transport planning principles. This resulted in the relocation of the Town Centre and introduced building heights in the proposed residential lots immediately adjoining the Stage 4 VRS site of **52 metres (15-16 storeys)** as outlined in **BLUE** in Figure 15 below.

The proposed additional 1 storey across Stage 4 to part 11 and 12 storeys is consistent with the endorsed built form in the Draft Masterplan.



Figure 17 Endorsed Masterplan 2019 following approval of Concept Plan MOD A (Source COP):

Melrose Park North Endorsed Draft Masterplan (2020)

Council (in consultation with PAYCE) is now finalising the Masterplan for public exhibition. The revised Masterplan has seen further increased building heights across the Melrose Park North Precinct.

These increased building heights have been introduced for similar planning reasons to the current clause 4.6 Request in this report – namely seeking a better planning outcome in terms of public domain, urban design, residential amenity, landscaping and recognition of the Precinct as a new Growth Area.

The Revised Masterplan has significantly increased building heights across the precinct, in particular in the proposed residential lots immediately adjoining the Stage 4 VRS site from 52 metres (15-16 storeys) to 20 and 22 storeys as outlined in **BLUE** in the Figure below.



Figure 18: Current Endorsed Height Map for the adjoining Site at Melrose Park North (Source: COP)

The increased heights in the Revised Masterplan of 20-22 storeys immediately adjoining the site clearly indicate the changing character of the area and the suitability of the additional storey as sought under this Clause 6 Request.

6.2.2 Improved Urban Design outcomes

As discussed in Section 3, the proposed built form amendments to the Concept Plan are required to facilitate the redevelopment of Superlot AB. The proposed built form has been developed and informed by the extensive consultation with DEAP and Council. The proposed design response addresses these concerns and further improves the previous design.

The proposed additional building height for Superlot AB is the result of the:

- relocation of the poor quality garden apartments (in the previous proposal) as requested by Council
- relocated gaps between buildings including between Buildings 1 and 2 to align with EWR-1 and gap between Buildings 4 and 5 to improve proportions, and gap widened and opened to the sky between Buildings 3 and 4. The design changes were as requested by Council
- raising the floor level for all buildings to be above the 0.5m freeboard (overland flow)
- increased floor level of Buildings 1, 2 and 3 by 0.7m to facilitate direct pedestrian access to Buildings lobbies
- inclusion of rooftop communal open spaces in Building 3 (as requested by Council) with shade structures for sun protection

The proposed encroachments into the 28 metre PLEP 2011 building height plane on Superlot AB are acceptable for the following reasons the:

- the proposed additional height aligns with the increased building heights in the adjoining sites as part of the Council endorsed Melrose Park North Masterplan as part of the Melrose Park Precinct
- non-complying height will not result in any detrimental amenity impacts in terms of view loss, shadowing or loss of privacy
- areas of non-compliance are for portions of the residential units and roof elements which have been supported by DEAP to ensure the overall urban design is improved
- proposal achieves a clear design variation in building height across the site and minimise monotonous and unbroken buildings
- revised envelopes do not prejudice the ability of the concurrent detailed Stage 4 DA to provide deep soil planting and landscaped open space consistent with the ADG
- proposal does not result in any amenity impacts on adjoining or nearby properties and does not prejudice the development potential of any adjoining sites
- proposal remains consistent with the approved maximum GFA / FSR for the VRS
- the design response provides the Stage 4 development with landmark qualities that will create an instantly recognisable development, which is desirable for a site of this size, location and importance
- the localised increases in height will provide a stronger vertical emphasis to individual buildings
- the proposed buildings will achieve a human scale of development, by varying and graduating building heights across the site, localising the tallest buildings at key focal points

The proposed modification to the Concept Plan is not associated with excessive site density or an overdevelopment of the site as the proposal maintains the 2:1 allowable FSR across the site. Further, the proposal does not result in unacceptable overshadowing to adjoining properties, in particular properties to the south of the site as demonstrated in **Appendix 2**.

6.2.3 Improved response to the topography of site

- the proposed increase in heights appropriately responds to the topography of the site by stepping the proposed buildings with the fall of the land (Figures 17 and 18)
- the proposed increase in heights allows for the provision of additional gaps between the buildings on the eastern and western elevations to permit sightlines
- provision of modulated building heights across the VRS has permitted the inclusion of rooftop communal open space on Building 3 that provide for both shade and solar access
- responds to finished levels of approved EWR-2 (DA 337/2018/A) immediately south of the site



Figure 19: Indicative relationship to Victoria Road. View from Victoria Road (Source: AJC)

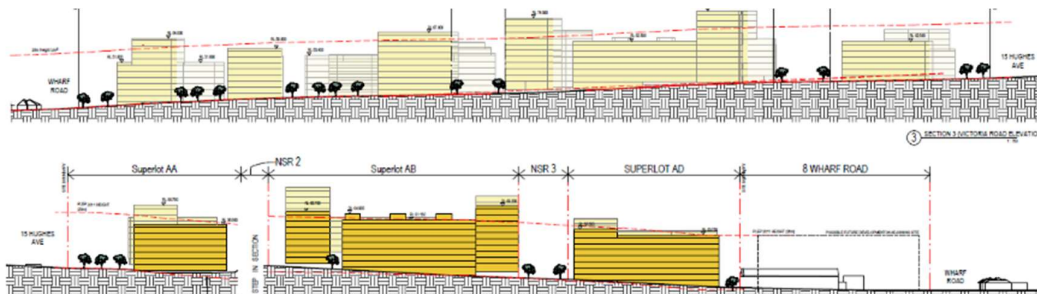


Figure 20: Proposed building envelopes have been stepped in response to the fall of the land (Source: AJC)

6.2.4 Improved relationship with the local context

- the increases in building height will have a positive visual impact on the Victoria Road streetscape and the broader surrounding area
- the buildings in excess of the building height development standard are separated by roads, open spaces and other lower-rise buildings, which prevents tower-crowding, and there is an appropriate transition of built form / scale within the site and to neighbouring properties
- the taller building elements will provide for sweeping views for future residents
- the design response does not result in any additional GFA or FSR across the VRS
- the proposal does not result in adverse traffic or amenity impacts when compared to a height compliant scheme



Figure 21: Indicative South-West perspective, corner of NSR-2 & EWR-2 (Source: Applicant)

For all the reasons above, the proposed development provides for a significantly superior urban design outcome for the site, when compared to a strictly height compliant scheme.

The detailed design as evident in the previous DA, demonstrates that the approved building envelopes were inappropriate and did not result in a good planning outcome for the site. Notably, the intended yield for the site could not be achieved and the controls resulted in the inclusion of poor quality garden apartments (subterranean apartments).

6.3 Wehbe Tests

6.3.1 Wehbe Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard

The proposed variation to the Height of Building development standard will be achieved notwithstanding the non-compliance with the standard as outlined in detail at Section 4.

6.3.2 Wehbe Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

The underlying objective and purpose of the Height of Buildings development standard, (including transition of built form, minimise impacts, safeguard heritage, respect existing character and satisfactory sky exposure) is considered relevant to the development.

However, as discussed in Section 6.1 above, it is considered that the increase in heights will facilitate the achievement of a landmark development within the identified Melrose Park Growth Precinct, have a substantially positive urban design impact and acceptable amenity impacts.

Therefore, the proposed increase in building heights represent a significant improvement over a compliant scheme of uniform height and therefore better achieves the objectives of the Height of Buildings development standard.

6.3.3 Wehbe Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

The proposal is considered superior to a strictly height compliant scheme as:

- the increases in height are an appropriate design response within the VRS
- strategically located buildings mark the key corners of Superlot AB
- the building height development standard has been varied by SCPP
- the increase in heights allows for the provision of additional gaps between the buildings on the eastern and western elevations to permit sightlines
- the areas of non-compliance will not lead to adverse impacts on adjoining properties in terms of overshadowing
- the proposed building height is the result of fill across the site to grade the site to ensure it relates to EWR-2 approved immediately south of the site
- the proposed building height is also the result of increased floor levels to address overland flow (flooding) on the site
- the areas of non-compliance will not lead to adverse impacts on adjoining properties or will inhibit the future development potential of adjoining properties within the Melrose Park Precinct
- provision of a stronger vertical emphasis to individual buildings fosters the delivery of landmark and architecturally unique development

Therefore, a strictly height compliant scheme would fail to deliver a development of sufficiently high quality, would not provide adequate public benefit and for these reasons, compliance is unreasonable.

6.3.4 Wehbe Test 4: The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unreasonable

The VRS is within the Melrose Park North Precinct and is surrounded by low-scale residential development. It is therefore a unique precinct in terms of its allowable height, density and nature.

As there is no development site with a comparable applicable Height of Buildings development standard within the immediate (1 kilometre) vicinity of the Northern Precinct the Height of Buildings development standard is not considered to have been abandoned or destroyed by Council's own actions in granting consents departing from the standard.

6.3.5 Wehbe Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

The land has been zoned appropriately and the controls applicable to the site are generally acceptable, despite the proposed localised increases in height. As discussed at Section 6.5, the proposed development is consistent with the objectives of the zone.

For the reasons outlined in Section 6 of this report, the proposed height of buildings and built form design response would better achieve the objectives of the zone than a strictly height compliant scheme.

6.4 SJD DB2 Pty Ltd v Woollahra Council (2020)

The *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112* established greater flexibility in applying Clause 4.6 to vary development standards where a better outcome would be achieved in the context of the site. The outcome of this case concluded the following questions should be asked in relation to the request to vary a development standard:

6.4.1 What is the desired future character?

As outlined in Section 6.2.1 of this report, the VRS is strategically located in an identified economic corridor between Parramatta and Sydney Olympic Park in the Central River City within the Greater Sydney Region Plan.

The site forms part of the Melrose Park North Precinct which is specifically recognised as a significant urban renewal site in Council's *Local Strategic Planning Statement* identified as a future Growth Precinct and Proposed Local Centre.

The proposal which now includes a more substantial commercial component and maintains residential density (with improved amenity by relocating some garden apartments) clearly demonstrates that the proposal aligns with the desired future character of the locality as both a Future Growth Precinct and Local Centre.

In summary, the desired future character of the Site is evolving and has clearly been established as a high density mixed use development as evident by:

- identification of Melrose Park as a Growth Area in the Parramatta LSPS 2020, which includes the Site
- the approved Concept Plan which shows Superlot AB as a high density, mixed use development lot.
- the Council adopted and revised Melrose Park North Masterplan, which proposes 20-22 storey residential development immediately to the south of the site (**Figure 16**).

6.4.2 Is the proposal consistent/compatible with that desired future character?

City of Parramatta Local Strategic Planning Statement

The Council's *Local Strategic Planning Statement* was finalised in March 2020 and sets out the 20-year vision for land use planning in the Parramatta LGA. The LSPS identifies priorities for jobs, homes and infrastructure to guide development and planning to 2036.

The *Local Strategic Planning Statement* predicts that Parramatta will require 87,900 more dwellings by 2036 and be home to 198,000 more people. Melrose Park is identified as a Growth Precinct and is forecast to provide 6,330 of those dwellings and 2,600 jobs. The proposed development will help achieve these targets.

There are a number of Planning Priorities that are of particular relevance to the Proposal and these are addressed below:

PLANNING PRIORITY 3: Advocate for improved public transport connectivity to Parramatta CBD from the surrounding district

*P10 Stage Planning Proposals in Growth Precincts at Parramatta East, Camellia, **Melrose Park** and Westmead based on the timing of the Sydney Metro West project, Parramatta Light Rail Stage 2 (or equivalent infrastructure) and other heavy and light rail infrastructure consistent with the Parramatta Local Housing Strategy (once endorsed by DPIE).*

PLANNING PRIORITY 4: Focus housing and employment growth in the GPOP and Strategic Centres; as well as stage housing release consistent with the Parramatta Local Housing Strategy

- The proposal will provide for 412 dwellings within the Melrose Park Growth Precinct and GPOP in line with housing targets and the Parramatta Local Housing Strategy. The proposal will also generate up to 120 jobs through the provision of additional commercial uses including a supermarket.

PLANNING PRIORITY 7: Provide for a diversity of housing types and sizes to meet community needs into the future

- The proposal provides a diverse range of housing types and provides affordable options to meet the needs of the community's growing proportion of small households.

Melrose Park North Endorsed Draft Masterplan (2020)

The Revised Masterplan has significantly increased building heights across the precinct, in particular in the proposed residential lots immediately adjoining the Stage 4 VRS site from 52 metres (15-16 storeys) **to 20 and 22 storeys**.

The proposed additional building height from 10 storeys to part 11 and part 12 storeys and resultant increased permeability and ground level public domain improvements are compatible with the desired future character of the locality as evident in the Revised Melrose Park North Masterplan, which proposes increased building height in this location within the Precinct.

6.4.3 Has any visual intrusion been minimised?

The proposed additional building height would be imperceptible in its wider context of the whole VRS. Superlots AA, AC and AD within the VRS have approved building envelopes of up to 9 and 11 storeys. The proposed Superlot AB envelope of 6 to part 11 and part 12 storeys, is appropriate.

Due to the placement of the part 11 and part 12 storey components within Superlot AB and in context of the broader VRS site, the visual intrusion has been minimised as viewed from the public domain.

Due to the placement of the additional building height, being primarily to the north of the site, the subsequent impacts on adjoining properties have been minimised including overshadowing as demonstrated in the Design Report (Appendix 2). A detailed assessment of the proposals impact on views is provided below.



Figure 22: Indicative North-East perspective, corner of Victoria Road and Boulevard Park (Source: Applicant)

View Impact Assessment

The topography of the site and the adjoining properties generally falls from north to south, from Victoria Road to Parramatta River. Therefore, potential view impacts are generally limited to the properties on the northern side of Victoria Road, in particular the three-storey townhouse development at 722 Victoria Road.

A revised view analysis has been prepared by AJ+C (**Attachment O**). The view analysis is taken from the eastern and western portions of 722 Victoria Road and compares the approved Concept Plan building envelopes to the proposed Concept Plan (as amended). The PLEP 2011 permits a maximum building height of 28m, approximately, 7-8 storeys. It is noted that several building envelope heights have been approved under the Melrose Park Concept Plan which exceed the 28 metres PLEP 2011 building height.

Through an analysis of the view impacts, it is clear that views from 722 Victoria Road towards the horizon are obscured by buildings over 4 storeys or a building height of approximately 14 meters. This is considerably lower than the compliant building height of 28 metres or a 7 to 8 storey building, as demonstrated in the Figures below.

On this basis, a compliant scheme of up to 28 metres would obscure the identified views.

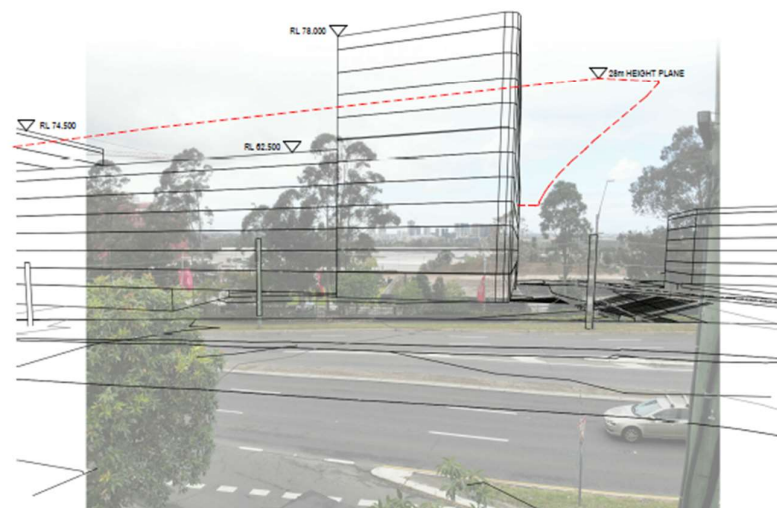
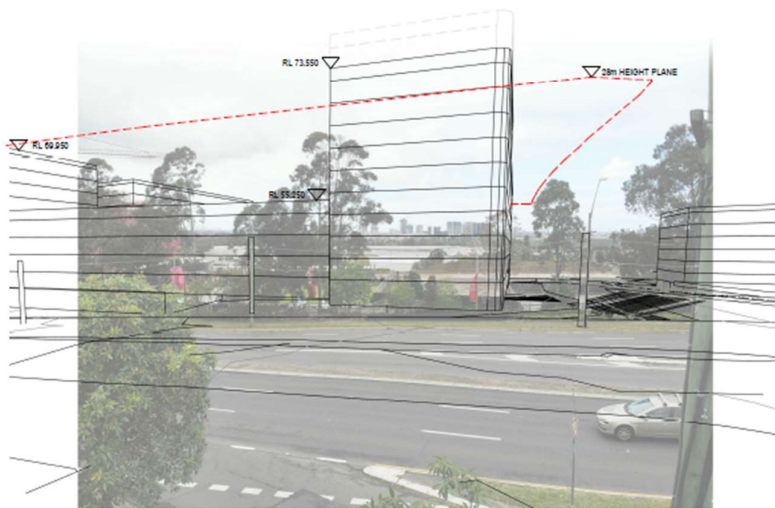
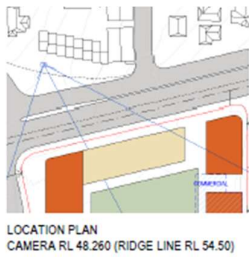


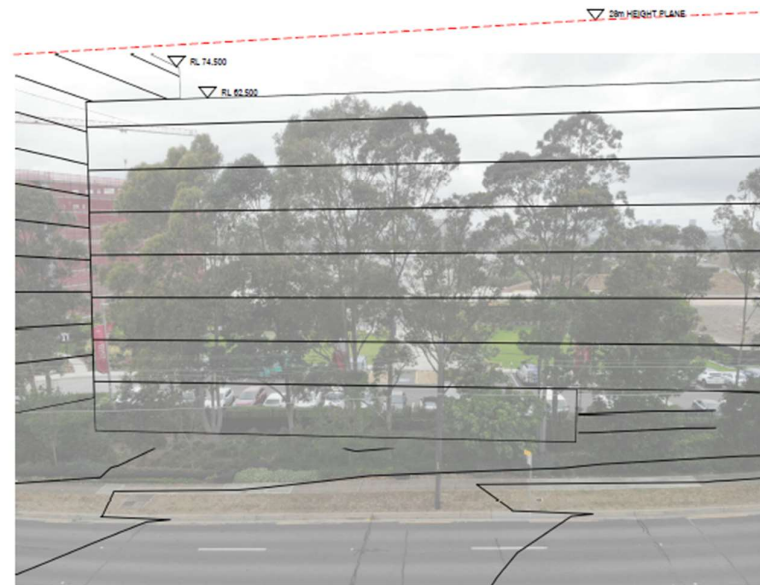
Figure 23: View analysis from Victoria Road demonstrating the approved and proposed concept plan (Source: PAYCE)



LOCATION PLAN
CAMERA RL 54.260 (RIDGE LINE RL 51.90)



APPROVED CONCEPT PROPOSAL



PROPOSED CONCEPT PROPOSAL

Figure 24: View analysis from Victoria Road demonstrating the approved and proposed concept plan (Source: PAYCE)

Notwithstanding, the proposed development has been considered against the LEC Planning Principle for view sharing set out in *Tenacity v Warringah* [2004] NSWLEC 140 which identifies the concept of view sharing in the following terms:

... The notion of view sharing is invoked when a property enjoys existing views and a proposed development would share that view by taking some of it away for its own enjoyment. (Taking it all away cannot be called view sharing, although it may, in some circumstances, be quite reasonable.)

The Tenacity decision establishes a four-step assessment for view sharing. An analysis of the impact of the proposed development on current views from the properties located to the north of the site on Victoria Road is provided in the Table 5.

| Planning Principle | Planning Principle |
|---|---|
| <p>Step 1: The assessment of views to be affected:</p> <p><i>"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".</i></p> | <p>The views identified comprise:</p> <ul style="list-style-type: none"> views over Stage 4 of the VRS site (Superlot AB); distant district views including, Melrose Park North which is currently undergoing a process of urban regeneration into a high density neighbourhood, Wentworth Point and Rhodes. the view analysis does not identify any water views of the Parramatta River <p>On this basis, the identified views would not be considered as highly valuable or iconic.</p> |
| <p>Step 2: Consider from what part of the property the views are obtained from:</p> <p><i>"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".</i></p> | <p>The views from the identified properties are from the south facing ground, first and second floor windows and balconies.</p> <p>The identified views are over the subject site. It is noted that Superlot AB is currently under-developed.</p> |
| <p>Step 3: Assess the extent of the impact</p> <p><i>"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".</i></p> | <p>Publicly available real estate floor plans for 722 Victoria Road have been reviewed. This information confirms that the south facing ground floor windows would provide views from living rooms, while views from the upper floor windows are from bedrooms.</p> <p>Living room views are more valued than bedroom views. However, in this instance living rooms are located at ground level and would therefore be the most difficult to retain views across the subject site.</p> <p>Notwithstanding, all views would be lost due to a compliant development as demonstrated in the Figures above.</p> |

| Planning Principle | Planning Principle |
|--|---|
| <p>Step 4: Assess the reasonableness of the proposal that is causing the impact</p> <p><i>“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”.</i></p> | <p>It is acknowledged that the proposal does not comply with the numeric building height control established for the site under Clause 4.3 of the PLEP 2011.</p> <p>Notwithstanding, views from 722 Victoria Road towards the horizon are obscured by buildings on the site over 4 storeys or a building height of approximately 14m. This is considerably lower than the compliant PLEP 2011 building height of 28m or a 7 to 8 storeys.</p> <p>Furthermore, when compared to a compliant scheme the proposed building height will not result any significant view loss.</p> |

Table 5: Tenacity v Warringah [2004] NSWLEC 140

Applying the above principles to 722 Victoria Road, the identified horizon views are not considered to be highly valuable or iconic. These views are over Superlot AB and the Melrose Park North Precinct and are only currently available due to the under-developed nature of these sites.

The view analysis prepared by AJ+C demonstrates that a building with a height of over 4 storeys will obscure the views from 722 Victoria Road over Superlot AB. Furthermore, when compared to a compliant scheme the proposed building height will not result any significant view loss.

It is noted that the only way to retain the identified views would be limit any building height on the site to approximately 2 to 3 storeys. This would render the site undevelopable and inconsistent with the approved Concept Plan.

The proposal is considered reasonable from a view sharing perspective as:

- it complies with other key planning controls, such as FSR
- the identified views are over the subject site because it is under-developed
- retaining the identified views would require building heights within the site to be limited to 2 to 3 storeys, which is well below the PLEP 2011 building height control and the approved Concept Plan development.

6.4.4 Have the controls been previously abandoned?

As discussed in Section 6 of this report, Council and the SCPP have previously approved departures from *Clause 4.3 Height of Buildings* within the VRS. The SCPP approved a maximum building height of 35 metres and building heights above 28 metres were limited to six locations over the VRS.

The Council's findings remain relevant to the proposed scheme as the proposed building envelopes:

- will not result in unreasonable overshadowing to properties south of the VRS
- have urban design merit as Superlot AB fronts Victoria Road and the proposed building envelopes assist to dramatize the entry into the VRS
- the proposal results in a superior planning outcome
- as detailed in Section 6 of this report, DEAP advised of its support for additional building height subject to maintaining approved overall GFA and other built form amendments
- the proposed additional height is consistent with the desired future character of the area as evidenced through the Revised Melrose Park North Masterplan for the adjoining site

6.5 Clause 4.6(4) – Consistency with Objectives

This Request has adequately addressed the matters required to be demonstrated by subclause (3), as outlined in Section 5. The proposed development is consistent with the objectives of the B4 Mixed Use zone as outlined in Table 5 and the objectives of the Height of Buildings development standard as outlined in Table 6.

In addition, the proposed development is a superior development to a strictly height compliant scheme and therefore better achieves the objectives of the Height of Buildings development standard and the zone. The proposal is therefore in the public interest.

| Zone B4 Mixed use | |
|---|--|
| Objectives | Achievement of Objectives |
| <i>Provide a mixture of compatible land uses.</i> | <p>The proposal provides a mixture of residential and retail uses including a supermarket, which are compatible land-uses with the surrounding area. The proposed additional building height will provide for additional residential and non-residential floorspace and therefore achieves this objective.</p> <p>The provision of retail will contribute towards meeting the needs of the local community.</p> <p>The variation in building height will facilitate population and expenditure within the VRS and the growth of retail tenancies in established centres within the vicinity of the VRS and Parramatta LGA.</p> |
| <i>Encourage development that contributes to an active, vibrant and sustainable neighbourhood.</i> | <p>The additional building height provides for a significantly better development, which will provide for quality communal open space and landscaping areas, pedestrian permeability, visual links, a human scale of development and fosters an active, vibrant and sustainable neighbourhood.</p> |

| Zone B4 Mixed use | |
|---|---|
| Objectives | Achievement of Objectives |
| Create opportunities to improve the public domain and pedestrian links. | <p>The proposal provides for significantly improved public domain, pedestrian permeability, open space, communal open space, landscaped streetscapes and provision of landscaped buffer between the residential units and the public domain.</p> <p>The proposed variation to the building height development control enables this objective to be better met through the increase in gaps between Buildings 1 and 2 and permitting sight lines to EWR-1.</p> |
| Support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality. | N/A |
| Protect and enhance the unique qualities and character of special areas within the Parramatta City Centre. | <p>There are no designated special areas within or nearby the site and this objective is therefore not relevant to this site. Notwithstanding, the proposed increases in height will enhance the qualities and character of the surrounding area through the creation of a landmark development.</p> |

Table 6: Consistency with B4 Mixed Use zone objectives

| Clause 4.3 Development Standard | |
|---|---|
| Objectives | Achievement of Objectives |
| Nominate heights that will provide a transition in built form and land use intensity. | <p>The variation of the building height development standard will ensure that the development provides a varied and interesting built form, which provides for an appropriate scale of development.</p> <p>The increases in building height will appropriately punctuate Superlot AB within the VRS.</p> |
| Minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development. | <p>The proposed additional height will have a positive visual impact and will not result in loss of privacy or unreasonable loss of solar access to adjoining properties.</p> <p>It is noted that a detailed view analysis is provided in Section 6.4.3.</p> <p>The location of the tallest buildings to the north of the site minimises overshadowing.</p> |
| Require the height of future buildings to have regard to heritage sites and their settings. | <p>The proposed variation to the building heights development control does not have any adverse impacts on nearby heritage items or their setting.</p> |
| Ensure the preservation of historic views | <p>The proposal does not interfere with any existing historic views.</p> |
| Reinforce and respect the existing character and scale of low density residential areas. | <p>As discussed previously within this report the proposed the scale of the development is appropriate for the site and the variation of the Height of Building development standard is warranted and will have significant positive urban design outcomes.</p> <p>The Height of Buildings development standard for the VRS envisages a high density development and therefore does</p> |

| Clause 4.3 Development Standard Objectives | |
|---|--|
| Objectives | Achievement of Objectives |
| | <p>not require that the development replicate the scale of the surrounding low density areas.</p> <p>The building height envelopes have been carefully considered to deliver the best urban design for the site and the most appropriate relationship to existing surrounding areas.</p> <p>The proposal would not have an adverse impact on the character and scale of the nearby low density residential area.</p> |
| Maintain satisfactory sky exposure and daylight to existing buildings within commercial centres, to the sides and rear of tower forms and to key areas of the public domain, including parks, streets and lanes. | <p>The variation to the building height development control would not have an adverse impact on sky exposure and daylight to the sides and rear of the proposed towers or to key areas of the public domain.</p> <p>The additional height would not have any adverse impacts on existing (or likely future) neighbouring residential properties.</p> |

Table 7: Consistency with Clause 4.3 development standards objectives

6.6 Clause 4.6(5)(a) – Matters of Significance for State of Regional Planning

The proposed exceedance of the maximum Height of Buildings development standard for the site does not raise any matters of State or Regional Planning significance as:

- the development is not of a size or nature to have more than local impact;
- the proposed height departure is localised and is minor in the context of the approved VRS development and broader Melrose Park regeneration;
- the exceedance in building height will have a positive urban design impact;
- there are no significant amenity or environmental impacts; and
- the site is not a site designated to be of State significance.

6.7 Clause 4.6(5)(b) – Public Benefit in Maintaining the Development Standard

As demonstrated in the previous sections of this report, the variation to the height of buildings development standard would establish the best urban design response for the site and provide for a landmark development.

Conversely, a strictly height compliant development would result in a substantially inferior outcome due to the provision of uniform building heights as was the opinion of Council and the DEAP in respect of the previous Stage 4 DA (DA389/2019).

In light of the significant public benefits arising from allowing a variation, it cannot be reasonably assumed that there is any public benefit in maintaining the existing height of buildings development standard. Other public benefits that are unique to the proposal and would be unable to be delivered or significantly reduced in benefit, when compared to a strictly height compliant scheme, include:

- attainment of a suitably high standard of design and appearance to deliver a landmark development
- provision of publicly accessible through-site links
- good public domain outcomes with increased permeability through the site
- acceptable level of density to support the proposed commercial uses which will be enjoyed by the existing and new communities
- provide for a development to support Council's strategic objectives for the precinct as outlined in the 2020 LSPS which identifies this site as a future Growth Precinct and Local Centre
- increased provision of developer contributions.

6.8 How Would Strict Compliance Hinder the Attainment of the Objectives Specified in Section 5(a)(i) and (ii) of the Act

Sections 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) are quoted below:

The objects of the Act are:

(a) *to encourage:*

- (i) *The proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
- (ii) *The promotion and coordination of the orderly and economic use and development of land.*

The development is wholly consistent with the objectives specified in Section 5(a)(i) and (ii) of the EP&A Act, as:

- the site is located within an area undergoing transformation into a high density urban precinct as recognised in the Parramatta Council's *Local Strategic Planning Statement*
- the site adjoins and is consistent with the Revised Melrose Park Masterplan to support the Melrose Park Structure Plan and Melrose Park North Planning Proposal (which has Gateway Approval)
- the redevelopment of the site for residential and retail uses including a supermarket will create a new vibrant neighbourhood, maximises the efficient use of the land and will contribute to urban consolidation and reducing demand to develop more environmentally sensitive lands;
- the development promotes the orderly and economic use and development of the land as it delivers new housing and jobs within an established urban environment located on a rapid bus corridor (Victoria Road) without significant or unreasonable environmental impact; and

- the provision of pedestrian permeability fosters the orderly use of the land by enabling future pedestrian connections to the VRS and integration with the Melrose Park North Precinct.

Strict compliance with the Height of Buildings development standard would hinder the attainment of the objective of the EP&A Act, as such a development would:

- not deliver the optimum urban design solution for the development of the site as residential units would be below ground;
- have a detrimental visual impact on the surrounding area and Victoria Road streetscape;
- present a uniform height that would fail to transition to adjoining residential areas and respect their existing character;
- would be unable to achieve a landmark status befitting the importance of the site; and
- would not be able to deliver pedestrian permeability and views.

6.9 Is the Objection Well Founded

For the reasons outlined in previous sections, it is considered that the objection is well founded in this instance and that granting an exception to the development can be supported in the circumstances of the case.

7 Conclusion

Clause 4.6 allows for flexibility in the application of development standards in appropriate circumstance and this Request has been shown to satisfy the provisions of 4.6(3) and 4.6(4) of the PLEP 2011. Given the high standard of the proposal and public benefits the development is considered to be in the public interest.

It has been demonstrated that compliance with the height of buildings development standard is unnecessary and unreasonable given the specific circumstances of the proposal. In addition, clear planning grounds have been provided that justify contravening the development standard. The proposal is consistent with the objectives of the development standard and the B4 Mixed Use zone.

The proposed increases in height are considered appropriate and provide for a superior development compared to a compliant development. The tallest components of the site are strategically located to the north of the site. The proposal results in a scale of development that is appropriate within the emerging Melrose Park Precinct and provides an acceptable built form transition to existing neighbouring residential and public domain and internal road developments.

The variation to the height standard will not result in a breach of the approved overall GFA or FSR for the VRS, with the additional population required to ensure the success of the proposed supermarket and retail uses.

The proposal is consistent with the strategic direction for the site. The proposal will provide for 412 dwellings within the Melrose Park Growth Precinct and GPOP in line with housing targets and the Parramatta *Local Strategic Planning Statement*. The proposal will also generate up to 120 jobs through the provision of additional commercial uses.

The proposed development is considered to better satisfy the objectives of the height of buildings development standard and the B4 Mixed Use zone by delivering a more appropriate development outcome for the site and the broader area.

The proposed increase in building height should be supported the:

- increase in building height will not result in unacceptable environmental impacts
- proposal results in a superior urban design outcome
- proposal results in a superior public domain outcome
- proposal achieves a high level of residential amenity
- proposal appropriately responds to the site's constraints
- proposal provides the density required to support the proposed commercial uses in the B4 Mixed Use Zone
- approved overall GFA and FSR for VRS is maintained
- proposal better aligns with the building heights endorsed by Council for the adjoining Melrose Park North Precinct

On balance, proposal results in an overall better planning outcome for the site and for the reasons set out above, the proposed development represents a superior outcome for the site and it is therefore justified and appropriate that the development standard be varied as detailed in this Request.



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Clause 4.6 Request – Floor Space Ratio

657-661 Victoria Rd and 4-6 Wharf Rd, Melrose Park
Stage 4 (Superlot AB) Development Application



submitted to the City of Parramatta Council
on behalf of:
Sekisui House Australia Pty Ltd

23 October 2020

Contact



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Cover image: **the site** (Source: Applicant)

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1 Introduction

This is a written request (the Request) to seek a variation to a development standard in accordance with the provisions of Clause 4.6 Exception to Development Standards of the *Parramatta Local Environmental Plan 2011* (PLEP 2011). This request has been prepared following a request from Council on 16 October 2020 for abundant caution.

This Request supports a Development Application (DA) for the construction of residential flat buildings, commercial space comprising of a supermarket and other retail and subdivision on proposed Superlot AB (Stage 4) which is part of the site at 657-661 Victoria Road and 4-6 Wharf Road, Melrose Park known as the Victoria Road Site (VRS).

1.1 The site

The current site is referred to as Stage 4 and is part of the larger site known as the VRS. The VRS is a large prominent site fronting Victoria Road (a strategic transport corridor), which acts as a key linkage from Parramatta CBD to Sydney CBD. The site is located between the suburbs of Ermington to the west and West Ryde to the east.

Stage 4 is located in the centre of the site, fronting Victoria Road. It has an area of 17,970m² and is located in between Stage 1 (Superlot AC) and Stage 3 (Superlot AA). It has an approximate frontage of 123 metres to Victoria Road. The VRS is elevated, sloping down from Victoria Road with views towards Sydney, Parramatta and Chatswood CBDs, the Parramatta River and general district views.

The surrounding area is characterised by a variety of industrial and commercial uses, including industrial and warehouse buildings in the Melrose Park industrial precinct to the south of the site, and established low density detached dwelling houses surrounding the site. There are several heritage items located nearby, 6 within Parramatta Local Government Area (LGA) and one within Ryde LGA. The closest heritage item is 8 and 38-42 Wharf Road, being the industrial area immediately south of the site, which is a local heritage item (I311) listed within Schedule 5 of the PLEP 2011. I.

Construction is well underway, with Stage 1 nearing completion.

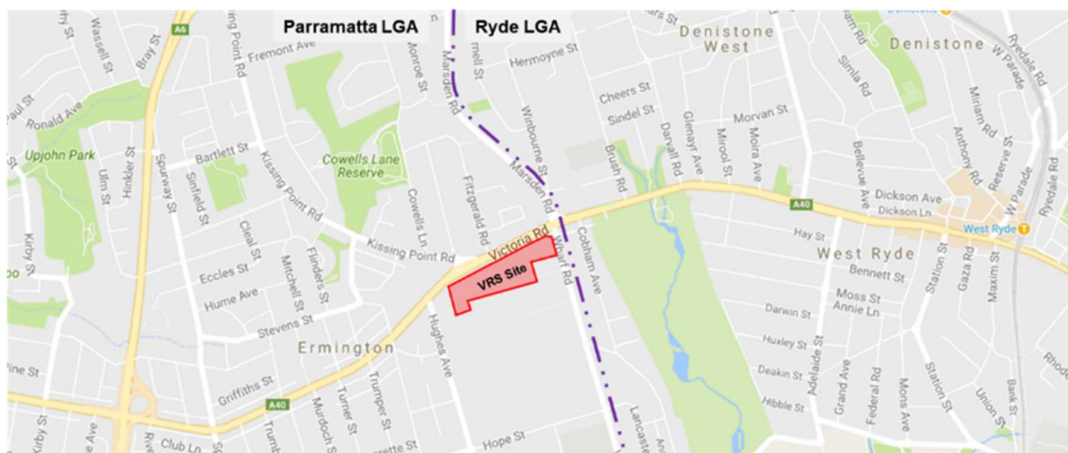


Figure 1: Location of the VRS Site (Source: Nearmap)

1.2 The CI 4.6 Request

This Request relates to Clause 4.4 Floor Space Ratio (FSR) of the PLEP 2011. This Request has considered the NSW Department of Planning, Industry and Environment (DPIE) guideline *Varying Development Standards: A Guide, August 2011* (DPIE Guide) and planning system circular PS 17-006 *Varying Development Standards, December 2017*, and addresses the findings and principles of the following judgements of the Land and Environment Court:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and [2015] NSWCA 248; and*
- *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112*

1.3 Key Reasons to support the increase in floor space ratio

The proposed increase in FSR should be supported as:

- ***the proposal remains compliant with the overall FSR of 2:1 approved for VRS under the Concept Proposal (as amended)***
- ***the approved overall GFA for VRS is maintained***
- the concept approval facilitates an improved distribution of FSR and GFA across the VRS site to allow for public domain, infrastructure and built form variety
- requiring an FSR of 2:1 for Lot AB would be contrary to the Concept Proposal (as amended), which approved an FSR of 2.03:1 (including roads) or 2.82:1 (excluding roads) for Lot AB (as amended)
- providing an FSR of 2:1 for Lot AB would result in a shortfall of GFA, adversely impacting upon the proposed yield
- the proposal provides the density required to support the proposed commercial uses in the B4 Mixed Use Zone
- the proposal results in a superior urban design outcome
- the proposal results in a superior public domain outcome
- the proposal achieves a high level of residential amenity
- on balance proposal results in an overall better planning outcome for the site

Importantly, a Clause 4.6 Request to vary the FSR development standard has not been submitted for any of the prior stages of the wider VRS site due to Concept Approval (as amended). An extract from Council's Assessment Report for Stage's 2 (DA/1025/2017) states:

A Clause 4.6 variation request is not considered to be necessary for the following reasons:..

- ***Clause 4.4 'FSR' – The concept plan overall complies with the allowable GFA across the wider site. While the proposal 'exceeds' the allowable FSR based on the area of the site, it is consistent with the distribution of floor space approved in the concept plan.***

Notwithstanding, this Clause 4.6 Request has been prepared for abundant caution, should the consent authority deem it necessary. The following sections of this Request critically analyse the proposed increase in FSR, its impact and reasonableness. This analysis demonstrates that an exception to the FSR development standard is warranted in this instance and will provide for a significantly better planning outcome than a compliant scheme.

2 Planning Overview

The *Standard Instrument (Local Environmental Plans) Order 2006* was introduced to create a common format for local environmental plans across NSW and all councils have now adopted local environmental plans based on the Standard Instrument (SI).

The SI includes various development standards as a means to achieving environmental planning objectives and these standards can be numerical or performance based.

Clause 4.6 of the SI allows a consent authority to consider and grant consent to a development even in the circumstance where that development would contravene a development standard. Importantly, on land where a SI applies and Clause 4.6 is relevant, the powers *State Environmental Planning Policy No.1 – Development Standards* do not apply.

The DPIE Guide confirms that the NSW planning system allows for flexibility in planning controls, in certain circumstances, through the provisions of Clause 4.6 of the SI.

The DPIE Guide recommends that any Request to vary a development standard should confirm the planning context and relevant controls to assist the consent authority's assessment. The following table (Table 1) provides a summary of the relevant planning context and provides a key numerical overview of the proposed variation.

| Information Requirement | Comment |
|---|--|
| Relevant Applicable Planning Instrument | PLEP 2011. |
| Zoning of the Land | Zone B4 Mixed Use (refer to Figure 2). |
| Objectives of the Zone | <p>The objectives of zone B4 Mixed Use are:</p> <ul style="list-style-type: none"> • to provide a mixture of compatible land uses; • to integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling; • to encourage development that contributes to an active, vibrant and sustainable neighbourhood; • to create opportunities to improve the public domain and pedestrian links; • to support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality; and • to protect and enhance the unique qualities and character of special areas within the Parramatta City Centre. |
| Development Standard to be Varied | Floor space ratio |
| Nature of the Development Standard | A numerical floor space ratio. |
| Relevant Development Standard Clause | Clause 4.4 'Floor Space Ratio' of the PLEP 2011. |
| Objectives of the Development standard | <p>The objectives of Clause 4.4 Floor Space Ratio are:</p> <ul style="list-style-type: none"> • to regulate density of development and generation of vehicular and pedestrian traffic, • to provide a transition in built form and land use intensity within the area covered by this Plan, |

| Information Requirement | Comment |
|--|---|
| | <ul style="list-style-type: none"> to require the bulk and scale of future buildings to have regard to heritage sites and their settings, to reinforce and respect the existing character and scale of low density residential areas. |
| Development Standard Numeric Control for the Site | Maximum floor space ratio of 2:1 (refer to Figure 3). |
| Proposed Numeric Control | Maximum floor space ratio of <ul style="list-style-type: none"> 2.03:1 (including future roads) for Lot AB 2.82:1 (excluding future roads) for Lot AB 2:1 for VRS |
| Percentage Variation Between the Proposal and the Planning Instrument | An increase of: <ul style="list-style-type: none"> 0.03:1 represents a 1.5% increase over the PLEP 2011 FSR control of 2:1. 0.82:1 represents a 41% increase over the PLEP 2011 FSR control of 2:1. |

Table 1: DPIE Guide recommended planning information and numeric overview

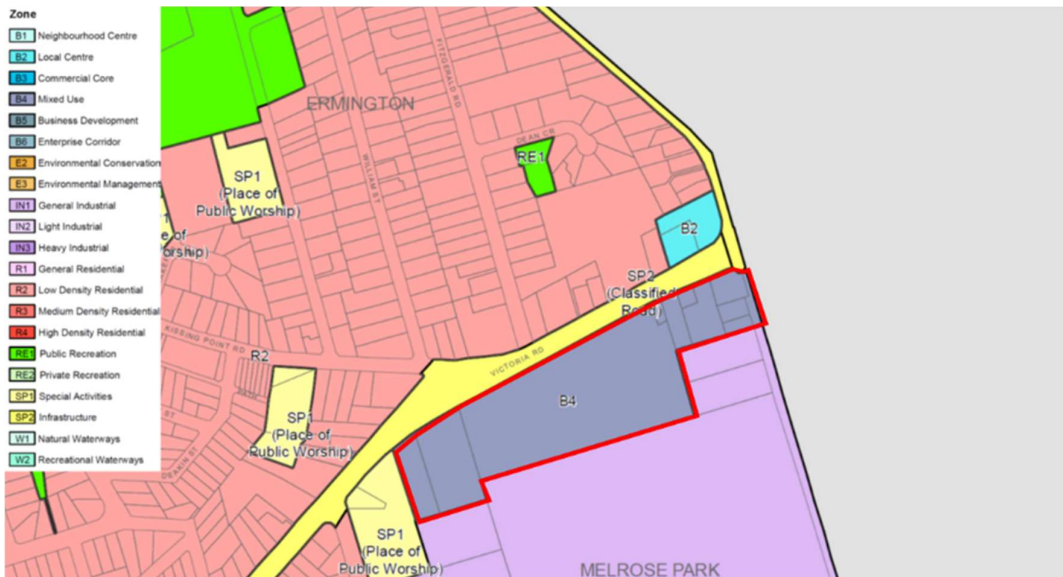


Figure 2: PLEP 2011 zoning map excerpt (Source: PLEP 2011)

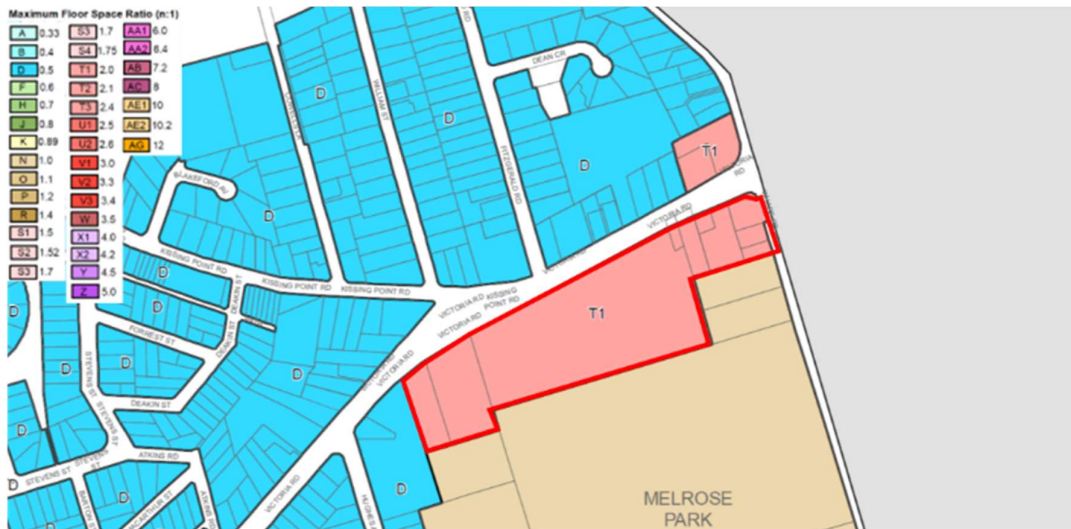


Figure 3: PLEP 2011 floor space ratio map excerpt (Source: PLEP 2011)

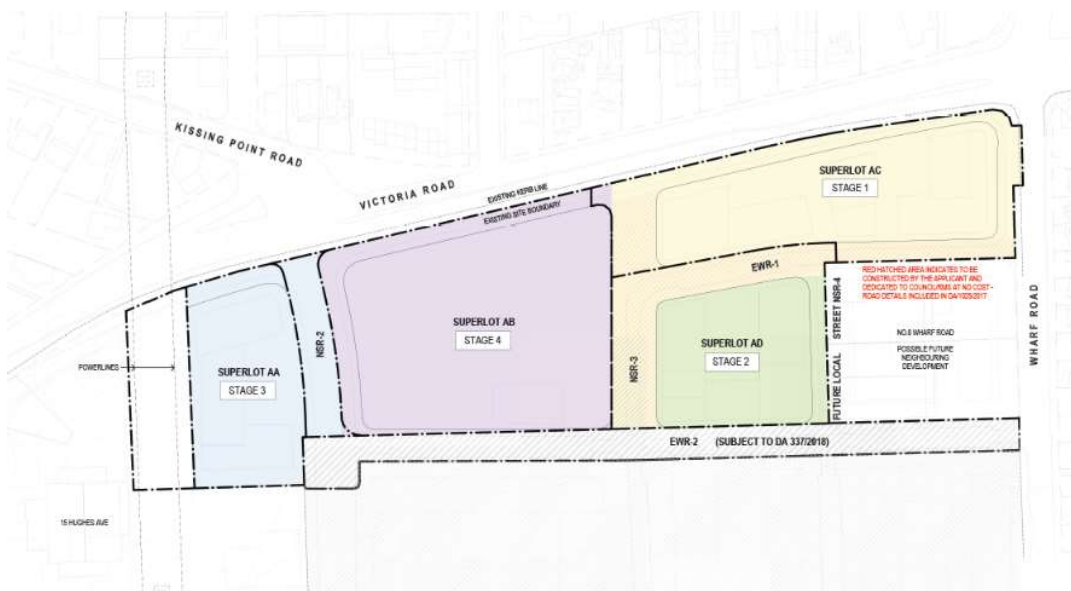


Figure 4: Approved Staging Plan (Source: Council)

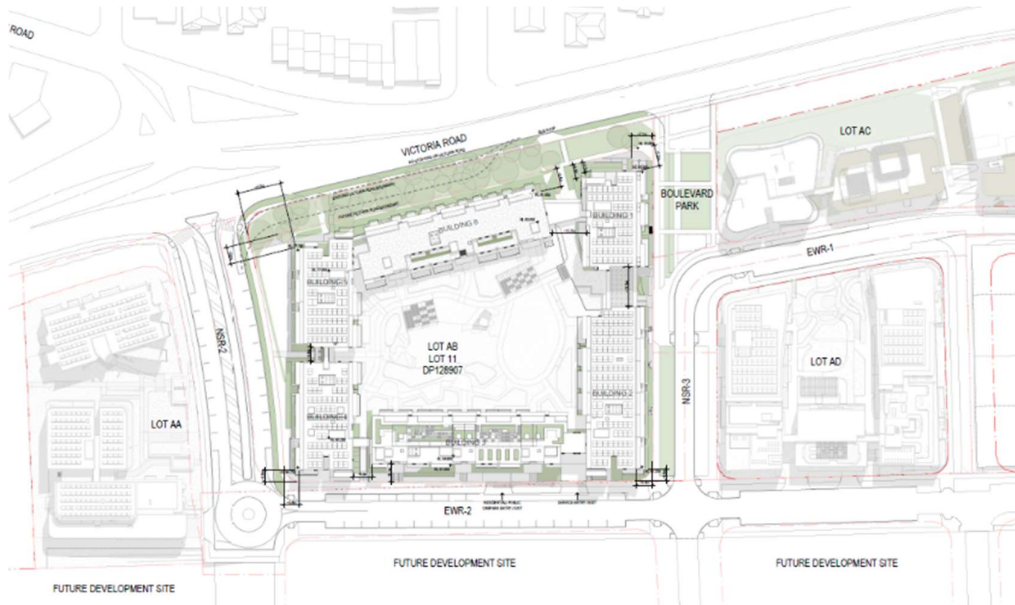


Figure 5: Location of Lot AB (Stage 4) within VRS (Source: AJC)

3 Background

The Applicant has undertaken extensive pre-DA consultation with Council officers, the Design Excellence Advisory Panel (DEAP) and the Council's Urban Design Team as part of the preparation of the current development application for Stage 4 of the VRS Site.

3.1 Previous VRS Stage 4 – Lot AB (DA 389/2019)

On 3 July 2019, a development application for Stage 4 was lodged with Council comprising construction of 4 x 6-11 storey residential flat buildings and 2 x 10-11 storey mixed use buildings containing 404 residential units, a supermarket, 80 space childcare centre and 2 retail shops; 3 basement levels providing 518 car parking spaces, earthworks, landscaping, public domain works including new roads, strata subdivision and Torrens title subdivision.

On 23 July 2019, the application was **withdrawn** following consultation with Council.

The development scheme for this final stage of VRS has continued to evolve as a result of the feedback received by Council since August 2019. This feedback has resulted in a superior scheme than the previous scheme submitted in DA 389/2019.

3.2 Consultation and amendments

A brief summary of the meetings and recommendations made by Council officers, DEAP and the Urban Design Team in response to the evolving development scheme and the Applicant's response to the remaining key issues is provided below.

- on 7 August 2019 the Applicant attended a DEAP meeting. DEAP's recommendations dated 26 August 2019 were provided to the Applicant and included relationship with the overall Master Plan, perimeter access and street level activation, subterranean units, limited permeability in the design, colonnade treatments not encouraged and width of the proposed vehicular access
- on 6 September 2019, the Applicant attended a further pre-lodgement application meeting with Council officers.
- on 18 September 2019, Council provided a list of issues to be addressed prior to DA lodgement which include building heights, compliance with the ADG, vehicular access, the facades and the consistency with the Concept Plan.
- on 24 September 2019, the Applicant met with Council officers to discuss Council's concerns as detailed in its letter dated 18 September 2019.
- on 26 September 2019, the Applicant provided a preliminary response and preliminary revised plans to address the key issues raised in Council's correspondence including building heights, vehicular access and consistency with the Concept Plan.
- on 8 November 2019, the chair of DEAP and Council officer's provided further comments to the Applicant in response to further design refinements (dated 26 September 2019)
- on 25 May 2020 the subject DA was lodged with Council.
- on 14 July 2020 a Request for Additional Information was issued by Council. This letter was later supplemented by:
 - recommendations by Council's Design Excellence Advisory Panel (DEAP) and comments from the Sydney Central Committee Planning Panel (SCCPP) following a Council briefing on 1 July 2020.
 - Email correspondence from Council dated 27 August 2020

- on 24 September 2020 the Applicant provided a formal response to Council's Request for Additional Information which included revised plans to address the key issues raised by Council, the DEAP, the SCCPP and public submissions.
- on 16 October 2020 a further request for additional information was received which recommended, amongst other items, that a Clause 4.6 request for FSR be submitted. In response, the Applicant has prepared this Clause 4.6 Request for abundant caution.

The current design responds to the issues raised in the pre-lodgement minutes, the recommendations made by the DEAP and the Urban Design Team and Council Officers together with the key matters raised in Council's Requests for Additional Information as detailed in the table below and in the Design Report submitted with the concurrent detailed Development Application.

| Key issues raised by DEAP and Council | Design Response |
|--|--|
| <i>Support for additional building height subject to maintaining approved overall GFA and other built form amendments as detailed below</i> | <p>The proposal is generally consistent with the current modification to the Concept Plan currently being considered by Council.</p> <p>Additional building height for all buildings is proposed following extensive consultation with Council. The proposed additional building height is the result of the:</p> <ul style="list-style-type: none"> • relocation of the poor quality garden apartments (in the previous proposal referred to below by Council as subterranean) • relocated gaps between buildings including between Buildings 1 and 2 to align with EWR-1 and gap between Buildings 4 and 5 to improve proportions, and the gap between Buildings 3 and 4 is widened and opened to the sky. The design changes were as requested by Council • raising the floor level for all buildings to be above the 0.5m freeboard (to address potential overland flow impacts) • increased floor level of Buildings 1, 2 and 3 by 0.7m to facilitate direct pedestrian access to Buildings lobbies • inclusion of rooftop communal open spaces in Building 3 (as requested by Council) with shade structures for sun protection |
| <i>Remove Subterranean apartments</i> | <ul style="list-style-type: none"> • The proposal relocates garden apartments (garden apartments) previously situated at the lower levels to additional levels within the building. • This redesign moves the apartments to Buildings 4, 5 and 6 and in part results in the additional building heights. |
| <i>Increased street activation</i> | <ul style="list-style-type: none"> • The proposal incorporates increased street activation with inclusion of Building 3 lobbies at street level and direct entry to ground floor apartments in Building 5. |
| <i>Delete Colonnades</i> | <ul style="list-style-type: none"> • The podium level facades of Buildings 2, 4 and 5 are redesigned to avoid the appearance of colonnades. The colonnade is retained in Building 1 which has a retail uses at ground floor level and pedestrian access is provided via the colonnade. |

| Key issues raised by DEAP and Council | Design Response |
|---|---|
| Increased site permeability | <ul style="list-style-type: none"> • The proposal incorporates further permeability to permit views from within the site to the surrounding public domain and into the site from public places. • The addition of pedestrian pathways at Level 2 to the internal communal courtyard from Victoria Road, NSR-3, EWR-2, EWR-1 and NSR-2 assist to establish the visual connection between internal courtyard and surrounding public domain • The proposal incorporates generous gaps within the eastern and western facades through the break between Buildings 1 and 2 and Buildings 3 and 4 respectively. These gaps permit views from the public domain into the site. • The increased gap and building entry of the east elevation between Buildings 1 and 2 aligns with EWR-1. Notably, views toward the internal communal open space are possible from NSR-3/EWR-1 to the east of the site. |
| Improve proportions of Buildings 4 and 5 | <ul style="list-style-type: none"> • To improve the massing, lower the scale and the perceived density of the development, a clear distinction between narrower and higher buildings with longer and lower buildings has been developed. • Council requested that the gap between Buildings 4 and 5 be relocated to create better building proportions. This has been achieved in the current proposal and results in both Buildings 4 and 5 being shorter in length than the previous DA proposal. Building 5 is proposed to be marginally longer in length than Building 4. • The requested gap between Buildings 4 and 5 is not included on the approved Concept Plan, however the location of the change in the building height is shown in the approved Concept Plan. The current design is generally consistent with the Concept Plan (as amended). |
| Length of southern façade and minimal articulation | <ul style="list-style-type: none"> • The design also responds to the length and articulation of the previous scheme of the southern façade. The proposal includes a physical setback between Buildings 3 and 4 of 6.5m. The design response also includes further articulation along the southern façade and a reduced driveway width fronting EWR-2. • The replanning of the car and service access fronting EWR-2 has allowed two additional building entries directly from this street. All building lobbies in Buildings 2, 3 and 4 are now directly accessed from EWR-2 (five pedestrian access points are proposed). • The replanning of the car and service access has also allowed for a significant increase in landscaped setback at street level along the southern façade. |
| Roof terraces recommended | <ul style="list-style-type: none"> • Provision has been made for a roof terrace to Building 3 as recommended by the DEAP and is intended to be used as communal open space (note – the Building 3 parapet, lifts and stairs exceed the PLEP 2011 28 metre building height limit as a result of providing the roof terrace). • The concept design for the roof terrace landscaping is detailed in Appendix 3. |

| Key issues raised by DEAP and Council | Design Response |
|---|---|
| <i>Lift covers for Buildings 3 and 6 recommended</i> | <ul style="list-style-type: none"> • The lifts in Building 3 are interconnected via the roof terrace. • The lifts in Building 6 are interconnected via the new Level 8 to provide lift redundancy. |
| <i>Improved built form delineation - layering and emphasis as podium 1:3 ratio</i> | <ul style="list-style-type: none"> • The Parramatta DCP and the ADG do not provide design guidance on proportion of podium heights. It is noted that the elevations propose the following built form delineation: • Building 1 east elevation – part 11 to part 12 storeys with 2-3 storey podium • Building 2 east elevation – 10 storeys with 2-3 storey podium • Building 4 west elevation – 7 storeys with 2 storey podium • Building 5 west elevation – 11 storeys with 3 storey podium • Each of the above podiums are less than 1 in 3 proportion as requested by Council. |
| <i>ADG compliance</i> | <p>Compliance with the relevant ADG design criteria is achieved:</p> <ul style="list-style-type: none"> • Solar access: 74% (ADG: 70%) • Units with no direct solar access: 4% (ADG max 15%) • Cross ventilation: 60% (ADG: 60%) |
| <i>Urban Design Outcome</i> | <ul style="list-style-type: none"> • The proposal is supported by a compliant 8 storey scheme envelope which demonstrates that the proposed envelope achieves a superior built form. A compliant scheme will be uniform in height (refer to the Figure below) |

Table 2: Summary of design responses to issues raised by Council (Base Source: Applicant)



Figure 6: Top image PLEP 28m complaint scheme, bottom image indicative approved Scheme (Source: AJC)

4 The Proposed Development

The FSR across the entire VRS site is 2:1 as approved in the Concept Plan in accordance with the PLEP 2011. The net FSR across the site for each development lot ranges from 1.65:1 (Lot AA) to 2.5:1 (Lot AD).

This is due to the fact that the site provides significant amount of public domain and public infrastructure including a new Park, roads and footpaths as well as provision for services and stormwater.

It is important to note that the areas of public domain provided for the site are extensive as it plays a critical role as the gateway into the adjoining 25 ha Melrose Park North Urban Renewal precinct to the south to Hope Street.

Ordinarily, an infill site in this location would not provide the road connections and public open space as proposed in this site. The provision of these public benefits leads to increased connectivity to the adjoining site as well as increasing FSR across each development lot to harvest the GFA from these areas to be dedicated as future public land.

The FSR for each stage is detailed in the table below and provides a breakdown of the FSR for the Superlot when the roads are included and excluded.

| Planning Control | Lot | FSR based on Superlot areas including roads and public open space | FSR based on Superlot areas excluding roads and public open space |
|------------------|---------|---|---|
| FSR | AA | 1.65:1 | 2.67:1 |
| | AB | 2.03:1 | 2.82:1 |
| | AC | 1.89:1 | 2.76:1 |
| | AD | 2.5:1 | 3.83:1 |
| | Overall | 2:1 | N/A |

Table 3: Approved FSR under the Concept plan (as amended)

The approved Concept Proposal (as amended) has an overall FSR of 2:1 for the VRS site. The proposal retains the overall FSR of 2:1 for VRS and therefore complies with the PLEP 2011.

As detailed in Table 3 the overall FSR and gross floor area approved under the Concept Proposal (as amended) is not spread evenly across the VRS, with the individual FSRs varying for each Superlot.

Condition 7(a) of the Concept Plan (as amended) states:

SITE FLOOR SPACE

7. The following applies in relation to gross floor area:

*(a) The floor area of each Stage of development must not exceed the values outlined in the **Development Schedule** set out in plan CP0900 Rev: 3-7 8 10 dated 07/06/17-10/09/18 20/06/2019 11/05/20.*

Reason: To ensure site floor space is compliant with the requirements of Parramatta Local Environmental Plan 2011.

The extract from CP0900 is provided in the Figure below.

| DEVELOPMENT SCHEDULE | | | | | | | | | | | | | | | |
|---|------------------------------|--|----------------------------------|-----------------------------------|--|---|-----------------------------|------------------------------|---------------|--|---------------|--------------------|---|-----------------------------|--|
| OVERALL | | | | | | | | | | | | | | | |
| Site Area | 47589 m2 | | | | | | | | | | | | | | |
| Site area dedicated to new roads/ footpaths | 11812 m2 | | | | | | | | | | | | | | |
| Site area dedicated to Public Open Space | 3471 m2 | | | | | | | | | | | | | | |
| Allowable Floor Space Ratio | 2.00 :1 | | | | | | | | | | | | | | |
| Actual Floor Space Ratio | 2.00 :1 | | | | | | | | | | | | | | |
| Total Gross Floor Area | 95196 m2 | | | | | | | | | | | | | | |
| Approx. No. of Apartments | 1098 | | | | | | | | | | | | | | |
| | | | | | | | | By Superlot | | By Superlot Less Roads / Public Open Space | | | | | |
| | TOTAL BUILDING ENVELOPE (m2) | TOTAL GROSS FLOOR AREA (m2) (approx. 75% BUILDING ENVELOPE) | COMMERCIAL GROSS FLOOR AREA (m2) | RESIDENTIAL GROSS FLOOR AREA (m2) | RESIDENTIAL NETT SELLABLE ARE (m2) (approx. 85% GROSS FLOOR AREA) | APPROX. NUMBER OF APARTMENTS (Average NSA for superlots AA,AB & AD is 70.5m2, AC is 71 m2) | % OF TOTAL GROSS FLOOR AREA | INDIVIDUAL FLOOR SPACE RATIO | LOT AREA (m2) | INDIVIDUAL FLOOR SPACE RATIO | LOT AREA (m2) | DEEP SOL AREA (m2) | DEEP SOL % SUPERLOT (POCP 2011 requires 15% site area) | COMMON OPEN SPACE AREA (m2) | COMMON OPEN SPACE % SUPERLOT (POC requires 25% site area) |
| Superlot AA | 18228.0 | 14641 | 0 | 14641 | 11625 | 165 | 15% | 1.65 | 8556.55 | 2.67 | 5474.0 | 1537.0 | 16.9% | 1518.0 | 27.7% |
| Superlot AB | 51034.9 | 36440 | 1900 | 34540 | 29359 | 416 | 38% | 2.03 | 17970.00 | 2.82 | 12935.7 | 983.0 | 7.6% | 3841.0 | 29.7% |
| Superlot AC | 31168.0 | 23376 | 33 | 23293 | 19675 | 277 | 25% | 1.89 | 12394.50 | 2.76 | 8482.0 | 1330.0 | 15.7% | 2083.0 | 24.6% |
| Superlot AD | 26473.0 | 20709 | 0 | 20709 | 16877 | 239 | 22% | 2.50 | 8293.30 | 3.83 | 5414.0 | 1129.5 | 20.9% | 1668.0 | 30.8% |
| TOTALS | 126904 | 95166 | 1983 | 93183 | 77531 | 1098 | | | 47556 | | 32306 | 4480 | | 9111 | |

Figure 7: Extract from Concept Plan Development Schedule (as amended) (Source: AJC)

5 Legislative Context

5.1 Clause 4.6 Exceptions to Development Standards

Clause 4.6 of the PLEP 2011 sets out key assessment criteria which enables Council to consider and grant development consent for a development that contravenes a development standard. The overarching objectives of this clause are contained in subclause (1) as detailed below:

- (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

Subclauses (3), (4) and (5) of Clause 4.6 are relevant and development consent can only be granted subject to their consideration.

5.1.1 Clause 4.6(3)

Clause 4.6(3) requires that development consent must not be granted for a development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating that:

- (a) *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *there are sufficient environmental planning grounds to justify contravening the development standard.*

5.1.2 Clause 4.6(4)

Clause 4.6(4) requires that development consent must not be granted for development that contravenes a development standard unless:

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

5.1.3 Clause 4.6(5)

Clause 4.6(5) requires that in deciding whether to grant concurrence, the Secretary must consider:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The written notification of assumed concurrence, dated 27.11.2017 states:

- (2) *Prior to assuming my concurrence Council must have consideration of the matters set out in subclause 4.6(5) of the SILEP or clause 8 of SEPP 1.*

These matters are outlined below.

5.1.4 Matters of significance for State or regional environmental planning

Not applicable.

5.1.5 The public benefit of maintaining the development standard

The development standard of 2:1 is maintained across the VRS site. The subject FSR of 2.03:1 (including roads) or 2.82:1 (excluding roads) for Lot AB (Stage 4) is consistent with the Concept Plan approval (as amended).

5.1.6 Any other matters

Not applicable.

5.2 Relevant Judgements - NSW Land and Environment Court

The following key Land and Environment Court (NSW LEC) judgements provide guidance on key considerations in the assessment of a Clause 4.6 variation Request.

These judgements focus on the degree to which a consent authority may be satisfied about the matters in Clause 4.6 and therefore further refine the requirements for variation Requests:

- *Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;*
- *Wehbe v Pittwater Council [2007] NSWLEC 827;*
- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 and [2015] NSWCA 248; and*
- *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112*

The key findings and established principles (as relevant) of the above judgements of the Land and Environment Court are summarised below.

5.2.1 Winten Property Group Limited v North Sydney Council (2001)

The *Winten Property Group Ltd v North Sydney Council (2001)* case posed the following questions to be addressed when considering objections to development standards:

- *Is the planning control in question a development standard?*
- *If so, what is the underlying object or purpose of the standard?*
- *Is compliance with the standard consistent with the aims of the policy, and in particular, does compliance with the standard tend to hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Environmental Planning & Assessment Act 1979?*

- *Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case? (A related question is: would a development which complies with the standard be unreasonable or unnecessary?)*
- *Is the objection well founded?*

5.2.2 Wehbe v Pittwater Council (2007)

This case expands on the findings of *Winten Property Group Limited v North Sydney Council (2001)* case and establishes a five-part test 'Wehbe tests' to ascertain whether strict compliance with a development standard is unreasonable or unnecessary, as follows:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;*
4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable; or*
5. *The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

It is noted that the DPIE Guide was formulated on the basis of the findings of the *Winten Property Group Limited v North Sydney Council (2001)* case and the Wehbe Tests.

5.2.3 Four2Five Pty Ltd v Ashfield Council (2015)

The outcome of these cases (initially heard and then upheld at appeal) concluded that in addition to considering the Wehbe Tests, Requests must also demonstrate that:

- *the grounds for departing from the development standard must be particular to the circumstances of the proposed development on the subject site; and*
- *compliance with the development standard is unreasonable or unnecessary, in addition to demonstrating that the proposal was consistent with the objectives of the development standard and/or land use zone.*

5.2.4 SJD DB2 Pty Ltd v Woollahra Council (2020)

The *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112* established greater flexibility in applying clause 4.6 to vary development standards where a better outcome would be achieved in the context of the site. The outcome of this case concluded the following questions should be asked in relation to the request to vary a development standard:

- *what was the desired future character?*
- *is the proposal consistent/compatible with that desired future character?*
- *has any visual intrusion been minimised?*
- *have the controls been previously abandoned?*

6 Assessment of the Variation to the Floor Space Ratio development standard

The PLEP 2011 contains a maximum FSR development standard of 2:1 for the entire VRS.

The maximum FSR development standard constitutes the built form baseline from which any variation request is measured and assessed.

The proposal seeks to maintain the overall FSR of 2:1 for the VSR site, however specifically for Lot AB a FSR of 2.03:1 (including roads) or 2.82:1 (excluding roads) is proposed.

It is important to note that a Clause 4.6 Request to vary the FSR development standard has not been submitted for any of the prior stages of the wider VRS site. An extract from Council's Assessment Report for Stage 2 (DA/1025/2017) states:

A Clause 4.6 variation request is not considered to be necessary for the following reasons:..

- *Clause 4.4 'FSR' – The concept plan overall complies with the allowable GFA across the wider site. While the proposal 'exceeds' the allowable FSR based on the area of the site, it is consistent with the distribution of floor space approved in the concept plan.*

Notwithstanding, the subject Clause 4.6 Request has been prepared as requested by Council for abundant caution, should it be required as part of the assessment and determination process. The proposed FSR is considered to be acceptable for the following reasons:

- the proposal remains compliant with the overall FSR of 2:1 approved for VRS under the Concept Proposal (as amended)
- the approved overall GFA for VRS is maintained
- the proposed FSR provides for significant public domain and public infrastructure works to be provided across the site to ensure superior connectivity to the adjoining Melrose Park North Urban Renewal area
- the concept approval facilitates an improved distribution of FSR and GFA across the VRS site
- requiring an FSR of 2:1 for Lot AB would be contrary to the Concept Proposal (as amended), which approved an FSR of 2.03:1 (including roads) or 2.82:1 (excluding roads)
- providing an FSR of 2:1 for Lot AB would result in a shortfall of GFA, adversely impacting upon the proposed yield
- the proposal provides the density required to support the proposed commercial uses in the B4 Mixed Use Zone
- the proposal results in a superior urban design outcome
- the proposal results in a superior public domain outcome
- the proposal achieves a high level of residential amenity
- on balance proposal results in an overall better planning outcome for the site

The proposed modification to the Concept Plan is not associated with excessive site density or an overdevelopment of the site. The proposal remains consistent with the overall FSR for the site. The following assessment comprehensively considers the provisions of CI 4.6 which has also been informed by an analysis of the relevant case law.

6.1 Clause 4.6(3)(a) – Compliance is Unreasonable or Unnecessary

The land south of the site is recognised by Council as being in transition and is currently the subject to the Melrose Park Northern Structure Plan Gateway Determination to facilitate its urban renewal. The Planning Proposal seeks to facilitate up to 5,500 dwellings, a minimum of 30,000m² employment uses and community uses.

The VRS site plays a critical role as effectively the first stage and gateway site into the Melrose Park North Precinct.

The VRS site provides the entrance to the broader Melrose Park North Precinct with key frontage to Victoria Road, delivery of a landmark development, ability to create a suitable transition in ground levels to respond to the topography of the site and the variety of proposed employment and residential uses and open space network within the Precinct.

The VRS site will embrace world's best practice urban design and leading sustainability measures, will revitalise Melrose Park and the surrounding locality by developing a contemporary urban environment and includes new or improved green links, parks and streets.

Given the strategic importance of the VRS and its intrinsic link to the success of the broader Melrose Park North Precinct immediately to the south, the applicant contends that strict compliance with the FSR development standard for Lot AB is unreasonable and unnecessary for the following reasons:

- the approved overall GFA and FSR for VRS is maintained
- the concept approval facilitates an improved distribution of FSR and GFA across the VRS site
- requiring an FSR of 2:1 for Lot AB would be contrary to the Concept Proposal (as amended), which approved an FSR of 2.03:1 (including roads) or 2.82:1 (excluding roads) for Lot AB (as amended)
- providing an FSR of 2:1 for Lot AB would result in a shortfall of GFA, adversely impacting upon the proposed yield
- the proposal provides the density required to support the proposed commercial uses in the B4 Mixed Use Zone
- the proposal will result in a significantly better planning outcome
- proposal results in a superior urban design outcome
- proposal achieves a high level of residential amenity

It is important to note that a Clause 4.6 Request to vary the FSR development standard has not been submitted for any of the prior stages of the wider VRS site. An extract from Council's Assessment Report for Stage 2 (DA/1025/2017) states:

A Clause 4.6 variation request is not considered to be necessary for the following reasons:..

- *Clause 4.4 'FSR' – The concept plan overall complies with the allowable GFA across the wider site. While the proposal 'exceeds' the allowable FSR based on the area of the site, it is consistent with the distribution of floor space approved in the concept plan.*

Notwithstanding, the subject Clause 4.6 Request has been prepared for abundant caution.

6.2 Clause 4.6(3)(b) – Grounds to Justify Contravening the Development Standard

The development of the VRS, including the increased FSR, will provide for a landmark development of the highest standard of visual appearance and public benefit. In this context there are sound planning grounds and significant benefits to justify contravening the FSR development standard.

In particular, the proposed built form will present a significantly superior urban design outcome for the site as outlined below.

6.2.1 Consistency with the Strategic Planning Context and the Melrose Park North Planning Proposal

The concept approval provides an improved distribution of FSR and GFA across the VRS site, which facilitates the delivery of superior built form outcomes and will support new communities consistent with the broader strategic planning objectives as detailed below:

Greater Sydney Region Plan

- the VRS is strategically located in an identified economic corridor between Parramatta and Sydney Olympic Park in the Central River City within the Greater Sydney Region Plan
- the proposal remains consistent with the Region Plan as Melrose Park is identified as a rapidly developing suburb
- the provision of publicly accessible pedestrian through-site links and new roads will significantly increase the permeability of the site and be instrumental in connecting Victoria Road to Parramatta River

Parramatta Local Strategic Planning Statement 2020

- the site forms part of the Melrose Park North Precinct which is specifically recognised a significant urban renewal site in Council's *Local Strategic Planning Statement* identified as a future Growth Precinct and Proposed Local Centre
- the proposal will deliver an appropriate mix of dwellings, improved housing choice, increased retail and other non-residential uses and employment opportunities within a new vibrant mixed use neighbourhood

Melrose Park North Endorsed Draft Masterplan (2019)

The site immediately adjoins the Council adopted Melrose Park Precinct. This identified growth precinct has the potential to deliver accelerated significant urban renewal outcomes by providing 5,500 new housing, foster housing choice, employment opportunities and other public benefits close to Parramatta and other strategic centres.

Following the approval of the Concept Plan, Council endorsed a Draft Masterplan 2019 which was the result of years of detailed investigation based on best practice urban design, landscape and transport planning principles. This resulted in the relocation of the Town Centre and introduced building heights in the proposed residential lots immediately adjoining the Stage 4 VRS site of **52 metres (15-16 storeys)** as outlined in **BLUE** in the below figure.

The proposed built form across Lot AB (Stage 4) is consistent with the endorsed built form in the Draft Masterplan and will provide an appropriate transition in terms of bulk and scale.



Figure 8 Endorsed Masterplan 2019 following approval of Concept Plan MOD A (Source COP)

Melrose Park North Endorsed Draft Masterplan (2020)

Council is now finalising the Masterplan for public exhibition.

The Revised Masterplan has significantly increased building heights across the precinct, in particular in the proposed residential lots immediately adjoining the Stage 4 VRS site from 52 metres (15-16 storeys) to **20 and 22 storeys** as outlined in **BLUE** in the below figure.

As discussed, the concept approval facilitates an improved distribution of FSR and GFA across the VRS site. The proposed building height for Lot AB proposes a max building height of part 11 and part 12 storeys). The proposed built form across Lot AB (Stage 4) is consistent with the built form in the Draft Masterplan and will provide an appropriate transition in terms of bulk and scale.



Figure 9 Current Endorsed Height Map for the adjoining Site at Melrose Park North (Source: COP)

The increased heights in the Revised Masterplan of 20-22 storeys immediately adjoining the site clearly indicate the changing character of the area and the suitability of the proposed bulk and scale of the development as sought under this Clause 4.6 Request.

6.2.2 Improved Urban Design and relationship with the local context outcomes

As discussed in Section 3, the proposed built form amendments to the Concept Plan are required to facilitate the redevelopment of Superlot AB. The proposed built form has been developed and informed by the extensive consultation with DEAP and Council. The proposed design response addresses these concerns and further improves the previous design.

Despite the proposed FSR variation, resultant built form and urban design is acceptable for the following reasons as the:

- proposal remains consistent with the approved maximum GFA / FSR for the VRS
- proposed bulk and scale aligns with the adjoining sites as part of the Council endorsed Melrose Park North Masterplan as part of the Melrose Park Precinct
- the additional floor area will not result in any detrimental amenity impacts in terms of view loss, shadowing or loss of privacy
- proposal achieves a clear design variation in building height across the site and minimise monotonous and unbroken buildings
- the proposed building envelopes do not prejudice the ability of Stage 4 DA to provide deep soil planting and landscaped open space consistent with the ADG
- proposal does not result in any amenity impacts on adjoining or nearby properties and does not prejudice the development potential of any adjoining sites
- the design response provides the Stage 4 development with landmark qualities that will create an instantly recognisable development, which is desirable for a site of this size, location and importance
- the proposed buildings will achieve a human scale of development, by varying and graduating building heights across the site, localising the tallest buildings at key focal points
- the proposal does not result in adverse traffic or amenity impacts when compared to a FSR compliant scheme

The proposal is not associated with excessive site density or an overdevelopment of the site as the proposal maintains the 2:1 allowable FSR across the site.

For all the reasons above, the proposed development provides for a significantly superior urban design outcome for the site, when compared to a strictly FSR compliant scheme.

The detailed design as evident in the previous DA, demonstrates that the approved building envelopes were inappropriate and did not result in a good planning outcome for the site. Notably, the intended yield for the site could not be achieved and the controls resulted in the inclusion of poor quality garden apartments (subterranean apartments).

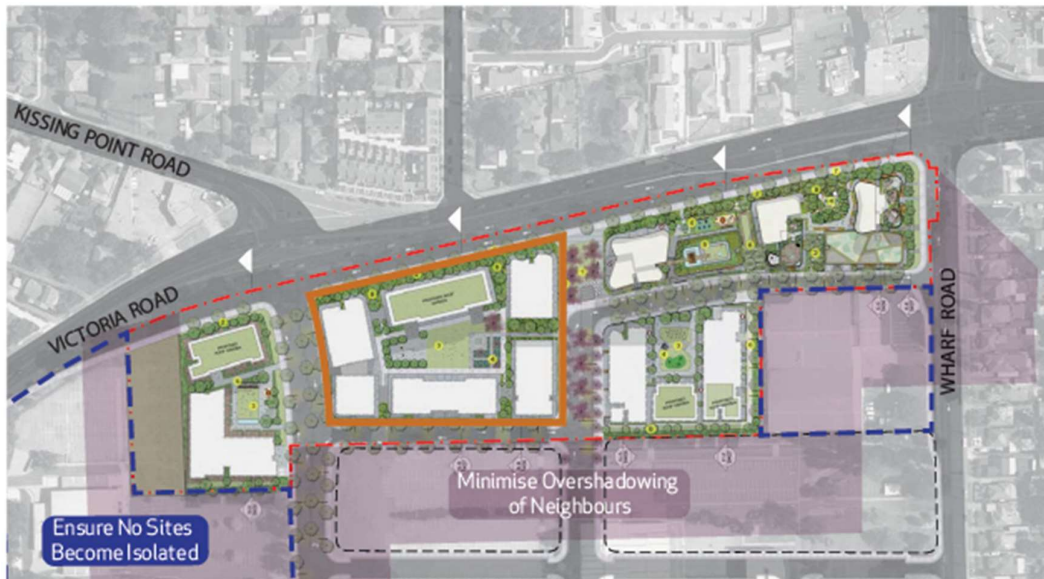


Figure 10: Proposal's relationship to neighbouring sites (Source: AJC)

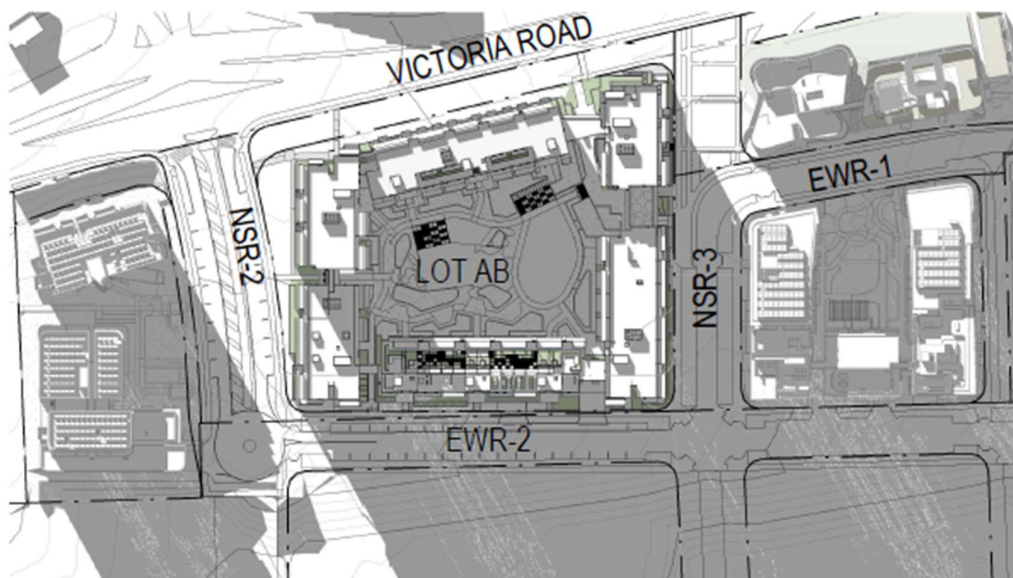


Figure 11: Shadows cast by the development at 3pm during mid-winter (Source: AJC)



Figure 12: Indicative South-West perspective, corner of NSR-2 & EWR-2 (Source: Applicant)

6.3 Wehbe Tests

6.3.1 Wehbe Test 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard

The proposed variation to the FSR development standard will be achieved notwithstanding the non-compliance with the standard as outlined in detail at Section 4.

6.3.2 Wehbe Test 2: The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

The underlying objective and purpose of the FSR standard is considered relevant to the development.

However, as discussed in Section 6.1 above, the concept approval facilitates an improved distribution of FSR and GFA across the VRS site. This ensures the achievement of the objectives of the FSR development standard when viewed across the VRS. It is considered that the proposed FSR will facilitate the achievement of a landmark development within the identified Melrose Park Growth Precinct, have a substantially positive urban design impact and acceptable amenity impacts.

6.3.3 Wehbe Test 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable

A strictly FSR compliant scheme would fail to deliver upon the intent of the Concept Proposal (as amended) as it would not facilitate the improved distribution of FSR and GFA across the VRS site. Therefore, compliance is unreasonable.

6.3.4 Wehbe Test 4: The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unreasonable

The VRS is within the Melrose Park North Precinct and is surrounded by low-scale residential development. It is therefore a unique precinct in terms of its allowable height, density and nature.

As there is no development site with a comparable applicable FSR development standard within the immediate (1 kilometre) vicinity of the Northern Precinct the FSR development standard is not considered to have been abandoned or destroyed by Council's own actions in granting consents departing from the standard.

6.3.5 Wehbe Test 5: The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone

The land has been zoned appropriately and the controls applicable to the site are generally acceptable, despite the proposed localised increase in FSR. As discussed at Section 6.5, the proposed development is consistent with the objectives of the zone.

For the reasons outlined in Section 6 of this report, the proposed FSR and built form design response would better achieve the objectives of the zone than a strictly FSR compliant scheme.

6.4 SJD DB2 Pty Ltd v Woollahra Council (2020)

The *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112* established greater flexibility in applying Clause 4.6 to vary development standards where a better outcome would be achieved in the context of the site. The outcome of this case concluded the following questions should be asked in relation to the request to vary a development standard:

6.4.1 What is the desired future character?

As outlined in Section 6.2.1 of this report, the VRS is strategically located in an identified economic corridor between Parramatta and Sydney Olympic Park in the Central River City within the Greater Sydney Region Plan.

The site forms part of the Melrose Park North Precinct which is specifically recognised as a significant urban renewal site in Council's *Local Strategic Planning Statement* identified as a future Growth Precinct and Proposed Local Centre.

The proposal which now includes a more substantial commercial component and maintains residential density (with improved amenity by relocating some garden apartments) clearly demonstrates that the proposal aligns with the desired future character of the locality as both a Future Growth Precinct and Local Centre.

In summary, the desired future character of the Site is evolving and has clearly been established as a high density mixed use development as evident by:

- identification of Melrose Park as a Growth Area in the Parramatta LSPS 2020, which includes the Site
- the approved Concept Plan which shows Superlot AB as a high density, mixed use development lot.
- the Council adopted and revised Melrose Park North Masterplan, which proposes 20-22 storey residential development immediately to the south of the site.

6.4.2 Is the proposal consistent/compatible with that desired future character?

City of Parramatta Local Strategic Planning Statement

The Council's *Local Strategic Planning Statement* was finalised in March 2020 and sets out the 20-year vision for land use planning in the Parramatta LGA. The LSPS identifies priorities for jobs, homes and infrastructure to guide development and planning to 2036.

The *Local Strategic Planning Statement* predicts that Parramatta will require 87,900 more dwellings by 2036 and be home to 198,000 more people. Melrose Park is identified as a Growth Precinct and is forecast to provide 6,330 of those dwellings and 2,600 jobs. The proposed development will help achieve these targets.

There are a number of Planning Priorities that are of particular relevance to the Proposal and these are addressed below:

PLANNING PRIORITY 3: Advocate for improved public transport connectivity to Parramatta CBD from the surrounding district

*P10 Stage Planning Proposals in Growth Precincts at Parramatta East, Camellia, **Melrose Park** and Westmead based on the timing of the Sydney Metro West project, Parramatta Light Rail Stage 2 (or equivalent infrastructure) and other heavy and light rail infrastructure consistent with the Parramatta Local Housing Strategy (once endorsed by DPIE).*

PLANNING PRIORITY 4: Focus housing and employment growth in the GOP and Strategic Centres; as well as stage housing release consistent with the Parramatta Local Housing Strategy

- The proposal will provide for 412 dwellings within the Melrose Park Growth Precinct and GOP in line with housing targets and the Parramatta Local Housing Strategy. The proposal will also generate up to 120 jobs through the provision of additional commercial uses.

PLANNING PRIORITY 7: Provide for a diversity of housing types and sizes to meet community needs into the future

- The proposal provides a diverse range of housing types and provides affordable options to meet the needs of the community's growing proportion of small households.

Melrose Park North Endorsed Draft Masterplan (2020)

The Revised Masterplan has significantly increased building heights across the precinct, in particular in the proposed residential lots immediately adjoining the Stage 4 VRS site from 52 metres (15-16 storeys) **to 20 and 22 storeys**.

The proposed bulk and scale are compatible with the desired future character of the locality as evident in the Revised Melrose Park North Masterplan, which proposes increased building height in this location within the Precinct.

6.4.3 Has any visual intrusion been minimised?

The proposed additional GFA would be imperceptible in its wider context of the whole VRS. Superlots AA, AC and AD within the VRS have approved building envelopes of up to 9 and 11 (partially 12) storeys. The proposed Superlot AB envelope of 6 to 11 (partially 12 storeys), is appropriate.

Due to the placement of the additional building height, being primarily to the north of the site, the subsequent impacts on adjoining properties have been minimised including overshadowing as demonstrated in the Design Report which accompanied the DA.



Figure 13: Indicative relationship to Victoria Road. View from Victoria Road (Source: AJC)

6.4.4 Have the controls been previously abandoned?

A Clause 4.6 Request to vary the FSR development standard has not been submitted for any of the prior stages of the wider VRS site due to the existence of the Concept Approval (as amended). An extract from Council's Assessment Report for Stage's 2 (DA/1025/2017) states:

A Clause 4.6 variation request is not considered to be necessary for the following reasons...

- *Clause 4.4 'FSR' – The concept plan overall complies with the allowable GFA across the wider site. While the proposal 'exceeds' the allowable FSR based on the area of the site, it is consistent with the distribution of floor space approved in the concept plan.*

Notwithstanding, the subject Clause 4.6 Request has been prepared for abundant caution. On this basis, the FSR development standard has not been previously abandoned.

6.5 Clause 4.6(4) – Consistency with Objectives

This Request has adequately addressed the matters required to be demonstrated by subclause (3), as outlined in Section 5. The proposed development is consistent with the objectives of the B4 Mixed Use zone as outlined in Table 4 and the objectives of the FSR development standard as outlined in Table 5

| Zone B4 Mixed use | |
|--|--|
| Objectives | Achievement of Objectives |
| <i>Provide a mixture of compatible land uses.</i> | The proposal provides a mixture of residential, retail uses and supermarket, which are compatible land-uses with the surrounding area. The provision of retail uses will contribute towards meeting the needs of the local community. The proposed FSR will facilitate population and expenditure within the VRS and the growth of retail tenancies in established centres within the vicinity of the VRS and Parramatta LGA. |
| <i>Encourage development that contributes to an active, vibrant and sustainable neighbourhood.</i> | The proposal provides a superior urban design outcome, which will provide for quality communal open space and landscaping areas, pedestrian permeability, visual links, a human scale of development and fosters an active, vibrant and sustainable neighbourhood. |
| <i>Create opportunities to improve the public domain and pedestrian links.</i> | The proposal provides for significantly improved public domain, pedestrian permeability, open space, communal open space, landscaped streetscapes and provision of landscaped buffer between the residential units and the public domain. |
| <i>Support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.</i> | N/A |
| <i>Protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.</i> | There are no designated special areas within or nearby the site and this objective is therefore not relevant to this site. Notwithstanding, the proposed FSR and resultant bulk and scale will enhance the qualities and character of the surrounding area through the creation of a landmark development. |

Table 4: Consistency with B4 Mixed Use zone objectives

| Clause 4.4 Development Standard Objectives | |
|---|--|
| Objectives | Achievement of Objectives |
| <i>to regulate density of development and generation of vehicular and pedestrian traffic</i> | The proposal remains compliant with the overall FSR of 2:1 for VRS. This ensures an appropriate density is provided across the site. |
| <i>to provide a transition in built form and land use intensity within the area covered by this Plan,</i> | The proposed bulk and scale aligns with the adjoining sites as part of the Council endorsed Melrose Park North Masterplan as part of the Melrose Park Precinct |
| <i>to require the bulk and scale of future buildings to have regard to heritage sites and their settings,</i> | The proposal is suitable separated from any neighbouring heritage item. Therefore, the proposed bulk and scale will not adversely impact on any heritage site or its setting. |
| <i>to reinforce and respect the existing character and scale of low density residential areas.</i> | <p>The site is zoned B4 Mixed Use and the proposal is consistent with the desired future character of this area.</p> <p>Notwithstanding, the proposal has been designed to mitigate adverse impacts neighbouring low density residential properties such as those on the northern side of Victoria Road. In particular, as the site is located to the south of Victoria Road it will not result in overshadowing of these properties.</p> <p>Furthermore, Victoria Road provides an appropriate separation distance to mitigate privacy impacts.</p> |

Table 5: Consistency with Clause 4.4 development standards objectives

6.6 Clause 4.6(5)(a) – Matters of Significance for State of Regional Planning

The proposed exceedance of the maximum FSR development standard for the site does not raise any matters of State or Regional Planning significance as:

- the development is not of a size or nature to have more than local impact;
- the proposed FSR departure is localised and is minor in the context of the approved VRS development and broader Melrose Park regeneration;
- the exceedance in FSR will have a positive urban design impact;
- there are no significant amenity or environmental impacts; and
- the site is not a site designated to be of State significance.

6.7 Clause 4.6(5)(b) – Public Benefit in Maintaining the Development Standard

As detailed in the previous sections of this report, the concept approval facilitates an improved distribution of FSR and GFA across the VRS site. On this basis, the variation to the FSR development standard would establish an improved urban design response for the site and provide for a landmark development.

Conversely, a strictly FSR compliant development would result in a substantially inferior outcome as it would preclude the intent of the Concept Proposal being achieved, resulting in a shortfall of GFA and adversely impacting upon the development yield.

In light of the significant public benefits arising from allowing a variation, it cannot be reasonably assumed that there is any public benefit in maintaining the existing FSR development standard. Other public benefits that are unique to the proposal and would be unable to be delivered or significantly reduced in benefit, when compared to a strictly FSR compliant scheme, include:

- attainment of a suitably high standard of design and appearance to deliver a landmark development
- good public domain outcomes with increased permeability through the site
- acceptable level of density to support the proposed commercial uses which will be enjoyed by the existing and new communities
- provide for a development to support Council's strategic objectives for the precinct as outlined in the 2020 LSPS which identifies this site as a future Growth Precinct and Local Centre

6.8 How Would Strict Compliance Hinder the Attainment of the Objectives Specified in Section 5(a)(i) and (ii) of the Act

Sections 5(a)(i) and (ii) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) are quoted below:

The objects of the Act are:

- (a) *to encourage:*
 - (i) *The proper management, development and conservation of natural and artificial resources, including agricultural land, natural area, forest, mineral, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment.*
 - (ii) *The promotion and coordination of the orderly and economic use and development of land.*

The development is wholly consistent with the objectives specified in Section 5(a)(i) and (ii) of the EP&A Act, as:

- the site is located within an area undergoing transformation into a high density urban precinct as recognised in the Parramatta Council's *Local Strategic Planning Statement*
- the site adjoins and is consistent with the Revised Melrose Park Masterplan to support the Melrose Park Structure Plan and Melrose Park North Planning Proposal (which has Gateway Approval)
- the redevelopment of the site for residential, retail uses and a supermarket will create a new vibrant neighbourhood, maximises the efficient use of the land and will contribute to urban consolidation and reducing demand to develop more environmentally sensitive lands
- the development promotes the orderly and economic use and development of the land as it delivers new housing within an established urban environment located on a rapid bus corridor (Victoria Road) without significant or unreasonable environmental impact
- the provision of pedestrian permeability fosters the orderly use of the land by enabling future pedestrian and road connections to the VRS and full integration with the Melrose Park North Precinct

Strict compliance with the FSR development standard would hinder the attainment of the objective of the EP&A Act, as such a development would:

- thwart the intent of the Concept Proposal (as amended) which seeks to facilitate an improved distribution of FSR and GFA across the VRS site
- result in a shortfall of GFA and adversely impacting upon the development yield
- would be unable to achieve a landmark status befitting the importance of the site

6.9 Is the Objection Well Founded

For the reasons outlined in previous sections, it is considered that the objection is well founded in this instance and that granting an exception to the development can be supported in the circumstances of the case.

7 Conclusion

Clause 4.6 allows for flexibility in the application of development standards in appropriate circumstance and this Request has been shown to satisfy the provisions of 4.6(3) and 4.6(4) of the PLEP 2011. Given the high standard of the proposal and public benefits the development is considered to be in the public interest.

It has been demonstrated that compliance with the FSR development standard is unnecessary and unreasonable given the specific circumstances of the proposal. In addition, clear planning grounds have been provided that justify contravening the development standard. The proposal is consistent with the objectives of the development standard and the B4 Mixed Use zone.

The proposal remains compliant with the FSR of 2:1 approved for VRS under the Concept Proposal (as amended). Notwithstanding, the proposed increases in FSR within Lot AB (Stage 4) are considered appropriate and provide for a superior development compared to a compliant development. The proposed bulk and scale results in a development that is appropriate within the emerging Melrose Park Precinct and provides an acceptable built form transition to existing neighbouring residential development.

The proposal is consistent with the strategic direction for the site. The proposal will provide for 412 dwellings within the Melrose Park Growth Precinct and GOPP in line with housing targets and the *Parramatta Local Strategic Planning Statement*.

The proposed development is considered to better satisfy the objectives of the FSR development standard and the B4 Mixed Use zone by delivering a more appropriate development outcome for the site and the broader area.

The proposed increase in FSR should be supported as the:

- proposal remains compliant with the FSR of 2:1 approved for VRS under the Concept Proposal (as amended)
- approved overall GFA and FSR for VRS is maintained
- increase in FSR will not result in unacceptable environmental impacts
- proposal results in a superior urban design outcome
- proposal results in a superior public domain outcome
- proposal achieves a high level of residential amenity
- proposal provides the density required to support the proposed commercial uses in the B4 Mixed Use Zone

On balance, proposal results in an overall better planning outcome for the site and for the reasons set out above, the proposed development represents a superior outcome for the site and it is therefore justified and appropriate that the development standard be varied as detailed in this Request.