



SYDNEY CENTRAL CITY PLANNING PANEL

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSCC-285
DA Number	DA/812/2021
LGA	City of Parramatta Council
Proposed Development	21-27 storey mixed-use building incorporating retail, commercial, boarding house and shop-top housing uses. Concept component of a staged application, seeking approval for building location, footprints and envelope; pedestrian links; pedestrian/vehicular entries; open space and landscaping. The development would be delivered across two stages requiring further development consent. 50% of the residential floor space would be affordable housing pursuant to State Environmental Planning Policy (Affordable Rental Housing) 2009. The application is to be determined by the Sydney Central City Planning Panel.
Street Address	33 – 43 Marion Street, Parramatta NSW 2150 (Lots 10-13 Sec 1 DP976, Lot 14 DP182289, Lot A DP349279, Lot 1 DP747666)
Applicant	Pacific Planning Pty Ltd
Owner	Loura Petroleum Pty Ltd, CN Marion Pty Ltd, 2 x individuals (not named for privacy reasons)
Date of DA lodgement	6 September 2021
Number of Submissions	1
Recommendation	Refusal
Regional Development Criteria	Clause 2 'General development over \$30 million' of Schedule 6, State Environmental Planning Policy (Planning Systems) 2021
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none">• Environmental Planning and Assessment Act 1979• SEPP (Building Sustainability Index: BASIX) 2004• SEPP (Transport and Infrastructure) 2021• SEPP (Affordable Rental Housing) 2009 [Savings provision in Housing SEPP 2021]• SEPP (Planning Systems) 2021• SEPP (Resilience and Hazards) 2021• SEPP No. 65 (Design Quality of Residential Apartment Development) & Apartment Design Guide• SEPP (Biodiversity and Conservation) 2021• Parramatta Local Environmental Plan 2011• Deferred Commencement Parramatta CBD LEP 2022• Draft Parramatta Consolidated LEP 2020• Parramatta Development Control Plan 2011• Voluntary Planning Agreement• EP&A Regulations 2021
Documents submitted with report for Panel's consideration	<ul style="list-style-type: none">• Attachment 1 – Architectural Concept & Reference Drawings• Attachment 2 – Landscape Reference Drawings
Clause 4.6 requests	<ul style="list-style-type: none">• Parramatta Local Environmental Plan 2011• Clause 4.4 – Floor Space Ratio• B4 Mixed Use Zone

Summary of key submission	<ul style="list-style-type: none"> • Overshadowing • Loss of Ventilation / Breeze • Excessive Height
Report prepared by	Alex McDougall Executive Planner, City Significant Development
Report date	6 May 2022

Summary of s4.15 matters

Yes

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

Legislative clauses requiring consent authority satisfaction

Yes

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

Clause 4.6 Exceptions to development standards

Yes

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?

Special Infrastructure Contributions

No

Does the DA require Special Infrastructure Contributions conditions (S7.24)?

Conditions

Have draft conditions been provided to the applicant for comment?

**N/A
(Refusal)**

1. Executive Summary

The application seeks concept approval for a 21-27 storey mixed use building, to be provided across 2 stages. The building would contain retail, offices, boarding house, affordable in-fill rental housing and market residential uses. The concept proposal includes a north-south public through site link along the western boundary of the site and publicly accessible extensions to the footways along Marion Street and Station Street West.

The proposed concept envelope is inconsistent with the form for the site envisaged by the Parramatta LEP 2011 and Parramatta DCP 2011. Specifically, the non-compliant Floor Space Ratio and staging results in unacceptable non-compliances with the site-specific envelope controls set out in the DCP.

The proposal would not allow for timely delivery of infrastructure required under the associated Voluntary Planning Agreement (VPA), specifically public domain improvements.

The proposed Stage 2 envelope would not support a commercially viable development and as such is inconsistent with the objectives of the LEP.

Some of the site constraints have not been adequately addressed, including an appropriate interface with the adjoining heritage items to the west of the site.

The applicant has not demonstrated that the amenity impacts on adjoining and nearby properties would be acceptable, specifically the solar access of the nearby residential occupiers to the south.

The applicant has not demonstrated that the proposed envelopes would allow for a future design that would provide acceptable communal open space for future occupants.

The proposal does not demonstrate that design excellence in landscaping could be achieved due to a lack of true deep soil zones and the ability to accommodate large trees, with associated impacts on the ability to provide a satisfactory wind environment.

The applicant has not demonstrated that the proposed traffic generation would allow for the efficient function of the local road network.

The application has been assessed relative to sections 4.15 and 4.22 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls. On balance, the proposal has not demonstrated a satisfactory response to the objectives and controls of the applicable planning framework. Accordingly, refusal is recommended.

2. Key Issues

Parramatta Local Environmental Plan 2011

- **Aims of Plan and Zone Objectives [cl. 1.2(2)(a,j,m) and cl. 2.3(2)]** – The applicant has not adequately demonstrated that the small footprint of the Stage 2 tower envelope would be economically viable to construct or provide a suitable commercial floorplate that could accommodate the needs of future businesses. Likely to require further breaches of the DCP setback controls to accommodate a viable footprint.
- **Floor Space Ratio (cl. 4.4)** – Council has obtained legal advice which contradicts the applicant's interpretation and application of the Affordable Rental Housing SEPP (ARH SEPP), Design Excellence and Clause 4.6 floor space 'bonuses'. The proposal is in excess of the allowable gross floor area and as such cannot be approved.

- **Heritage (cl. 5.10)** – Insufficient heritage justification has been provided for non-compliance with the site-specific western tower setback control to adjoining heritage items. Lack of deep soil on the western boundary does not allow for potentially ameliorating measures such as large tree planting.
- **Design Excellence – Landscaping and Wind (cl.7.10(4)(d)(vii,xiii))** – No deep soil or large tree planting proposed on site. As such, the proposal does not demonstrate that the future detailed DA could satisfy the criteria of excellence in landscape design. The wind report outlines that significant tree canopy will be necessary to ensure a suitable wind environment.

Apartment Design Guide

- **Orientation (cl. 3B)** – Proposal would result in significant solar impacts to adjoining properties. The applicant has not sufficiently demonstrated that the non-complying elements of the concept envelope would have an acceptable impact on adjoining residential units, particularly those at 27 Station Street West.
- **Communal Open Space (cl. 3D)** – The proposal does not provide appropriate communal open space for residential units. Approximately half of the proposed communal open space would conflict with the boarding house use.
- **Deep Soil (cl.3E)** – No true deep soil proposed. Western boundary through site link would seemingly be ideal location as it is required by the VPA, and would allow for significant tree planting to potentially improve heritage interface and ameliorate wind conditions in lane.

Parramatta Development Control Plan 2011

- **Building Envelopes (cl.4.3.3.7p)** – Various non-compliances with setback and floorplate controls, primarily to accommodate FSR bonuses associated with ARH SEPP and to stage the development. The applicant has not demonstrated that the non-compliances would have acceptable impacts on the amenity and heritage curtilage of adjoining properties.

Voluntary Planning Agreement

- **Public Right of Way** – The VPA requires that the public domain benefits (i.e. setbacks and through site links) be provided prior to an Occupation Certificate (OC) for any part of the development. As such, a condition would need to be included requiring the existing building on Stage 2 be demolished and easements provided prior to OC of Stage 1. It is understood that such a condition would not be consistent with the owners' expectations that the 43 Marion Street building would remain and continue to operate during Stage 1.

Likely Impacts of the Development

- **Traffic** – The applicant has not demonstrated that the proposal would have an acceptable impact on vehicular traffic in the vicinity of the site.

3. Site Description, Location and Context

3.1 Site

The subject site is comprised of seven lots located in the southern end of the Parramatta CBD (See Figures 1, 2 and 3 below). The site has a total area of 2,375m², has a Marion Street frontage of ~66m, a Station Street West frontage of ~35m and a Station Lane frontage of ~59.5m. Station Lane is one-way, west to east. The site has a cross fall of approximately 2m from south-west to north-east. The site is located 50m to the northwest of Harris Park train station (1 minute walk).

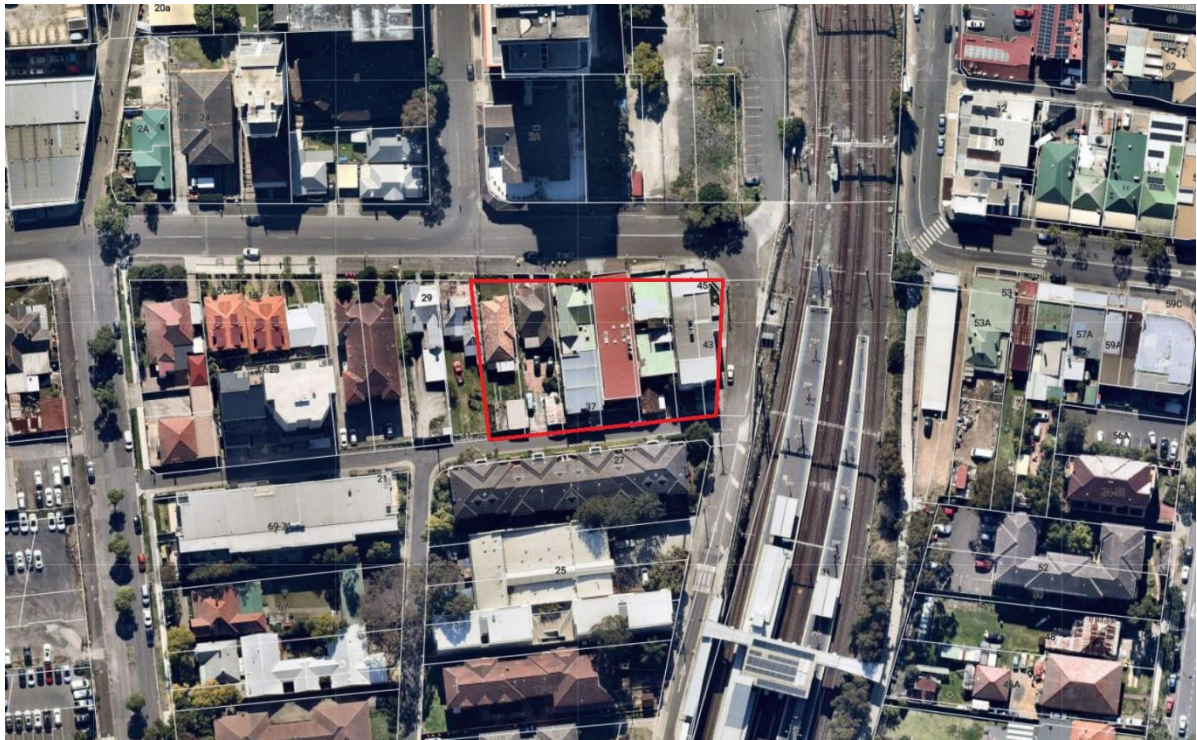


Figure 1. Locality Map (subject site in red)



Figure 2. Subject site as viewed from Marion Street looking south.



Figure 3. Subject site (left) as viewed from Station Lane looking east.

3.2 Surroundings Development

North:

- 3 storey mixed use development @ 2A Cowper Street
- Vacant lot @ 38-40 Marion Street

East :

- Harris Park Train Station

West:

- Single storey residential dwellings (heritage listed) @ 29 & 31 Marion Street

South:

- 3 storey residential flat building (24 units) @ 27 Station Street West

3.3 Site Improvements & Constraints

The site is occupied by the following buildings:

- 33 Marion – Single storey dwelling
- 35 Marion – Single storey dwelling
- 37 Marion – Single storey dwelling
- 39 Marion – Two storey commercial building
- 41 Marion – Two storey mixed use building
- 43 Marion (2 lots) – Three storey commercial building

The two immediately adjoining sites to the west contain 2 x heritage dwellings of local significance (Items 729 & 730), which are part of a cluster of heritage buildings to the west of the site.

The land may contain contamination and acid sulphate soils.



Figure 4. Heritage dwellings of local significance to the west of the site.

3.4 Statutory Context

The Parramatta CBD is undergoing significant redevelopment transitioning from its historic low to medium density commercial development to high-density mixed-use development.

3.5 Background

The site was subject to a site-specific Planning Proposal (Council ref: RZ/9/2017) that was gazetted 26/02/2021.

The Planning Proposal (PP) resulted in site specific development standards, a Development Control Plan (which became section 4.3.3.7p of the Parramatta DCP, see figure below) and a Voluntary Planning Agreement (VPA). The site-specific DCP sets out controls for the site, including a detailed building envelope. The VPA requires delivery of the following:

- Monetary contribution (in addition to standard developer contributions)
- 3m wide public access easements along the full extent of the western, northern and eastern boundaries prior to issue of any OC.



Figure 5. Figure 4.3.3.7.70 – Site specific building alignment and setbacks controls from Parramatta DCP 2011.

4. The Proposal

The application seeks concept plan approval for the following 2 stage development:

- Stage 1 (Site Area: 1,945sqm):
 - Built form envelopes and uses as follows:

	Dimensions	Uses
Basement	5 storeys	Car Parking, Services, Plant
Ground	3 storeys	Retail
Podium (First and Second Floors)		Residential (lobby only) Boarding House (lobby only) Boarding House

Tower (Levels 4-5)	24 storeys	Boarding House
Tower (Levels 6+)		Shop-Top Housing (inc. In-Fill Affordable Rental Housing)
Total	27 storeys	

- Floor Space:
 - Shop-top Housing: 14,345sqm (~178 units)
 - Boarding House: 3,000sqm
 - Retail: 487sqm
 - Total: 17,832sqm
- Parking (based on basement envelope and drawings in Traffic Report):
 - ~15 commercial/retail spaces
 - ~244 residential spaces
- North-south through site link along western boundary (6m wide)*;
- Easement benefitting Stage 2 site to share vehicular access and loading dock, including 'break-through' eastern basement walls to allow for future connection to Stage 2 basement
- 3m public domain right of way to northern boundary*
- Stage 2 (Site Area: 430sqm):
 - Built form envelopes and uses as follows:

	Dimensions	Uses
Basement	3 storeys	Car Parking, Services, Plant
**Ground	3 storeys	Retail
Podium (First and Second Floors)		Commercial (lobby only)
Tower	18 storeys	Commercial
Total	21 storeys	

- Floor Space:
 - Commercial: 2,857sqm
 - Retail: 258sqm
 - Total: 3,115sqm
- Parking (based on basement envelope and drawings in Traffic Report): ~34 commercial/retail spaces
- 3m public domain right of way to northern and eastern boundaries*

* basement under, right of way only, not to be dedicated to Council

Detailed application(s) for the stages, outlining the full design for the proposed buildings, would need to be approved prior to any construction work commencing on site.

The application documentation includes a 'reference scheme' seeking to demonstrate that an appropriate building can fit within the proposed envelopes (see Figures 5 and 6 below). It should be noted that approval is not sought for the reference scheme itself; it is for illustrative purposes only.

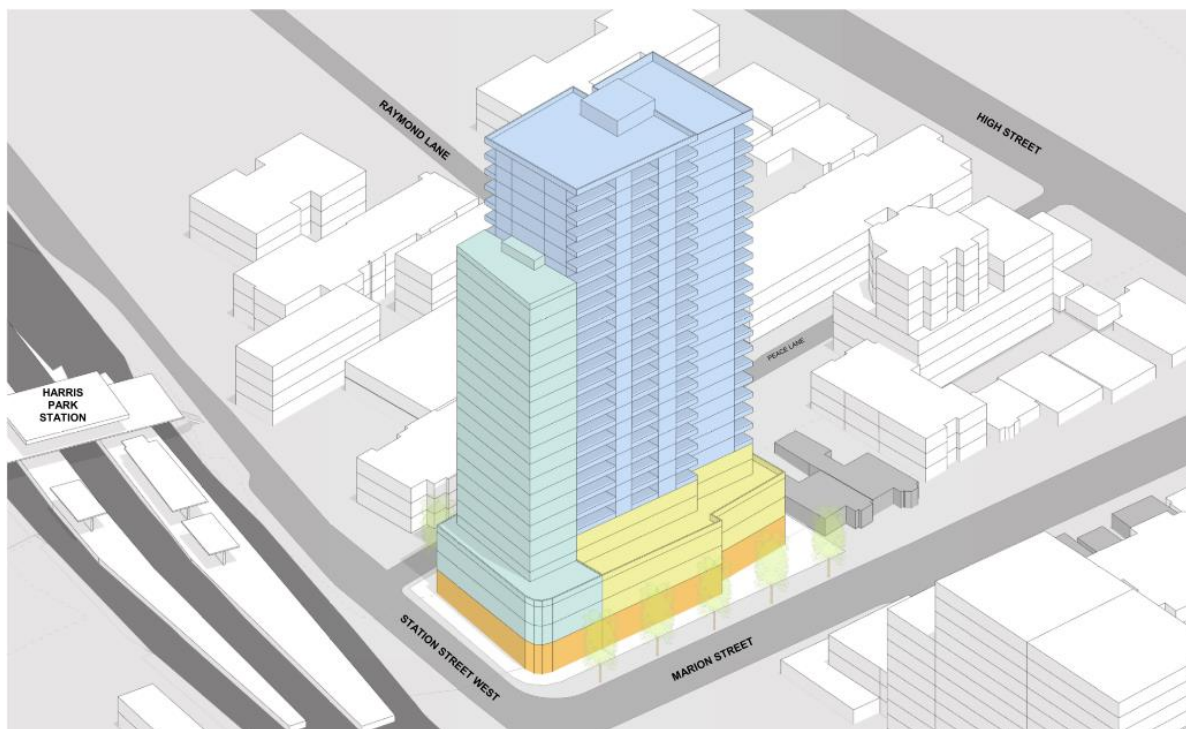


Figure 6. Concept scheme axiomatic view from the north-east.

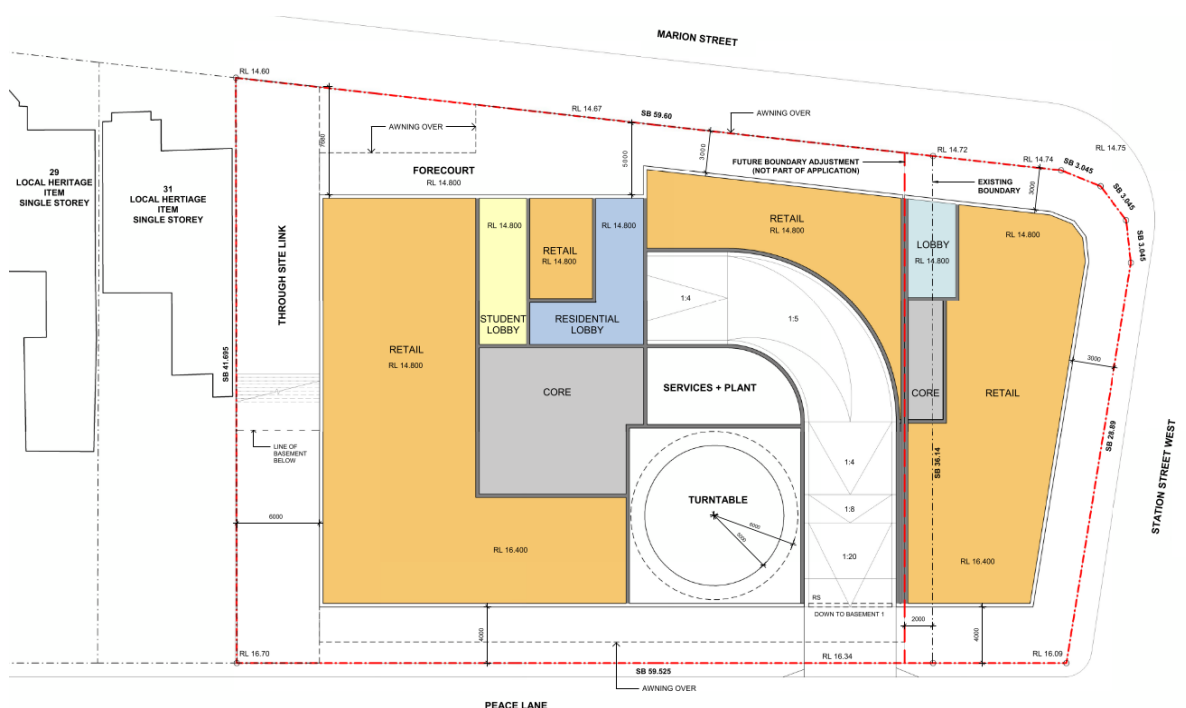


Figure 7. Proposed ground floor plan (reference scheme).

4.1 Additional Information

During the course of assessment, the applicant submitted the following additional information in response to concerns raised by Council officers:

- Revised Landscape Concept Plan including additional planting (small trees);
- Additional Architectural Design Statement;
- Draft Public Access Easement Documentation; and
- Economic Analysis of Viability of Stage 2 Building (re: Floor Plate Size)

5. Referrals

The following referrals were undertaken during the assessment process:

5.1 Sydney Central City Planning Panel

Issue Raised	Comment
<i>SEPP Affordable Rental Housing</i>	
Floor Space Ratio Bonuses - Confirmation required of correct calculation of the available bonuses.	Council officers are in receipt of legal advice which suggests the applicant's interpretation of the relevant legislation overestimates the allowable FSR. Council's interpretation of applicable FSR is contained in this report.
Extent of FSR appears to contribute to a range of planning concerns with the proposal, including those below.	Agreed. These concerns form reason to refuse the application.
Consistency with the character of the area dependent on the future character as described in the CBD PP and the certainty and imminence of that PP.	The Parramatta CBD Planning Proposal has been gazetted with a 6 month deferred commencement provision and as such is considered to be imminent and certain.
<i>SEPP 65/ Apartment Design Guide</i>	
Consideration of solar impacts to adjoining properties, particularly 27 Station Street West to south.	The applicant has not demonstrated that the proposal would have an acceptable impact on the occupants of 27 Station Street West.
Consideration of adequacy of Communal Open Space.	The applicant has not demonstrated that the proposal would provide appropriate communal open space.
Consideration of adequacy of Deep Soil.	The applicant has not demonstrated that the proposal would provide adequate deep soil.
Consideration of adequacy of Solar Access for future DAs.	The applicant has demonstrated that a future detailed DA could provide adequate solar access for future occupants.
<i>Parramatta Local Environmental Plan 2011</i>	
Proposal does not comply with site specific tower setback to adjoining heritage.	The applicant has not provided adequate heritage justification for the non-compliant setback.
Proposal significantly exceeds car parking rates, relying on non-discretionary development standard in ARH SEPP. Clarification required as to appropriateness of this approach.	The ARH SEPP does not allow a consent authority to refuse development on the basis of parking if the minimum provision is met. However, the proposal is in close proximity to a train station and as such concern is raised that the proposal would generate excessive traffic congestion in general, but most importantly at peak kiss and ride times. The applicant's traffic analysis is not considered to provide sufficient comfort.
<i>Parramatta Development Control Plan 2011</i>	
Various non-compliances with setback and floorplate controls, primarily to accommodate FSR bonuses associated with ARH SEPP, require justification.	The applicant appears to be attempting to accommodate excessive floor space, requiring non-compliances with the site-specific envelope controls. The staged approach also reduces the ability to use the DCP envelope efficiently.
Landscaping - No tree planting proposed on site. No details of on-structure planting, if any.	The applicant submitted a revised landscape plan outlining the planting of small trees on the site. However, it is considered that large trees would be

	required for a development of this size and requiring design excellence.
Consideration to be given to appropriateness and practicality of resultant built form of 'Stage 2' element of proposal, given its small and narrow floorplate.	The applicant has provided a report seeking to support the viability of Stage 2. However, it does not provide detail of the viability of constructing the building.
Consideration to be given to how the large blank eastern façade of Stage 1 will be treated until Stage 2 is built.	The applicant has sufficiently outlined how the Stage 1 boundary wall could be treated appropriately in the interim.
<i>Voluntary Planning Agreement</i>	
Consideration to be given to the practical delivery of public rights of way on the Stage 2 site at the time of Stage 1 occupation.	The applicant has not demonstrated that the public domain improvements could be provided in accordance with the VPA.
<i>Design Excellence</i>	
Consideration to be given to how design excellence can be assured.	The applicant has not demonstrated how excellence in landscaping can be achieved in light of no deep soil on the site. Further, excellence in wind conditions appears to require a significant tree canopy.

5.2 External

Authority	Comment
Transport for NSW (Sydney Trains)	Acceptable subject to condition requiring additional information with future detailed DAs.
Transport for NSW (RMS)	Raised concerns with the applicant's Traffic Report. Requested additional information about traffic generation.
Endeavour Energy	Acceptable subject to conditions.
Sydney Water	Acceptable subject to conditions. Recommend dual piping be required for future connection to recycled water supply.
Legal Advice	Do not support applicant's interpretation of GFA 'bonuses'. See further discussion in Section 7.9 of report.

5.3 Internal

Authority	Comment
Landscape & Trees	Raised concern with landscape concept details, insufficient detail to demonstrate proposed planting could be accommodated.
Traffic & Transport	Acceptable subject to conditions.
Environmental Health – Contamination	Acceptable subject to conditions.
Heritage	Request submission of a Heritage Impact Statement. Applicant argued such a statement was not necessary based on previous heritage studies.
Urban Design	Raised concern that staged approach would not deliver benefits of amalgamation as Stage 2 was not likely to be economically feasible. Suggested Stage 2 would need to seek further variations to setback controls to increase viability.

Authority	Comment
City Architect / Design Competition Secretary	Support staging in principle. However, do not support built form departures. Question the financial viability of developing the Stage 2 envelope. Likely that Stage 2 will never eventuate and Stage 1 does not deliver the benefits anticipated by the DCP/VPA.
Land Use (Strategic) Planning	<ul style="list-style-type: none"> • Recommended a heritage impact statement be provided. A heritage letter was provided instead. • Affordable Housing bonuses acceptable in principle for Stage 1 subject to assessment against built form controls. Raised concern that such bonuses should not apply to Stage 2. • Raised concern regarding isolation of stage 2. • Accept that ARH SEPP parking provisions override LEP maximum parking controls. • Noted the future DAs must meet increased BASIX requirements per LEP.
Social Outcomes	<ul style="list-style-type: none"> • Support affordable housing in principle • Concerns regarding overlapping/misapplication of FSR bonuses. • Noted student use of boarding house may need conditions to ensure it is affordable. A condition could be included to this effect.

6. Environmental Planning and Assessment Act 1979

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

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

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

6.2 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 development has a Capital Investment Value of more than \$30 million.

6.3 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 7
Section 4.15(1)(a)(ii) - Draft environmental planning instruments	Refer to section 8
Section 4.15(1)(a)(iii) – Development control plans	Refer to section 9
Section 4.15(1)(a)(iia) - Planning Agreement	Refer to section 10
Section 4.15(1)(a)(iv) - The Regulations	Refer to section 11
Section 4.15(1)(a)(v) - Coastal zone management plan	Not applicable.
Section 4.15(1)(b) - Likely impacts	Refer to section 12
Section 4.15(1)(c) - Site suitability	Refer to section 13
Section 4.15(1)(d) – Submissions	Refer to section 14
Section 4.15(1)(e) - The public interest	Refer to section 15

6.4 Section 4.22: Concept Development Applications

This section sets out the requirements for concept development applications.

Section 4.22(5) of the Act states that,

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

The concept proposal includes building envelopes and their prospective uses. This report provides only an assessment of the impacts that will be inextricably approved as a result of determining this application.

The NSW Land & Environment Court set out a planning principle for the amount of information that must be provided at Stage 1 of a concept application in *Anglican Church Property Trust v Sydney City Council* [2003] NSWLEC 353 at paragraphs 58-59 which state:

58 We accept that multi-stage applications are useful for large or controversial projects as they provide the applicant with certainty about the major parameters of a proposal before it embarks on the expensive exercise of preparing detailed drawings and specifications for a development application. The critical issue is: how much detail should be provided in the Stage 1 application as against the Stage 2 application?

59 The principle we have adopted is that in multi-stage applications the information provided in Stage 1 should respond to all those matters that are critical to the assessment of the proposal. Where traffic generation is the critical issue, Stage 1 should include information on the precise number of cars accommodated on a site. Where the floor space is critical, Stage 1 should include the precise FSR. Where the major issue is the protection of vegetation, the footprints of the proposed buildings may be sufficient. In the proposal before us, however, the two major issues are the impact on the heritage-listed Church and the heritage streetscape. In our opinion, two building envelopes, within which buildings of any shape or design might emerge, are not sufficient to make a proper assessment.

It is considered that the applicant has not provided sufficient information to make an assessment of the following critical issues:

- Landscaping – Insufficient concept landscape detail demonstrating that the future stages can achieve landscaping excellence (lack of deep soil planting, large trees).
- Wind – That sufficiently dense tree foliage can be provided to sufficiently ameliorate wind impacts.
- Viability – Insufficient evidence that the Stage 2 building would be viable to construct and operate.
- Heritage – Insufficient evidence that the non-compliant western setback would have an acceptable impact on the adjoining heritage items (no Heritage Impact Statement).
- Overshadowing – Insufficient evidence that the proposed envelope would have an acceptable impact on adjoining properties.
- Amenity – Insufficient concept detail demonstrating that the Stage 1 envelope can accommodate a building which provides sufficient amenity for future occupants (communal open space).
- Traffic – Insufficient evidence that the proposal would have an acceptable impact on vehicular traffic conditions.

7. Environmental Planning Instruments

7.1 Overview

The instruments applicable to this application comprise:

- SEPP (Building Sustainability Index: BASIX) 2004
- SEPP (Transport and Infrastructure) 2021
- SEPP (Affordable Rental Housing) 2009 [Savings provision under Housing SEPP 2021]
- SEPP (Planning Systems) 2021
- SEPP (Resilience and Hazards) 2021
- SEPP No. 65 (Design Quality of Residential Apartment Development) & Apartment Design Guide
- SEPP (Biodiversity and Conservation) 2021
- Parramatta Local Environmental Plan 2011

Compliance with these instruments is addressed below.

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

SEPP BASIX seeks to encourage sustainable residential development. A BASIX assessment uses a modelling program to determine if a proposal meets the applicable energy efficiency, water efficiency and thermal comfort targets for residential development. The program requires the input of detailed development details, which are not provided at concept plan stage. A complying BASIX certificate will be necessary for the subsequent Stage 1 detailed development application.

7.3 State Environmental Planning Policy (Transport and Infrastructure) 2021

The proposal is considered to constitute 'traffic generating development' (per Schedule 3 of the SEPP) as it proposes more than 200 car parking spaces. As such, the proposal was referred to TfNSW, who raised concern with the applicant's traffic modelling and requested additional information. The applicant did not respond to this request.

7.4 State Environmental Planning Policy (Affordable Rental Housing) 2009

Schedule 7 Clause 2(b) of State Environmental Planning Policy (Housing) 2021 states that the former provision of an instrument apply to any concept development application made, and not yet determined, prior to the commencement date of the policy. The subject application was submitted 6 September 2021 and the policy commenced on 26 November 2021. As such the former provisions apply.

Statement Environmental Planning Policy (Affordable Rental Housing) 2009 (ARH SEPP) provides incentives for developers to provide affordable rental housing.

The subject application includes 2 separate types of housing to which the SEPP relates, being in-fill affordable housing and a boarding house.

7.4.1 In-fill Affordable Housing

Division 1 of the ARH SEPP provides for development of in-fill affordable housing subject to the following qualifications:

Control	Proposal	Compliance
<i>10 Development to which Division Applies</i>		
Applies to residential development	Proposal is a mixed use development, of which part is residential development. It should be noted that the clause excludes boarding houses from the definition of residential development.	Yes, but the bonuses available apply only to the residential development (i.e. not the boarding house, or the other uses).
Permitted in Zone (B4)	Residential Flat Building	Yes. RFB is permissible in the zone
>20% of residential development is affordable	Designate 50% of residential development as affordable.	Yes.
Not a heritage item	Not a heritage item	Yes
Accessible Area	The site is within 800m of a railway station.	Yes. The site is adjacent Harris Park train station.

Clause 13(2)(b) outlines a sliding scale GFA 'bonus' for provision of affordable rental housing. The bonus increases with the percentage of floor space allocated as affordable.

The applicant seeks to achieve the maximum 20% bonus by designating 50% of the total *non-commercial* floor area of the proposal as affordable. However, the applicant includes the boarding house as part of this 50%. Council has received legal advice which does not support this approach as the boarding house is not, "*development to which this clause applies*" and does not form part of the "*dwelling in the residential flat building*".

The proposal would not qualify for the full bonus if it relied on the boarding house accommodation to make up part of that requirement. Notwithstanding, a condition requiring that 50% of the residential units be affordable could be included to secure entitlement to the full bonus. Such a condition is assumed in Council's FSR calculation (see Section 7.9.1 below for full FSR assessment).

Standard That Cannot Be Used to Refuse Development

The ARH SEPP sets out, at Clause 14, standards that cannot be used to refuse development consent for qualifying housing. Notwithstanding, a consent authority may consent to such development whether or not the development complies with these standards. An assessment of the proposal against these criteria is provided in the table below.

Control	Proposal	Compliance
Site Area:	2,375sqm	Yes
>450sqm		
Landscape Area:	~536sqm	No
>30% site area (>713sqm)		
Deep Soil Zones:		
>15%, min dim: 3m, (>356sqm) 2/3 to rear	0sqm N/A (no rear boundary)	No N/A
Solar Access:		
70% dwellings >3hrs sunlight mid-winter	Not specified	No

Parking: >0.5 spaces per 1 bed dwelling >1 space per 2 bed dwelling >1.5 spaces per 3 bed dwelling	Unknown (dwelling mix not defined)	Subject to future detail DA stage.
Dwelling Size: 1 bed: >50sqm 2 bed: >70sqm 3 bed: >95sqm	Unknown (detailed drawings not provided)	Subject to future detail DA stage.

Affordable Housing Tenure

Clause 17 of the SEPP requires that the affordable housing must be provided for at least 10 years. As the proposed envelope accounts for the affordable housing bonus, a condition would be included in any consent requiring that the affordable units be used for that purpose, and managed by a registered community housing provider, for at least 10 years from the date of the occupation certificate.

7.4.2 Boarding House

Division 3 of the ARH SEPP allows for Boarding Houses in the following circumstances:

Control	Proposal	Compliance
<i>26 Land to which this Division applies</i>		
List of applicable zones	B4 Zone	Yes
<i>27 Development to which Division applies</i>		
Development for the purpose of boarding houses	Proposal is a mixed use development, of which part is a boarding house.	Yes, but the bonuses available apply only to the boarding house component.

Standard That Cannot Be Used to Refuse Development

The ARH SEPP sets out, at Clause 29, standards that cannot be used to refuse development consent for boarding houses. Notwithstanding, a consent authority may consent to such development whether or not the development complies with these standards. An assessment of the proposal against these criteria is provided in the table below.

Control	Proposal	Compliance
FSR: 20% of maximum floor space ratio	20%	Council has received legal advice that the bonus only applies to the Boarding House floorspace as the clause refers to, " <i>development to which this Division applies</i> ". See further FSR assessment in Section 7.9.1 below.
Building Height: <80m	90.5m	No
Landscaped Area: Front setback landscaping consistent with streetscape	Unknown	Subject to future detail DA stage.

Solar Access: 3 hours direct sunlight to at least 1 communal living room, if such a living room is provided	Unknown	Subject to future detail DA stage.
Private Open Space: >20sqm area >3m dim.open space	0sqm	No
8sqm area >2.5m dim for manager if manager accommodation provided	Unknown	Subject to future detail DA stage.
Parking: >0.5 space / boarding room <1 space / on-site employee	Unknown	Subject to future detail DA stage.
Accommodation Size >12sqm GFA/single boarding room >16sqm GFA/double boarding room	Unknown	Subject to future detail DA stage.

Standards for Boarding Houses

Clause 30 sets out the following requirements for boarding houses:

Control	Proposal	Compliance
If >5 rooms, at least 1 communal room	Unknown (though assumed >5 rooms)	Subject to future detail DA stage.
All rooms <25sqm GFA	Unknown	Subject to future detail DA stage.
All rooms <= 2 occupants	Unknown	Subject to future detail DA stage.
Adequate bathroom/kitchen facilities	Unknown	Subject to future detail DA stage.
If >20 residents, on-site manager required	Unknown (though assumed >20 residents)	Subject to future detail DA stage.
>1 bicycle space / 5 boarding rooms	Unknown	Subject to future detail DA stage.

As the above are 'standards' (i.e. must be provided), but this level of detail is not considered to be necessary for a concept application, a condition requiring that the boarding house comply with these requirements would be recommended for any consent.

7.4.3 Character of Local Area

Clauses 16A (for in-fill affordable housing) and 30A (for boarding houses) of the ARH SEPP both require that consideration be given to whether the design of the development is compatible with the character of the area. The ARH SEPP does not provide any guidance on assessing the compatibility of affordable housing with the local area. For the purposes of this assessment the compatibility of the proposal with the character of the local area will be determined with the following 3 steps:

- Step 1 – Identify the local area.
- Step 2 – Determine the character (present and future) of the local area.

- Step 3 – Determine if the development is compatible with the character of the local area.

As assessment against each step is provided below:

Part A – Identify the local area

The local area is primarily considered to be the visual catchment of the site (as viewed from within the site and directly adjacent to the site on the street). *NSW LEC Case Succar vs Bankstown City Council [2012]* provides guidance on determining visual catchment. The visual catchment is considered to be those buildings that can be seen from within the site and while standing adjacent the site in the public domain.

Part B – Determine the character of the local area.



Figure 8. Parramatta LEP 2011 Height of Buildings Map (subject site in blue).

The local area ranges from single storey dwellings to city centre towers. The LEP envisages mixed use development from 12m (land to the south) to 54m (land to the north) in height within the visual catchment of the site (see Figure 7 above).

However, the land to the south is subject to a deferred commencement Planning Proposal, the 'CBD Planning Proposal' (see Section 8.4 below for more information), which will see that land rezoned in October 2022 with height and FSR standards of up to 80m and 6:1 respectively.



Figure 9. Parramatta CBD Planning Proposal Height of Buildings Map (subject site in blue).

Part C – Determine if development is compatible with character of the local area.

Compatibility within the urban environment is an issue that has been given detailed consideration by the Land and Environment Court. In the decision of *Project Ventures Development Pty Limited and Pittwater Council [2005] NSWLEC 191*, the Senior Commissioner of the Court was asked to consider the process of deciding whether a building is compatible with its surroundings. This led to the development of a Planning Principle as a guide on this issue. The planning principle states there are two important aspects of compatibility that need to be satisfied:

- ***Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.***

The planning principle established in *Pafburn v North Sydney Council [2005] NSWLEC 444* and revised in *Davies v Penrith City Council [2013] NSWLEC 1141* outlines principles for determining impact on neighbouring properties, including the questions that are relevant to the assessment of impacts on neighbouring properties. An assessment against these criteria is provided below:

- ***How does the impact change the amenity of the affected property? How much sunlight, view or privacy is lost as well as how much is retained?***

The proposal would have a significant impact on the existing residential flat building to the south, in particular the solar access and outlook of the existing units which have their primary outlook to Station Lane (see Figure 3 above). Even redevelopment under the proposed controls would struggle to achieve acceptable amenity for occupants.

The impact of the development overall to the adjoining properties to the immediate south, opposite Station Lane, is severe in terms of visual bulk and overshadowing.

- ***How reasonable is the proposal causing the impact?***

‘Reasonableness’ is a merit assessment of the benefits of the proposal versus its impacts. The key benefit is additional affordable housing, but the implementation of this benefit would result in additional impacts.

As outlined in more detail in Sections 7.8 and 7.9.2 of this report, the proposal has not quantified and assessed the solar impact on adjoining properties and as such cannot be said to have demonstrated a reasonable impact.

- ***How vulnerable to the impact is the property receiving the impact? Would it require the loss of reasonable development potential to avoid the impact?***

The units at 27 Station Street West have their primary outlook to the lane, a side boundary, and as such are vulnerable to any development on the subject site. The primary ‘allowable’ form would have a significant impact, and the non-compliances exacerbate the impacts.

- ***Does the impact arise out of poor design? Could the same amount of floor space and amenity be achieved for the proponent while reducing the impact on neighbours?***

The proposed floorspace, albeit it much higher than anticipated, would appear to fit within the DCP envelope. However, it is the proposed staged approach which reduces the ability to utilise the envelope most efficiently, and the higher weighting of floorspace in Stage 1. As such it appears that the benefits of the floor space, such as the affordable housing, could be accommodated in a complying form, with less impacts. As such the proposal is considered to constitute ‘poor design’ in this regard.

- ***Does the proposal comply with the planning controls? If not, how much of the impact is due to the non-complying elements of the proposal?***

The proposal does not comply with the planning controls. The primary elements which contribute to decreased amenity impacts are the eastern and western tower setback non-compliances.

An envelope was adopted for the site as part of the site-specific DCP, indicating a level of pre-determination that the impacts of such a form are acceptable. However, the proposal seeks to exceed the agreed site-specific envelope, partly to accommodate the bonuses allowable under the ARH SEPP and partly to accommodate the staged approach. The impacts of the proposed development are thus not *ipso facto* acceptable.

- ***Is the proposal’s appearance in harmony with the buildings around it and the character of the street?***

The proposal is not consistent with the existing buildings around it or the character of the street. However, it would be less out of place in comparison to the desired future character of the area.

As the CBD Planning Proposal has been gazetted, the constraints on the adjoining development are less, as redevelopment of those sites would be more able to achieve appropriate amenity, including solar access and outlook.

The proposal could achieve a quantum of additional affordable housing FSR, and comply with the DCP envelope, if a reduced FSR and non-staged approach was adopted. As there is an alternative that would have less impact, the proposal cannot be said to be consistent with the desired future character of the area.

7.5 State Environmental Planning Policy (Planning Systems) 2021

As this proposal has a Capital Investment Value of more than \$30 million, Part 2.4 of this Policy provides that the Sydney Central City Planning Panel is the consent authority for this application.

7.6 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 10 of 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 will be considered at the future detailed DA stages.

7.7 State Environmental Planning Policy (Resilience and Hazards) 2021

The application includes a Preliminary Site Investigation (PSI), the purpose of which was to provide preliminary advice on the potential for contamination to be present at the site and the consequent implications on the site's suitability for its intended use.

During preparation of the PSI, the applicant's consultant reviewed available background information to determine potential sources of contamination and undertook a site inspection to confirm and map salient site features.

Based on the site history and the site visit conducted as part of this PSI, there appears to be limited potential sources of contamination on site.

Council's Environmental Health team reviewed the application and considers the site is suitable for the proposed uses. Conditions relating to hazardous material management would be considered in future detailed DAs.

7.8 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.

7.8.1 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. An assessment of the proposal against the design principles is provided in the table below:

Requirement	Council Officer Comments
Principle 1: Context and Neighbourhood Character	<p>Consideration of the proposal's consistency with the character of the area is considered in Section 7.4.3 above.</p> <p>The provision of ground level setbacks and through site links would assist in supporting the proposed increased density for the area. However, as outlined in Section 10 below, the proposal would not achieve those requirements.</p>
Principle 2: Built Form and Scale	<p>As outlined above, the proposed built form is considered to be excessive.</p> <p>The ultimate built form, which includes a lowered corner element not typical of such buildings, is nonetheless not considered objectionable to Council's Design Excellence team.</p> <p>The uses are logically located throughout the building and relate roughly to the built form. Detailed design will be subject to the future detailed development application.</p>
Principle 3: Density	<p>The site is located in a city-centre area, in close proximity to a railway station, and as such is an area with high access to jobs, infrastructure and services.</p> <p>The density allowable will result in increased pedestrian traffic, which was partly to be supported by the proposed ground level setbacks agreed in the VPA. The proposal seeks to deliver the majority of the additional population density on the site, prior to delivery of the Stage 2 setbacks.</p>
Principle 4: Sustainability	<p>The site is subject to a site-specific clause requiring BASIX scores beyond the minimum requirements. As detailed plans are not included as part of this concept, BASIX scores cannot be computed. Notwithstanding, the future detailed development application(s) will need to demonstrate compliance.</p>
Principle 5: Landscape	<p>The proposal provides no true deep soil which is not considered to be appropriate. The concept landscape plans are considered to be insufficient as outlined in more detail in Section 7.9 below.</p>
Principle 6: Amenity	<p>The proposal would have a significant impact on the amenity of adjoining properties to the south, in particular the 24 units at 27 Station Street West directly to the south which mostly have their primary outlook and solar access across the site (see Figure 3). The applicant has not demonstrated that this impact is reasonable.</p>
Principle 7: Safety	<p>The proposal includes appropriate outlook to the public domain, including the proposed through site link (which is also direct and legible) and the publicly accessible front setbacks.</p> <p>The entrances are spaced out along Marion Street, away from vehicle entrances, which is considered to be appropriate.</p>
Principle 8: Housing Diversity and Social Interaction	<p>The proposal would provide for a variety of housing types, including affordable rental housing, boarding house and market housing.</p> <p>The proposal includes two open space areas, both above ground level. However, the podium top open space likely conflicts with the boarding house rooms (acoustic and visual privacy).</p>
Principle 9: Aesthetics	<p>The detailed building elements, textures, materials and colours will be subject to a future detailed application.</p>

7.8.2 Apartment Design Guide

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

Guidance	Requirement	Proposal	Compliance
Part 3			
3B: Orientation	<p>The building is oriented roughly in keeping with the site specific DCP with entrances along the primary street frontage and access to the rear.</p> <p>The applicant has not demonstrated that the proposal minimises overshadowing of adjoining properties, specifically the adjoining 24 units to the south at 27 Station Street West. The applicant provided qualitative assessment of 18 of the 24 units in the building, but did not provide a sufficiently detailed assessment of existing solar access, solar access as a result of complying development and solar access as a result of the proposed development. The applicant's assessment noted that changes could be made to the proposal design to improve its impact, but did not revise the concept drawings accordingly.</p>		
3C: Public Domain Interface	<p>The proposal includes 3m publicly accessible ground floor setbacks to the northern and eastern boundaries, as well as a through site link on the western boundary, as anticipated by the site-specific DCP. However, as outlined below, there is concern as to the delivery of these areas.</p>		
3D: Communal & Public Open Space	Min. 25% of site area (594m ²)	~600m ² (300m ² podium top, 300m ² rooftop)	Yes
	Min. 50% direct sunlight to main communal open space for min. 2hrs 9am & 3pm, June 21 st (297m ²)	The rooftop open space (~300m ²) would achieve full sun.	Yes
	<p>While the proposal would provide a sufficient quantum of communal open space, it is not considered to be appropriately located. The level 4 open space would be adjacent the boarding house use and would likely result in an amenity conflict between the two uses (visual and acoustic privacy).</p> <p>The applicant also claims that the through site link counts towards communal open space. However, part of the link is required to be dedicated to Council and as such will not fulfil the definition of communal open space.</p>		
3E: Deep Soil	Min. 7% with min. dimensions of 6m (110m ²)	0m ² (213m ² in planters on western boundary)	No
	<p>The applicant contends that the western planters could contain sufficient soil for a row of 8 x small trees with a height of 5-8m and a spread of 5-7m. This is not considered to be sufficient for a development of this scale. Further, deep soil has other benefits beside tree planting that should be achieved on this site.</p>		
3F: Visual Privacy	To West: Floor 2-3: 6m Floor 4-7: 9m Floor 8+: 12m	6m 9m 9m	Yes Yes No
	To South: Floor 2-3: 6m Floor 4-7: 9m Floor 8+: 12m	4m (+3m lane) = 7m 6m (+3m lane) = 9m 6m (+3m lane) = 9m	Yes Yes No
	<p>The proposed setbacks to the south are anticipated by the site-specific DCP. The 6m wide lane adds 3m of separation to the south, which allows for effective compliance up to level 7. However, the upper levels would likely put pressure on compliance to any future development at 27 Station Street West, which is a narrow block. The future detailed design is unlikely to be able to use design measures to protect privacy as this will be the primary outlook for some units. The Parramatta deferred commencement CBD LEP and DCP include minimum lot and frontage sizes to encourage consolidation. As such it is likely that 27 Station Street West would need to amalgamate with 25 Station Street West, thus providing more opportunity to be appropriately spaced from the proposal.</p>		

Guidance	Requirement	Proposal	Compliance
3G: Pedestrian Access and Entries	Multiple entries provided which would activate primary streets. The proposed through site link is straight, direct and is overlooked with passive surveillance.		
3H: Vehicle Access	The applicant has submitted a traffic report outlining that the design of the access/parking/loading areas can comply with the relevant spatial requirements. The vehicle access is provided off the rear lane and is well separated from pedestrian entries. The access will result in headlight glare to adjoining properties, though this seems to be an unavoidable consequence of the access having to be off the lane. While the ground level vehicle loading dock would be a source of noise, the bedrooms of the adjoining property are to the opposite elevation.		
3J: Bicycle and car parking	SEPP (ARH) non-discretionary development standard applies.	N/A	N/A
Part 4			
4A: Daylight / Solar Access	Min. 2hr for 70% of apartments living & POS 9am & 3pm mid-winter (≥ 124); Max 15% apartments receiving no direct sunlight 9am & 3pm mid-winter (≤ 26)	119 out of 178 (67%) Not specified, appears most south facing will receive none, ~59/178 (33%)	No No
	The reference scheme would not achieve compliance. This appears to be primarily as a result of the inability to rely on the eastern elevation of Stage 1 to receive solar access. However, the applicant submitted further modelling demonstrating that a revised layout could achieve the targets, by for example amalgamating units on the south side of the building to accommodate less smaller units, thus achieving the required ratios. While they did not amend the drawings as such, the future detailed DA would need to demonstrate compliance, which may require a higher mix of 3-bedroom units than the developer would otherwise consider to be ideal.		
4B: Natural Ventilation	Min. 60% of apartments below 9 storeys naturally ventilated (≥ 19)	20 out of 32 apartments (63%)	Yes
	The reference scheme demonstrates that the building envelope allows for the future detailed application to achieve compliance.		
4C: Ceiling heights	Min. 2.7m habitable Min 2.4m non-habitable Min 3.3m ground floor mixed use	2.8m 2.8m 4.1m-5.7m	Yes Yes Yes

Guidance	Requirement	Proposal	Compliance
4D: Apartment size & layout	<p>1B – Min 50m² 2B – Min 75m² (2 baths) 3B+ – Min 95m² (2 baths)</p> <p>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.</p> <p>Habitable room depths max. 2.5 x ceiling height</p> <p>Max. habitable room depth from window for open plan layouts: 8m.</p> <p>Min. internal areas: Master Bed - 10m² Other Bed - 9m²</p> <p>Min. 3m dimension for bedrooms (excl. wardrobe space).</p> <p>Min. width living/dining: 1B – 3.6m 2B – 4m 3B – 4m</p>	The draft reference scheme demonstrates that the envelopes are capable of accommodating a building which could comply with these detailed requirements. Notwithstanding, the future detailed development application must demonstrate compliance.	Yes
4E: Private open space & balconies	<p>Min. area/depth: 1B - 8m²/2m 2B - 10m²/2m 3B - 12m²/2.4m</p>	As above.	Yes
4F: Common circulation & spaces	<p>Max. apartments off circulation core on single level: 8 - 12</p> <p>Corridors >12m length from lift core to be articulated.</p>	As above.	Yes
4G: Storage	<p>1B – Min 6m³ 2B – Min 8m³ 3B+ – Min 10m³</p> <p>Min. 50% required in Basement</p>	As above.	Yes
4H: Acoustic Privacy	<p>The proposed loading dock is at grade and within close proximity to several adjoining units at 27 Station Street West. However, the bedrooms of those units face away from the site and as such are unlikely to be as affected.</p> <p>Floor layouts will be determined at future detailed DA stage.</p>		
4J: Noise and pollution	<p>The subject windows will face away from, or be significantly above, the adjoining train line and as such are less likely to be affected by rail noise. An acoustic report will be required at future detailed DA stage. Any requirements for attenuation measures will be dealt with at this time.</p>		
4K: Apartment Mix	<p>Unit mix will be assessed at future detailed DA stage.</p> <p>As the proposal seeks to benefit from the full bonus floor space under the Affordable Rental Housing SEPP, 50% of the residential flat building floorspace will be affordable.</p>		
4M: Facades	<p>Facades will be subject to the future detailed development application.</p>		
4N: Roof design	<p>The concept anticipates a flat roof to accommodate part of the required communal open space. The reference scheme demonstrate that the lift overrun to access the roof space can be sufficiently central to the roof to avoid visibility from the public domain. Details will be subject to future detailed DA.</p>		

Guidance	Requirement	Proposal	Compliance
4O: Landscape Design	The application includes a reference landscape scheme which outlines no medium or large tree planting. The basement envelope does not include deep soil planting areas capable of accommodating such trees. Concern is raised that the future detailed stages will not be able to demonstrate acceptable landscape design.		
4P: Planting on structures	The reference scheme anticipates planting on structure, including rooftop open spaces. Details will be subject to future detailed DA.		
4Q: Universal Design	The site is considered to be appropriately barrier free with level and lift access from street level and lift access from the basement to the upper residential floors of the development. Details of universal design will be required at the future detailed development application stage.		
4T: Awnings and Signage	Awnings are proposed within the front setback, over the land to be publicly accessible, which is considered to be appropriate given the proximity to a busy public transport node and retail at ground level. No signage is proposed as part of the application.		
4U: Energy Efficiency	Per the requirements of cl.7.22(4) of the PLEP, the proposal is required to provide energy and water efficiencies in excess of the minimum requirements. Details demonstrating compliance will be required at the future detailed DA stage.		
4V: Water management			
4W: Waste management	Details of waste management will be provided at future detailed DA stages. The reference design demonstrates a loading dock can be accommodated at ground level for waste vehicles. An easement for Stage 2 would be required. A construction waste management plan would be required as a condition of the future detailed DA.		
4X: Building maintenance	Building maintenance assessment will be subject to the choice of materials at the future detail development application stage.		

7.9 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	Comply?
1.2 Aims of Plan	<p>The proposal is not considered to be consistent with several of the aims of the LEP as the Stage 2 floorplates are not of sufficient size to be a viable development or accommodate the needs of future businesses.</p> <p>The applicant's justification for the viability of the Stage 2 development is that the owner has consented to the application, currently runs a business out of the existing commercial building on the site and wishes to expand, that C grade office space is in decline in the CBD, that vacancy rates of C grade office space are decreasing in the CBD, and that rents would fall to meet demand for the space.</p> <p>However, this is not considered to be sufficient as the applicant has not considered the costs of developing the Stage 2 site in their assessment of the financial viability of the proposal. If the rents that can be returned from the space cannot justify the construction costs, the development is unlikely to proceed.</p>	No

Development standard	Proposal	Comply?
2.3 Zoning B4 – Mixed Use	The proposal seeks in-principle approval for the following uses, all of which are permissible in the zone: <ul style="list-style-type: none"> • Retail Premises • Commercial Premises • Boarding House • Shop Top Housing 	Yes
Zone Objectives	The proposal is considered to be in keeping with the following objectives of the B4 Mixed Use zone: <ul style="list-style-type: none"> • The proposed uses are considered to be compatible in the city centre context. • The residential uses and 3 x retail units at ground level, would support an active, vibrant and sustainable neighbourhood and provide for the daily commercial needs of the locality. The proposal is considered to be inconsistent with the following objectives of the B4 Mixed Use zone: <ul style="list-style-type: none"> • The proposed Stage 2 commercial development is not considered to be suitable due to its small floorplate. • While the through site link and publicly accessible front setbacks would improve the public domain and pedestrian connections, they may not be fully realised. • The proposal is closer to the adjoining heritage items than anticipated in the controls. 	No
4.3 Height of Buildings Map: 80m DE Bonus: 92m (not awarded)	90.5m Any approved plans would need to first be amended to show anything above 80m as hatched and subject to a design excellence competition.	No
4.4 Floor Space Ratio Map: 6:1 (14,250m²). Bonus Rules: 15% design excellence to commercial element only* 20% boarding house, to boarding house part 20% for in-fill affordable * can only be confirmed at future detailed DA stage, after competition Allowable (assuming 50% of residential units not including boarding house are affordable, boarding house provided includes bonus, design excellence bonus applies to only commercial): 16,948.60sqm (7.136:1)	Boarding House: 3,000sqm Residential (Affordable + Regular): 14,345sqm Commercial (Retail + Office): 3,602sqm Total: 20,947sqm (8.8:1) See end of table for further detailed of calculations	No

Development standard	Proposal	Comply?
4.6 Exceptions to Development Standards	The applicant has submitted a clause 4.6 to the Floor Space Ratio standard. See assessment at end of table.	No
5.10 Heritage conservation	<p>The site does not contain any heritage items.</p> <p>The two sites immediately adjoining to the west contain locally listed heritage dwellings (See Figure 4 above).</p> <p>As outlined below, the proposal does not comply with the site specific DCP western tower setback requirements, developed in part to assist in achieving the objective of, <i>“ensuring a suitable interface to the adjoining heritage item”</i>.</p> <p>The applicant has submitted an architectural statement which seeks to justify the non-compliance on heritage grounds. The primary justification is that the podium setbacks comply and the items will primarily be viewed in the context of the podium and not the tower.</p> <p>The lack of deep soil, and thus ability to plant larger trees along the western boundary reduces the ability to ameliorate the built form tension.</p> <p>As a Heritage Impact Statement specific to the development has not been submitted to justify the proposal, the applicant has not demonstrated an acceptable heritage impact.</p> <p>The site is identified as being of potential local archaeological significance. An archaeological assessment will be required at future detailed DA stage. An advisory note would be included in any consent to this effect.</p>	No
6.1 Acid Sulfate Soils Class 5	The site is not considered likely to be affected by acid sulfate soils.	Yes
6.2 Earthworks	<p>The application includes excavation which extends to all 4 boundaries. A geotechnical report will be necessary at future detailed DA stage(s) to demonstrate the proposal will have acceptable earthworks impacts. An advisory note is included to this effect.</p> <p>A deep soil zone along the western boundary, in addition to other benefits, would minimise potential for structural impacts to the adjoining heritage item.</p>	Yes
6.3 Flood Planning	The site is not flood affected.	N/A
7.2 Floor Space Ratio	This clause provides a sliding scale for FSR on sites smaller than 1,800sqm. While the land for Stage 2 is less than 1,800sqm, as it is part of the 'site', the sliding scale does not apply.	N/A
7.3 Car Parking	See Section 7.23 below.	N/A
7.4 Sun Access	The proposal would not overshadow Jubilee Park, Parramatta Square or Lancer Barracks during the solar protection window (i.e. 12pm – 2pm).	Yes
7.6 Air Space Operations	The clause requires the consent authority to not grant consent to a development that is a controlled activity within the meaning of Division 4 of Part 12 of the Airports Act 1996 of the Commonwealth unless the applicant has obtained approval for the controlled activity.	N/A

Development standard	Proposal	Comply?
	<p>The Bankstown Airport Obstacle Limitation Surface (OLS) is breached by any development above ~156m AHD in the Parramatta CBD.</p> <p>The proposal does not exceed this height.</p>	
7.10 Design Excellence	<p>Sub-clause (4) requires that development in the CBD demonstrate compliance with a set of design excellence criteria. An assessment against the design excellence criteria is provided at the end of this table.</p> <p>Sub-clause (5) requires that design excellence competitions be held in certain circumstances.</p> <p>The ruling of Commissioner O’Neil in <i>Uniting Church in Australia Property Trust (NSW) v Parramatta City Council</i> suggests that a concept development application had to demonstrate compliance with the design excellence criteria but did not require a design excellence competition as outlined in paragraph 48 of her judgement:</p> <p><i>The clause [7.10] applies to “development involving the erection of a building” at sub-cl (2). A concept proposal is development involving the erection of a building, although it is not a development application for the erection of a building. A concept proposal involves the erection of a building because it secures the approved form of the future building on the site. The wording in sub-cl (2), “development involving the erection of a building” is in contrast to the wording in sub-cl (5)(a) “development in respect of a building”. Development in respect of a building requires a development application consistent with the definition of development in s 1.5(1) of the EPA Act because that development must be in respect of, meaning for the purpose of, a building; whereas development involving the erection of a building need not necessarily be development for the erection of a building, but can be development associated with the future erection of a building, such as a concept proposal for a building envelope.</i></p> <p>However, the Chief Judge, in reviewing the commissioner’s decision appears to potentially contradict this finding at paragraph 57 of his judgement (emphasis added):</p> <p><i>Clause 7.10 applies to all developments involving the erection of a new building but cl 7.10(5) applies only to development of one or more of the types stated in paragraphs (a) to (e). Concept proposals for the development of a site (such as building envelopes) can be development involving the erection of a new building (and hence development to which cl 7.10 applies) but might not be development of a type in cl 7.10(5)(a) to (e). If the proposed development is not development of a type described in cl 7.10(5)(a) to (e), cl 7.10(5) does not apply and</i></p>	No

Development standard	Proposal	Comply?
	<p><i>there is no restriction on granting consent unless a competitive design process has been held</i></p> <p>The Chief Judge seems to suggest at the line in bold above that a concept application <i>might be</i> development to which sub-clause 5 applies. The proposal is over 55m in height. As such a design excellence competition will ultimately be required. The applicant has not undertaken such a competition to date.</p> <p>As outlined in Section 6.4 above, a concept application must address those elements critical to the assessment of the proposal. In some cases, demonstrating the design excellence of a building envelope may require refinement through a design competition, such as when a site is significantly constrained by the presence of a heritage item on site. However, in this case, the critical issues are primarily podium and tower setbacks, which can be assessed using the existing and proposed built form controls.</p> <p>As such it would be considered reasonable in this instance to rely on a condition requiring that a design excellence competition be held prior to submission of the future detailed DAs and that no design excellence bonuses are awarded at this time. As such the proposed drawings could not be approved as they 'include' the bonus as if it has been awarded. The 'bonus' could be represented on the drawings with a dashed line to indicate potential additional height/FSR.</p>	
7.22 Development on land at 33-43 Marion Street	<p>This clause incentivises a 5% bonus for residential floor space if impacts on adjoining properties are acceptable. The proposal does not seek to benefit from this clause.</p> <p>The development must demonstrate exceedances to the minimum BASIX requirements. As the proposal is a concept, and thus does not include details of the BASIX, assessment cannot be undertaken at this time. The clause will still apply regardless and as such a condition of consent is not required.</p>	<p>N/A</p> <p>N/A</p>
<p>7.23 Car parking on land at 33-43 Marion Street [and other site]</p> <p>Maximum parking rates:</p> <p><u>Residential Flat Building:</u></p> <p>Studio: <0.1 space/dwelling 1 bed: <0.3 space/dwelling 2 bed: <0.7 space/dwelling 3+ bed: <1.0 space/dwelling</p> <p>Apartment Breakdown not provided.</p> <p>SEPP minimums supersede</p> <p><u>Boarding House:</u></p> <p>Number of bedrooms not specified.</p>	<p>SEE: 232</p> <p>Drawings in Traffic Report: 293 (of which Residential: 244 Commercial: 49)</p> <p>The proposal does not seek approval for a specific number of car parking spaces. However, it makes provision for a 3-5 storey basement capable of accommodating a number of spaces in the range above. The traffic modelling is based on this quantum of parking. As outlined elsewhere in this report, it is not considered that the applicant has demonstrated the proposal would have an acceptable traffic impact.</p>	<p>?</p> <p>Yes No</p>

Development standard	Proposal	Comply?
<p>Not listed in clause (refer to ARH SEPP provisions)</p> <p><u>Office:</u></p> <p>1 space/175sqm x 2,857sqm = 16 spaces</p> <p><u>Retail:</u></p> <p>1 space/90sqm x 745sqm = 8 spaces</p> <p>Total Commercial: 24</p>		

7.9.1 FSR Calculations

Summary of applicant's legal advice:

- Clause 4.4 'Floor Space Ratio Map'
 - Maximum mapped ratio is 6:1
- Clause 7.10 'Design Excellence Bonuses'
 - Design Excellence bonus can only be applied to the mapped amount as the clause specifically refers to 'mapped'.
- Clause 4.6 'FSR Variation'
 - Considers that 5% variation can be applied to mapped FSR and bonuses (Council has legal advice to contrary).
- Clause 7.2 'Site specific bonus'
 - Site specific bonus can only be applied to the mapped amount as the clause specifically refers to 'mapped'.
 - Notes this bonus and Design Excellence (DE) bonus are not cumulative and as such does not seek to apply this bonus (being lesser than the DE bonus).
- ARH – In-Fill Bonus
 - Suggests that boarding house will be 'affordable' as it will be for students, and thus can form part of the 50% affordable housing prerequisite for the maximum bonus. Council has advice that boarding houses cannot count towards achieving 50% affordable requirement for full bonus.
 - States that the clause applies because 20% of the development will be boarding house (unclear why the justification wouldn't be that in-fill affordable is proposed).
 - States that 20% requirement demonstrates clause applies to all of mixed-use development. Council have legal advice to contrary.
 - Considers in-fill bonus applies to maximum possible, which is more than just mapped, would be mapped + design excellence bonus (25% commercial)- + 5% Clause 4.6 variation. Commercial bonus can be applied as it is the maximum permissible (notwithstanding the proposal may not actually qualify for that bonus). Take that bonus and add to base permissible map + design excellence bonus (15% residential) + 5%.
- ARH – Boarding House Bonuses
 - Assume Boarding House to be rented as "affordable housing" (though it is not clear why such a designation is required for the purposes of this clause).
 - Boarding House to be 20% on top of overall development.
 - Outlines draft condition to ensure student accommodation operates as a boarding house.
 - Considers clause 27 only applies to boarding house.

- ARH – General
 - States that clause 13 and 29 bonuses are not cumulative.

Applicant's Interpretation of FSR:

	Bonus	Stage 1	Stage 2	Total
BASE FSR	-	6	6	
Site Area	-	1945	430	2375
BASE GFA	-	11670	2580	
DE GFA	15% (on top of base)	1750.5	387	
4.6 GFA	5% (on top of base and DE)	671.025	148.35	
ARH Bonus GFA	20% (on top of base, DE*, and 4.6)	3740.625		
TOTAL GFA		17832.2	3115.4	20947.5
TOTAL FSR		9.17	7.25	8.82

* calculated with 25% commercial design excellence bonus as it is 'maximum allowable'

Council Officer Interpretation:

- PLEP cl.4.6(8) – Max CBD variation (5%)
 - Does not form part of the “floorspace permitted on the land” when calculating other bonuses.
 - As this only gives power for cl.4.6 to be used to exceed FSR by max of 5%, and the other bonuses are equal to or more than 5%, Clause 4.6 cannot be used to increase floorspace beyond other bonuses.
- PLEP cl.7.10(8) – Design Excellence Bonus (15% resi, 25% comm)
 - Does not form part of the “floorspace permitted on the land” when calculating other bonuses as it is discretionary (“May grant consent”, not “must grant consent” to bonus).
 - Can only formally be granted after design competition is run, until then would need to be represented as a dashed line on concept drawings.
 - Can only be granted to commercial floor space which doesn't benefit from the ARH bonuses.
 - The Stage 2 development would be part of larger building containing residential uses and as such benefit from only the 15% bonus (not the 25% bonus for fully non-residential buildings).
- PLEP cl.7.22(3) – Site Specific Residential Bonus (5%)
 - Does not form part of the “floorspace permitted on the land” when calculating other bonuses as it only applies in certain circumstances.
 - As this only gives power to exceed FSR by max of 5%, and the other bonuses are equal to or more than 5%, cannot be used to increase floorspace beyond other bonuses.
- ARH SEPP cl.13(2) – In-fill Bonus (20% if 50% residential is affordable)
 - Can only apply to residential floor space, not entire development, as cl.11 sets out that the division applies only to residential flat buildings.
 - Boarding house floorspace cannot make up percentage of affordable for purpose of bonus as it is not development to which the clause applies and is not 'affordable housing' as defined by the SEPP (even though it may be cheaper accommodation).
 - Floor space benefitting from this bonus cannot also benefit from DE, 4.6 or site specific 'bonuses', as they only bestow a discretionary power to increase

the FSR from the mapped rate by an amount less than allowable per the SEPP.

- ARH SEPP cl.29(1)(c) – Boarding House Bonus (20%)
 - Can only apply to boarding house, not entire development, as clauses 26 and 27 set out that the division applies only to boarding houses.
 - Floor space benefitting from this bonus cannot also benefit from DE, 4.6 or site specific ‘bonuses’ for same reason outlined above.

Officer Calculation:

- Applicable Bonuses:
 - Boarding House Base GFA + 20%
 - Residential Base GFA + 20% (50% of which must then be affordable)
 - Commercial Base GFA + 15% (when competition is run)
- Calculation:
 - Base FSR: 6:1
 - Commercial total proposed is 1.52:1 (of which 1.32:1 is Base GFA and 0.2:1 is 15% Bonus GFA)
 - Residential Base GFA = $6 - 1.32 = 4.68$.
 - Base GFA x 20% for boarding house and residential $(0.936) = 5.616:1$
 - Boarding House is 1.26:1
 - Remaining GFA for Residential is thus $5.616:1 - 1.26:1 = 4.356:1$
- Sub-total:
 - Commercial GFA: 1.52:1
 - Boarding House GFA: 1.26:1
 - Residential GFA: 4.356:1
- TOTAL: **7.136:1 (16,948sqm)**

Note: Given the proposed use mix, the total allowable FSR is not fixed but is dependent on the proportion of commercial floor space proposed. A lesser proportion of commercial proposed would result in an increase in the allowable FSR and vice versa.

Note: The breakdown of boarding house and residential GFA is interchangeable if 50% of the residential units are affordable as they both benefit from 20% bonuses.

7.9.2 Clause 4.6 Variation Assessment

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 limited by the terms of Clause 4.6(8)(ca) of the subject LEP which limits any variation to the Floor Space Ratio (FSR) development standard in the Parramatta City Centre to a maximum of 5%.

The application seeks to utilise clause 4.6 to increase the allowable FSR. As outlined above, the applicant is of the view that the FSR development standard can include other bonuses on top of the mapped figure, such as the design excellence and affordable housing FSR bonuses. Council has received legal advice that the other bonuses the applicant seeks to benefit from do not form part of the “floorspace permitted on the land”. As the other bonuses are greater than 5%, Clause 4.6 cannot be used to increase the allowable FSR on the site beyond the other bonuses.

Notwithstanding, if the Panel were to come to a different view, an assessment of the request is provided below.

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 submitted a request seeking to vary the standard. The full request is included at Appendix 1. Below is a summary of the applicant’s reasoning with regard to the requirements of clause 4.6(3):

Compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of this proposed development for these reasons:

- the objectives of the development standard are achieved notwithstanding non-compliance with the standard, and*
- the underlying objective or purpose would be defeated or thwarted if compliance were required with the consequence that compliance is unreasonable.*

The proposed development is, through its built form, bulk and scale, address to the corner of each street, compatibility with the streetscape, and relationship to adjoining heritage items, consistent with the character envisaged for the site. It has no impact on surrounding development beyond that which would result from a complying development.

Sufficient environmental grounds exist to justify contravening the development standard, in this case. In relation to the extent of non-compliance and the form of development it is noted that:

- 1. The variation to the floor space ratio control is approximately 5%, and will not be appreciated from either the public or private domains, and does not lead to any impact beyond that which is contemplated by the maximum height of building control and the site-specific DCP.*
- 2. The Concept provides for a mixture of compatible land uses, including student housing close to education, residential (including affordable) close to public transport, and jobs and employment in the Parramatta CBD.*
- 3. The Concept supports generous setbacks on all sides creating significant benefits to the public realm, permeability and through site links, and an improved pedestrian-friendly environment that supports a high level of pedestrian amenity, safety and security.*
- 4. The Concept provide for access and vehicular movements away from the two key active frontages along Marion Street and Station Street West.*

5. *The proposed traffic generation calculated for this Concept is less in the PM Peak hour and only 4 vehicles greater in the AM peak Hour to that considered through the Planning Proposal process that informed the applicable development standard. The increase in traffic volumes is insignificant.*

A development proposal that was forced to be compliant with the standard fails to recognise that:

- The site has three street frontages and can adopt varied setbacks and unique building elements to define the corner location;*
- The variation is minor and imperceptible to any viewer of the site and the form and scale of the building is consistent with that envisaged for the site through the height of building control and site-specific DCP; and*
- There are no significant environmental benefits that would result from strict compliance.*

The applicant's request is not supported as outlined below:

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 that determine 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.*

Floor Space Ratio Objectives

Clause 4.4 Objective	Proposal
<i>to regulate density of development and generation of vehicular and pedestrian traffic</i>	<u>Vehicular traffic</u> The applicant's traffic report estimates the additional density over the mapped limit would result in negligible additional traffic movements. RMS raised concern that the modelling was not sufficient to confirm acceptable traffic impact and requested additional information. Given the location of the site adjacent a train station it is considered imperative that the proposal not have a detrimental impact to traffic movements, particularly at peak kiss-and-drop times. <u>Pedestrian traffic</u> Noting the high existing pedestrian traffic adjacent the site and the additional density proposed as a result of the development, the VPA for the site outlined 3m widening of the public pedestrian domain along the

Clause 4.4 Objective	Proposal
	<p>northern and eastern boundaries of the site. Staged development of the proposal would result in the bulk of additional accommodation being provided at Stage 1, before the widening on the Stage 2 site could be accommodated.</p> <p>As such the proposal is not considered to be consistent with this objective of the standard.</p>
<i>to provide a transition in built form and land use intensity within the area covered by this Plan</i>	<p>The adjoining sites to the south are subject to a significantly lower allowable density than the proposal. Additional density on the subject site exacerbates that discrepancy.</p> <p>However, the land to the south is subject to a deferred commencement planning proposal which will significantly increase its allowable density.</p>
<i>to require the bulk and scale of future buildings to have regard to heritage sites and their settings</i>	As outlined in Section 7.9, the proposal has not demonstrated a satisfactory regard to the adjoining heritage items.
<i>to reinforce and respect the existing character and scale of low-density residential areas</i>	The site is not located in the vicinity of a low-density residential area.

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*

The applicant suggests that the underlying objective of the standard is to achieve higher densities at appropriate locations. The location of the site in a city centre, adjacent a train station, was taken into account in coming to the view to support the FSR proposed under the site-specific planning proposal. This was the highest density that was considered appropriate. The bonuses sought with regard to design excellence and affordable housing alone would put further pressure on the capacity of the area to accommodate the development. As such the underlying objective would not be thwarted.

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 challenge that the development standard is 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.

Environmental Planning Grounds

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.

Comments on the applicant's grounds, as outlined above (using their numbering):

1. The applicant's ground that the 5% would be imperceptible is subjective and could be true of any such breach.
2. The mixtures of land uses is a requirement of the zoning.
3. Compliance with the site-specific setback controls is not achieved, and the proposed staging is such that some of the public domain improvements would be significantly delayed.
4. Access off the lane would have been required regardless.
5. The estimated traffic generation, as outlined above, is not confirmed.

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."*

It is not considered possible for the applicant to rely on clause 4.6 given the other design excellence and affordable housing bonuses already exceed the standard by 5%. Notwithstanding, it is not considered that consent can be granted for this 'bonus' as the applicant's written request does not adequately address the relevant matters and the proposal is not in the public interest as the proposal is not consistent with the standard or 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 for regional planning panels.

7.9.3 Design Excellence

An assessment of the concept proposal against the design excellence criteria in clause 7.10 of the PLEP 2011 is provided in the table below:

Matters of Consideration	Comment
whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,	The future competition will ensure that a high standard of architecture is achieved.
whether the form and external appearance of the proposed development will improve the quality and amenity of the public domain,	<p>The external appearance will be subject to assessment at future detailed DA stage.</p> <p>While Stage 2 being a lower corner element is not ideal, it is not considered to be reason to refuse the application.</p> <p>Each stage would include public domain upgrades. However, providing them in stages would delay the upgrades considered necessary for the site.</p>
whether the proposed development detrimentally impacts on view corridors,	The proposal does not detrimentally impact on any view corridors as outlined in this report.
how the proposed development addresses the following matters—	
the suitability of the land for development,	The site is considered to be suitable for the development, subject to resolution of the issues outlined in this report, owing to its zoning, location and ability to manage constraints.
the existing and proposed uses and use mix,	The proposed uses are considered to be compatible with the existing uses in the area.
any heritage and archaeological issues and streetscape constraints or opportunities,	As outlined above, the proposal has not demonstrated an acceptable heritage impact.
the location of any tower proposed, having regard to the need to achieve an acceptable relationship with other towers (existing or proposed) on the same site or on neighbouring sites in terms of separation, setbacks, amenity and urban form,	The non-compliance with eastern and western tower setbacks results in a longer than anticipated tower form that will compromise the ability to develop a tower on the adjacent site to the south (i.e. solar access).
the bulk, massing and modulation of buildings,	The reference scheme demonstrates that it is possible for the proposed floor space to be contained in the proposed envelope while providing appropriate articulation and modulation to reduce bulk. However, the proposed floor space would also likely fit in the DCP envelope if the proposal were not staged.
street frontage heights,	The podium envelope is consistent with the applicable street frontage height controls.
environmental impacts, such as sustainable design, overshadowing and solar access, visual and acoustic privacy, noise, wind and reflectivity,	<p>The proposal is considered likely to have an unacceptable overshadowing impact.</p> <p>Acoustic and visual privacy impact will be subject to assessment at stage 2.</p>
the achievement of the principles of ecologically sustainable development,	The applicant has submitted a wind report which demonstrates that unacceptable wind impacts can likely be managed. However, this would require significant trees in the through site link, which can unlikely be accommodated without deep soil.

	Reflectivity assessment will be subject to detailed design. The LEP outlines ESD requirements in excess of the minimums.
pedestrian, cycle, vehicular and service access and circulation requirements, including the permeability of any pedestrian network,	The reference scheme demonstrates that appropriate pedestrian, cycle and vehicular circulation could be achieved.
the impact on, and any proposed improvements to, the public domain,	The proposal will increase the quality and amenity of the public domain by providing a through site link and increased publicly accessible footways. However, staging of delivery is a concern.
the impact on any special character area,	The site is not located in the vicinity of any special characters areas.
achieving appropriate interfaces at ground level between the building and the public domain,	The concept outlines a series of lobbies and retail spaces at grade with the surrounding public domain.
excellence and integration of landscape design.	The reference landscape plan includes insufficient deep soil to accommodate sufficiently large trees to achieve design excellence.

8. Draft Environmental Planning Instruments

The following draft / deferred commencement environmental planning instruments are relevant to the subject application:

8.1 DRAFT CONSOLIDATED CITY OF PARRAMATTA LEP 2020

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 has been publicly 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.

8.2 DEFERRED COMMENCEMENT PARRAMATTA CBD PLANNING PROPOSAL 2022

This site is subject to the Parramatta CBD Planning Proposal. The planning proposal was issued with a deferred commencement gazettal on 6 May 2022. The provisions of the plan will come into effect 14 October 2022.

The primary focus of the Planning Proposal is to strengthen the economic function of the Parramatta CBD and increase its capacity for new housing, employment, business, recreation and cultural opportunities. The amended planning controls will allow for the delivery of an extra jobs and homes in the CBD.

The vision is for new buildings to define streets and public spaces to deliver a comfortable, functional and attractive public domain; while the towers above are tall and slender and are set back to allow daylight, views and circulation of air to the streets and public spaces below.

The controls require that all development include dual piping for recycled water systems. The controls require that all commercial buildings contain end of journey facilities. These outcomes have been design excellence requirements for a number of years. As such a

condition would be included in any consent requiring their provision.

The controls will require that development have active frontages. The drawings demonstrate that the proposal have active frontages to all streets.

9. Development Control Plans

9.1 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	The site is in line with a significant district view from Woodville Road to the south. The proposal would form part of the existing city skyline as viewed from this location.	Yes
2.4.2.1 Flooding	Site not subject to flooding.	N/A
2.4.2.2 Protection of Waterways	Other than stormwater runoff, which are discussed elsewhere in this report, the proposal would not directly impact on the Parramatta River or any other waterway.	Yes
2.4.2.3 Protection of Groundwater	Impact on groundwater will be assessed as part of the future detailed development application. An advisory note would be included in any consent noting that the approved envelopes do not preclude further assessment in this regard. An advisory note would be included in any consent recommending that the application liaise with Water NSW regarding the potential need for controlled activity approval.	Yes
2.4.3.1 Soil Management	No works proposed. Subject to future detailed DA.	Yes
2.4.3.2 Acid Sulfate Soils - Class 5	See assessment under section 7.9 above.	N/A
2.4.3.3 Salinity	The site is identified as being of moderate salinity potential. As such it is not considered that any special measures are necessary.	N/A
2.4.4 Land Contamination	As outlined under the SEPP (Resilience and Hazards) 2021 assessment above, the site is considered suitable for the proposed use subject to implementation of the recommendations in the preliminary site investigation at future stages.	Yes
2.4.5 Air Quality	The site is not located in close proximity to any pollution generating sources.	Yes
2.4.6 Development on Sloping Land	The site is relatively flat (~2m cross fall). The ground floor drawings show floor levels generally matching the adjoining ground level and thus accommodate the level change internally. Detailed design will be subject to future detailed DA.	Yes
2.4.7 Biodiversity	The site does not contain any significant trees. The landscape plan does not outline any deep soil or large tree planting on the subject site. As such the proposal is not considered to be acceptable in this regard. The concept anticipates street tree planting which would be a requirement of a future detailed DA.	No

Development Control	Proposal	Comply
	<p>Details of planting will be confirmed at future detailed DA stage.</p> <p>The site is not known to accommodate any threatened species.</p>	
2.4.8 Public Domain	<p>Public domain upgrades will be the subject of future detailed DAs.</p> <p>The proposed envelopes demonstrate that the future detailed DA can provide adequate address to, and passive surveillance of, the public domain.</p>	Yes
3.1 Preliminary Building Envelope		
Not applicable. See Section 4.3.3 'Parramatta City Centre' below.		
3.2. Building Elements		
3.2.1 Building Form and Massing	<p>The Stage 1 building would present as a typical podium with setback tower form from the north, west, and south. However, in the interim, before Stage 2 was completed, the eastern view would be of a blank, unarticulated wall.</p> <p>While the applicant has not demonstrated how this elevation would be treated in the interim, Council's City Architect is of the view that it could be treated in an acceptable way and as such does not form reason to refuse the application.</p> <p>Upon completion of Stage 2, the two buildings would combine to create a single building form, which Council's City Architect believes could be acceptable.</p>	Yes
3.2.2 Building Façade and Articulation	<p>The concept envelopes include articulation consistent with those set out in the site specific DCP.</p> <p>Building façade detail will be subject to assessment at future detailed application stage.</p> <p>A condition would be included in any consent noting that the approved envelopes do not preclude further assessment in this regard.</p>	Yes
3.2.3 Roof Design	The concept envelopes envisage a flat roof design, which is consistent with the character for tall buildings in the CBD. Subject to further assessment at future detailed DA.	Yes
3.2.4 Energy Efficient Design	See Section 4.3.3.6 of the DCP below.	N/A
3.2.5 Streetscape Define prominent corners	<p>The corner of Marion Street and Station Street West is prominent in that it is within a view corridor and adjacent a train station.</p> <p>As the Stage 2 building form would be only 21 storeys high, the proposal would not have a taller corner element, as is usually preferred. However, this is not considered to be reason to refuse the application as outlined above.</p>	Yes
3.2.6 Fences	Subject to future detailed DA.	N/A
3.3 Environmental Amenity		
3.3.4 Acoustic Amenity	See ADG assessment	Yes
3.3.5 Solar Access	See ADG assessment	Yes

Development Control	Proposal	Comply
3.3.6 Water Sensitive Urban Design Stormwater Drainage	Detailed stormwater drainage details will be assessed at future detailed DA stage. Any water intercepted by the basement cannot be drained to Council's stormwater system. As such the basement will either need to be waterproof or the proposal demonstrate that the amount of water intercepted can be used on site. An advisory note would be included in any consent to this effect.	Yes
Water Efficiency/ Grey Water	See Section 4.3.3.6 of the DCP below.	Yes
3.3.7 Waste Management	Stage 2 will require an easement across the loading dock area to allow for waste to be collected off-street. Such a condition would be included in any recommendation for approval. Subject to future detailed DA.	Yes, subject to condition.
3.4 Social Amenity		
3.4.1 Culture and Public Art	Subject to future detailed DA.	N/A
3.4.2 Access for People with Disabilities	Subject to future detailed DA.	Yes
3.4.3 Amenities in Building Available to the Public	Subject to future detailed DA.	N/A
3.4.4 Safety and Security	The proposed through site link is straight and would receive passive surveillance from the boarding house use. Further assessment will occur at future detailed DA stage.	Yes
3.4.5 Housing Diversity and Choice	Unit mix will be assessed at future detailed DA stage. As the proposal seeks to benefit from bonus floor space under the Affordable Rental Housing SEPP, 50% of the residential flat building floorspace must be affordable. A condition would be included in any consent to this effect.	Yes
3.5 Heritage		
3.5.1 General	See assessment under section 7.8 above.	Yes
3.5.2 Archaeology	See assessment under section 7.8 above.	Yes
3.5.3 Aboriginal Cultural Heritage	The site is identified as being of low Aboriginal heritage sensitivity.	N/A
3.6 Movement and Circulation		
3.6.1 Sustainable Transport		
Car Share	Subject to future detailed DA.	N/A
Green Travel Plan		
3.6.2 Parking and Vehicular Access		
Car Parking / Access	See ADG/ARH SEPP/LEP assessment above.	N/A
Bicycle Parking	Subject to future detailed DA.	N/A
Residential – 1 per 2 dwellings (~89)		
Boarding House – see ARH SEPP		
Commercial - 1 bicycle space per 200m ² of floor space		
3.6.3 Accessibility and Connectivity	See Section 4.3.3.7 of the DCP below.	Yes

Development Control	Proposal	Comply
3.7.2 Site Consolidation and Development on Isolated Sites	Council's Urban Design officers raised concern that the Stage 1 development isolates the Stage 2 site. Site isolation relates to land outside of a subject site. The two adjoining sites to the west are heritage items and as such have limited development potential. As such, the proposal would not result in isolation of any adjoining sites.	N/A
4.3.3 Strategic Precinct - Parramatta City Centre		
Objectives	<p>The concept is not considered to be consistent with the objectives of the strategic precinct for the following reasons:</p> <ul style="list-style-type: none"> • The office floorspace may be unviable. • The proposed upgrades to the public domain may not be fully delivered if Stage 2 is never progressed. • The proposal has not demonstrated an acceptable impact on heritage. • The proposal has not demonstrated it would improve the natural environment with, for example, deep soil planting and significant trees. 	No
4.3.3.1 Building Form		
Street Frontage >20m	Marion Street – ~66m Station Street West – ~35m	Yes
Alignment, Setbacks, Building Dimensions, Activation, Public Domain	See 4.3.3.7 City Centre Special Areas (p) 33-43 Marion Street, Parramatta	N/A
Offices All GFA <12m from window	<7.5m	Yes
Wind Mitigation	<p>The application is supported by a wind report which provides qualitative analysis suggesting that towers within the envelopes proposed will be capable of achieving appropriate wind conditions in the public domain, communal open spaces and private balconies subject to amelioration measures.</p> <p>The amelioration measures recommended include the following:</p> <ul style="list-style-type: none"> • Awning to north, east and southern frontages. • Densely foliating street trees along Marion Street and Station Street West. • Densely foliating trees along the proposed through site link. <p>However, the lack of provision of deep soil along the through site link will compromise the ability to provide the required densely foliating trees to serve to make the wind comfort of the lane acceptable.</p> <p>A condition would be included in any consent requiring wind tunnel testing of the design competition entries.</p>	No
Buildings Exteriors	Assessment of building exterior will be carried out upon submission of the future detailed development application.	N/A
Sun Access to Public Spaces	The proposal does not overshadow any of the protected areas.	Yes

Development Control	Proposal	Comply
4.3.3.2 Mixed Use Buildings		
Street Activation	The proposal outlines active frontages to all streets. Further assessment will be conducted at future detailed DA stage.	Yes
Entrances/Servicing	The reference scheme demonstrates that vehicular access can be achieved from the lane frontage. The reference scheme demonstrates that the uses would have separate accesses.	Yes
4.3.3.3 Public Domain and Pedestrian Amenity		
Through Site Links	The proposed through site link appears to include stairs. The fall from the lane to Marion Street is approximately 1:20. As such, the link can, and thus should be, step-free to maximise accessibility. A condition to this effect would be included in any consent.	Yes, subject to condition.
Awnings		
Not required (over public owned footpath).	Not proposed over public owned footpath. To be provided over publicly accessible privately owned front setbacks.	Yes
Courtyards and Squares	The proposal would include a small forecourt adjacent the north-western corner of the Stage 1 building. The forecourt would be located adjacent the through site link as recommended by the control. The forecourt would also receive good solar access. Further assessment would be conducted at future detailed DA stage.	Yes
4.3.3.4 Views and View Corridors		
<i>Protect strategic views</i>	The proposal would not affect the CBD view corridors.	Yes
4.3.3.5 Access and Parking		
Location of Vehicle Access	See ADG assessment above.	Yes
Design of Vehicle Access	Subject to future detailed DA.	N/A
Pedestrian Access and Mobility	See ADG assessment above.	Yes
Vehicular Driveways and Maneuvering Areas	See ADG assessment above.	Yes
On-site Parking		
Parking within footprint	Basement outside footprint (whole site)	No
Accessible spaces: 1-2% Motorcycle spaces: 4 per 50 car parking spaces	Subject to future detailed DA.	N/A
4.3.3.6 Environmental Management		
Landscape Design	As outlined above, the concept does not provide space for sufficient planting. Detailed site and public domain landscape design will be subject of a future detailed DA.	No
Planting on Structures	Subject to future detailed DA.	N/A
Green Roof	Subject to future detailed DA.	N/A
Energy and Water Efficient Design	The PLEP requires improved BASIX targets for the site. To be assessed at detailed DA stage.	N/A
Recycled water	A condition would be included in any consent requiring recycled water infrastructure within the building.	Yes

Development Control	Proposal	Comply
4.3.3.7 City Centre Special Areas (p) 33-43 Marion Street, Parramatta		
Built Form Objectives	<p>The proposal is not considered to be consistent with the objectives of the Special Area for the following reasons:</p> <ul style="list-style-type: none"> The proposed staging will delay and compromise delivery of the required pedestrian upgrades. Has not demonstrated that the proposal would have an acceptable impact on adjoining heritage. Has not demonstrated the through site link would have a high level of amenity due to lack of large tree planting. 	No
Alignment		
Western Front Setback aligned to heritage items	Yes*	No (minor)
Eastern Front Setback aligned to Marion Street	Yes*	No (minor)
	*Length of western section less than outlined in Figure 4.3.3.7.70.	
Podium Setbacks		
Front (Northern):		
East: 3m	3m	Yes
West: 6m	5m	No
East: 6m	3m	No
South: 4m	4m	Yes
West: 6m	6m	Yes
Basement Setbacks/Planting		
East: 6m	0m	No
West 6m	0m (part of basement level 1 set back 6m)	No
Ingress/Egress		
Off Peace Lane Contained in building envelope	Off Peace Lane Contained in building envelope	Yes Yes
Tower Setbacks From Boundary		
Front (Northern):		
East: 9m	9m	Yes
West: 12m+	12m+	Yes
East: 9m	6m	No
South: 6m	6m	Yes
West: 12m	9m	No
Built Form		
Tower Length: <45m	48.8m	No
Tower Depth: <23m	24m	No
Podium Footprint:<1,565m ²	~1,600m ²	No
Tower Footprint:<955m ²	~1,000m ²	No

Development Control	Proposal	Comply
Public Domain		
Tree Planting Maximised	130m ² set down slab (1 basement level) + 83m ² planter at through site link, no trees on concept plan.	No
Awnings consistent with Public Domain Guidelines	Awnings not detailed at this time. Subject to assessment of future detailed DA.	N/A
Through Site Link:		
Western Boundary	Western boundary	Yes
Width: 6m (assumed)	6m	Yes
Legible	Legible and straight (subject to detailed DA)	Yes
Clear	3m width planting/seating	Yes
Open to sky	Open to sky	Yes
Well lit	Subject to Detailed DA	N/A
Footpath widening:		
North: 3m	3m	Yes
East: 3m*	3m	Yes
* DCP says west, assumed typo		
Active Frontages		
North	Retail (77% of frontage)	Yes
East	Retail (100% of frontage)	Yes
4.3.3.8 Design Excellence		
	Subject to future detailed DA.	N/A
5 Other Provisions		
5.1 Boarding Houses		
Landscaped Area >20sqm	0sqm A condition would be included in any consent requiring such a space be provided notwithstanding the approved drawings.	No
5.5 Signage	No signage proposed.	N/A

9.1.1 Envelope Non-Compliances

The proposal is non-compliant with several site-specific envelope controls, as outlined in the table above and figure below. The non-compliances are the result of attempting to include significant floor space bonuses and stage the development.

The non-compliances with the tower envelope controls result in additional amenity impacts on the dwellings to the south.

The non-compliance with the northern podium setback could potentially have heritage impacts (not justified through heritage statement as outlined elsewhere in this report).

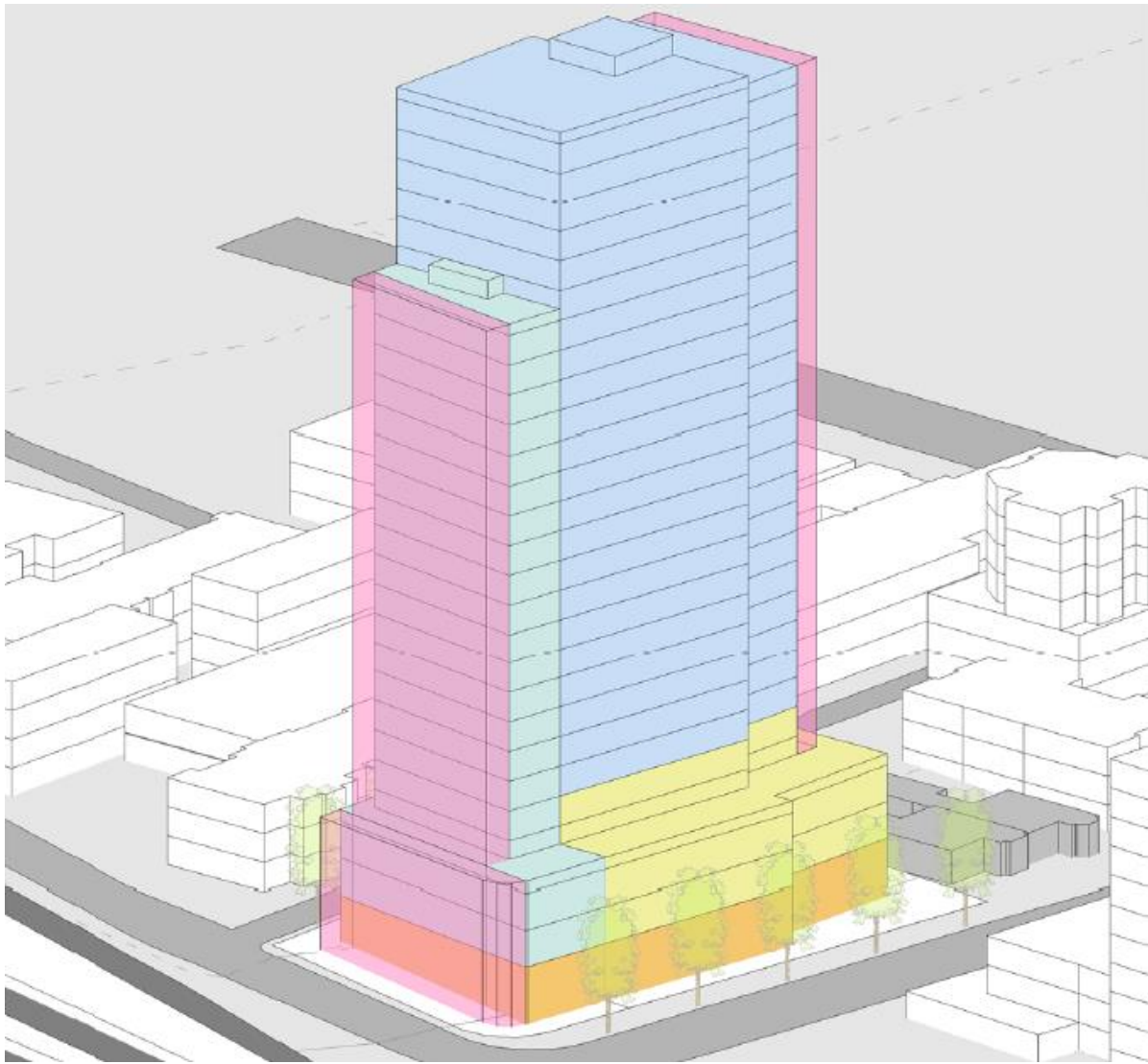


Figure 10. Concept scheme axiomatic view from the north-east with non-compliances shown in pink (diagram does not show non-compliance with northern podium setback).

The non-compliance with the eastern podium setback control would fail to achieve the objectives of the control, namely an improved pedestrian friendly environment and visual connections in Station Street West. The draft Parramatta City Centre DCP seeks to set up setbacks to Station Street West to account for a historic irregularity in the subdivision pattern (see Figure 11 below). Allowing a non-complying setback would thwart the wider planning for the street.

The same floor space could seemingly be contained within the DCP envelope and as such even if the impacts could be said to be minor, they could not be said to be acceptable as there is an alternative compliant form.



Figure 5.8.1 Station Street West Public Domain & Alignment

Figure 11. Excerpt from Draft Parramatta DCP showing irregular subdivision patten in Station Street West and plan for setback to account for it.

10. Planning Agreements

The proposal is subject to a Voluntary Planning Agreement (VPA) which requires the following outcomes:

Item	Type	Detailed Requirements	Compliance
1	Monetary Contribution	<p>Monetary contributions formula outlined in VPA based on 'approved GFA', which excludes any bonuses. Not clear if 'approved GFA' in a staged DA would relate only to the approved GFA of Stage 1, noting that the GFA of Stage 2 may not be confirmed at that time.</p> <p>Timing: 75% (or security) prior to the issue of a Construction Certificate, 25% prior to the issue of an Occupation Certificate.</p>	Achievable (though 'Approved GFA' may be unclear).
2	Public Access and Easements	<p>3m wide public access easement along full extent of western, northern and eastern boundaries.</p> <p>No buildings or structures are to be erected on the Easement land</p>	<p>No (the proposal includes planters along the western boundary, but with a 3m accessway close by)</p> <p>No (the proposed basement is located under all 3 boundary easements).</p>

		Timing: Prior to issue of first Occupation Certificate	No (under a staged approach a building may remain on the Stage 2 lot and as such all easements would not be provided at first OC)
--	--	---	---

It may be that the Item 2 issues could be resolved with the following conditions/amended drawings:

- Basement setback 3m from western/northern/eastern boundaries
- Buildings, or part thereof, on Stage 2 site to be demolished prior to OC of Stage 1.
- 3m clear path of travel along western boundary.

However, as the applicant does not own Stage 2, it is not clear that they could comply with the requirement of such a condition. Further, the purpose of the staging appears to be to facilitate retention of the existing building on the Stage 2 lots. As such, such a condition is not considered to be reasonable or appropriate.

The applicant submitted draft easement documents for the required public access. Notwithstanding, this does not resolve the issues identified above. Further, the western easement location is not consistent with the public walkway outlined on the architectural and landscaping drawings.

11. The Regulations

The recommendation of this report includes conditions to ensure the provisions of the Regulations will be satisfied.

12. The likely impacts of the development

The likely impacts of the development have been considered in this report and it is considered that the impacts are inconsistent with those that are to be expected given the applicable planning framework.

13. Site suitability

Suitable investigations and documentation has been provided to demonstrate that the site can be made suitable for the proposed development in terms of contamination.

The applicant has not demonstrated that the proposed envelope would have an acceptable impact on the historical significance of the adjoining heritage items.

Future detailed application will be required to demonstrate archaeology has been adequately considered.

No other natural hazards or site constraints are likely to have a significant adverse impact on the proposed development.

14. Submissions

The application was notified and advertised in accordance with Council's requirements for a 21 day period between 16 September 2021 and 8 October 2021. One submission was received. The public submission issues are summarised and commented on as follows:

Issues	Comment
Overshadowing	The proposal results in unacceptable overshadowing.
Loss of Ventilation / Breeze	The proposal is considered to be adequately separated from adjoining properties so as not to result in a material loss of ventilation or natural breeze.
Excessive Height	The proposal complies with the height development standard, subject to a design competition, which would be a condition of any consent.

15. Public Interest

For the reasons outlined in this report, including but not limited to the incongruence of the proposal with the associated VPA, the proposal is not considered to be in the public interest.

16. 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.

17. 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 CBD Development Contributions Plan 2007 (Amendment No. 5) requires the payment of a levy equal to 3% of the cost of development for works over \$250,000.

No works are proposed as part of the subject application. The contribution requirement for the building would be applied to the future detailed development application.

18. Summary and Conclusion

The application has been assessed relative to sections 4.15 and 4.22 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls. On balance the proposal has not demonstrated a satisfactory response to the objectives and controls of the applicable planning framework.

The proposed floor space is in excess of that allowable by the controls. The excess floorspace and staged approach results in non-compliances with the site-specific DCP controls, exacerbating amenity impacts and compromising compliance with the future character of the area. A non-staged development with complying affordable housing and design excellence bonuses would appear capable of being contained within the site-specific DCP envelope. The applicant has also not demonstrated that the Stage 2 development would be commercially viable. If Stage 2 is not developed, the public domain benefits required by the Voluntary Planning Agreement (VPA) would not be delivered.

The proposal is not consistent with the requirements of the VPA applying to the site, in that it would not allow for timely delivery of the required public domain improvements.

The proposal has not demonstrated an acceptable impact on the adjoining heritage items.

The proposal does not include deep soil planting areas, considered to be necessary to provide the significant trees (and thus wind protection) befitting of a development which must achieve design excellence.

Having regard to the assessment of the proposal from a merit perspective, Council officers are not satisfied that the development has been responsibly designed or provides for acceptable levels of amenity for future occupants (communal open space). It is considered that the proposal does not sufficiently minimise adverse impacts on the amenity of neighbouring properties and the road network. Hence the development, is inconsistent with the intentions of the relevant planning controls and does not represent a form of development contemplated by the relevant statutory and non-statutory controls applying to the land.

For these reasons, it is considered that the proposal is not satisfactory having regard to the matters of consideration under Sections 4.15 and 4.22 of the Environmental Planning and Assessment Act, 1979. Accordingly, refusal of the Concept is recommended.

19. Recommendation

A. **That** the Sydney Central City Planning Panel as the consent authority **Refuse** Development Application No. DA/812/2021 for concept consent for 21-27 storey mixed-use building incorporating retail, commercial, boarding house and shop-top housing uses at 33 – 43 Marion Street, Parramatta NSW 2150 (Lots 10-13 Sec 1 DP976, Lot 14 DP182289, Lot A DP349279, Lot 1 DP747666) for the following reasons:

1. The proposal is contrary to the provisions of Clauses 4.4, 4.6 and 7.10(8) of Parramatta Local Environmental Plan 2011 and Clauses 13(2)(b), 16A, 29(1) and 30A of the State Environmental Planning Policy (Affordable Rental Housing) 2009, in that the proposed gross floor area is in excess of that allowable on the site and results in a development that is not consistent with the character of the area.
2. The proposal is contrary to the provision of Section 4.15(1)(a)(iiia) of the Environmental Planning and Assessment Act 1979, in that the proposal would not allow for execution of the Voluntary Planning Agreement (VPA) applying to the site. Specifically, the proposal is inconsistent with the requirements of the VPA and the VPA does not allow for the staged provision of public domain upgrades.
3. The proposal is contrary to the provisions of Clause 5.10 of the Parramatta Local Environmental Plan 2011, in that the proposal has not demonstrated an acceptable impact on the adjoining heritage items. Specifically, the proposal is non-compliant with the site-specific western tower setback and northern podium setback controls in Section 4.3.3.7(p) of the Parramatta Development Control Plan 2011 and no Heritage Impact Statement has been submitted adequately justifying the non-compliances.
4. The proposal is contrary to the provisions of Clause 7.10(4)(d)(vii,xiii) of the Parramatta Local Environmental Plan 2011, Section 4.3.3.1 of the Parramatta Development Control Plan 2011, and Section 3E of the NSW Apartment Design Guide, in that the proposal has not demonstrated that the development could achieve excellence in wind conditions and landscape design. Specifically, the proposal includes no deep soil planting and as such would not be able to

accommodate large trees befitting of a development of this scale and which are required to achieve appropriate wind conditions on site.

5. The proposal is contrary to the provisions of Section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979, Clauses 4.4(1)(a) and Clause 7.23 of Parramatta Local Environmental Plan 2011 and Section 2.121 of State Environmental Planning Policy (Transport and Infrastructure) 2021 in that the proposal has not demonstrated that the proposal would have an acceptable impact on local traffic conditions. Specifically, the modelling within the submitted traffic report is not considered to be satisfactory and does not justify the size of basement proposed.
 6. The proposal is contrary to the provisions of Section 3B of the NSW Apartment Design Guide and Section 4.3.3.7(p) of the Paramatta Development Control Plan 2011 in that the proposal has not demonstrated an acceptable impact on the amenity of adjacent residential occupants. Specifically, the non-compliances with the site-specific building envelope controls result in additional overshadowing of adjacent properties and an alternative approach appears to exist that would not result in these additional impacts.
 7. The proposal is contrary to the provisions of Section 4.3.3.7(p) of the Paramatta Development Control Plan 2011 in that the proposal has not demonstrated an acceptable interface to Station Street West. Specifically, the non-compliances with the site-specific building envelope controls compromise achievement of the objectives of the control, to provide an improved pedestrian friendly environment and create a permeable visual ground plane.
 8. The proposal is contrary to the provision of Section 3D of the NSW Apartment Design Guide in that the proposal has not demonstrated that the development will provide acceptable amenity for future residential occupants. Specifically, the proposal would not provide acceptable communal open space to the residential units.
 9. The proposal is contrary to the provisions of Clauses 1.2(2)(a,j,m) and 2.3(2) of the Parramatta Local Environmental Plan 2011 in that the Stage 2 development is neither viable to construct or suitable for future occupiers due to its small net lettable floorspace footprint.
- B. **That** the Sydney Central City Planning Panel not support the applicant's Clause 4.6 variation request to the Floor Space Ratio development standard in Clause 4.4 of the Parramatta Local Environmental Plan 2011.
- C. **That** the party who made a submission be advised of the decision.



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Clause 4.6 Exception to Development Standard – Floor Space Ratio

**Development Application
33-43 Marion Street, PARRAMATTA, NSW, 2150**

**Submitted to City of Parramatta Council
August 2021**

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Clause 4.6 – Exceptions to Development Standards

1.0 Introduction

1.1 Written request under clause 4.6(3) of Parramatta Shire Local Environmental Plan 2011

Address:	33-43 Marion Street, Parramatta
Proposal:	Concept application for a 27 storey mixed use development ground floor retail, commercial and office space, and residential development including student and affordable housing.
EPI Applicable:	Parramatta LEP 2011
Standard to be varied:	Floor Space Ratio – Clause 4.4
Standard:	6.9:1
Numeric variation of standard:	7.245:1 4.87%

Table 1: Request overview

This document is a **written request** to seek an exception to development standards under Clause 4.6(3) – Exceptions to Development Standards of the Parramatta Local Environmental Plan (LEP) 2011. The request seeks to justify the contravention of the development standard relating to floor space ratio under clause 4.4(2) of the LEP and accompanies a Concept development application for a 27-storey mixed-use development incorporating ground floor retail, commercial and office space, and residential development including student and affordable housing. The Concept Application seeks consent for the building footprint, location and massing envelope.

This variation request demonstrates the following:

- (a) that compliance with the development standards is unreasonable or unnecessary in the circumstances of the case,
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard,
- (c) is consistent the building footprint, building location and massing envelopes identified in the Marion Street Precinct Plan, and the DCP,
- (d) complies with the maximum building height for the site under Clause 4.3 and Clause 7.10 of the Parramatta LEP 2011,
- (e) that the proposal is in keeping with the desired future character of the area in terms of streetscape, setbacks, height, density and land-use intensity,
- (f) is consistent with the objectives of the LEP, the particular standard and the zone in which the development is proposed to be carried out,
- (g) it is in the public interest to allow a departure from the numerical standard in this case, and
- (h) the public benefit associated with the social outcome being sought.

1.2 The Site

The site is located at the corner of Marion Street and Station Street West approximately 600 metres south of the Parramatta train station and 50 metres from the entrance to the Harris park train station, as illustrated in Figure 1 below.



Figure 1: Subject Site (Source: Sixmaps)



Figure 2: Aerial Photograph (Source: Six maps NSW Government)

The site is currently zoned B4 Mixed Use under the Parramatta Local Environmental Plan 2011. The area is characterised by B4 zoned land but contains a mix of newer high-density buildings and older low-density building.

The site is part of the Marion Street Precinct, to which the Marion Street Precinct Plan applies. The concept seeks to emulate the building footprints and massing, with the exception of the building height, which does comply with the LEP in metres.

1.2.1 43 Marion Street, Parramatta

No commercial arrangement has been made at this time with the landowner of 43 Marion Street. However, No.43 is included within the application facilitating the possibility for the total development to proceed in one stage in the future.

The progression of the application as a Concept DA is considered to be a more appropriate mechanism to properly consider the final development outcome and the requirements for the design excellence competition process.

This has had implications on the design, however, the footprint and massing is generally the same as that envisaged by the Marion Street Precinct Plan. The most significant variation is simply the height, which has resulted in three different heights across the site; 21 storeys to the east (No.43 Marion), 27 storeys through the centre of the site, and 26 storeys to the west. These heights are however within the podium and tower footprints envisaged by the Precinct Plan and DCP.

1.3 The Proposed Development

This proposal constitutes a Concept Development Application in accordance with the provisions of sections 4.21 to 4.24 of Part 4, Division 4.4 – Concept Development Applications of the EP&A Act 1979. While this DA does not seek consent for development, it seeks consent for the layout and elevations of buildings, basements and publicly accessible areas.

Specifically, the aspects of the final development included in the concept for which approval is sought are:

- (a) the building footprint locations,
- (b) building elevation and massing,
- (c) setbacks and building separation,
- (d) the location of pedestrian links and circulation,
- (e) location of the site entry and exit,
- (f) open space and landscaping, and
- (g) vehicular entry, access arrangements and movement.

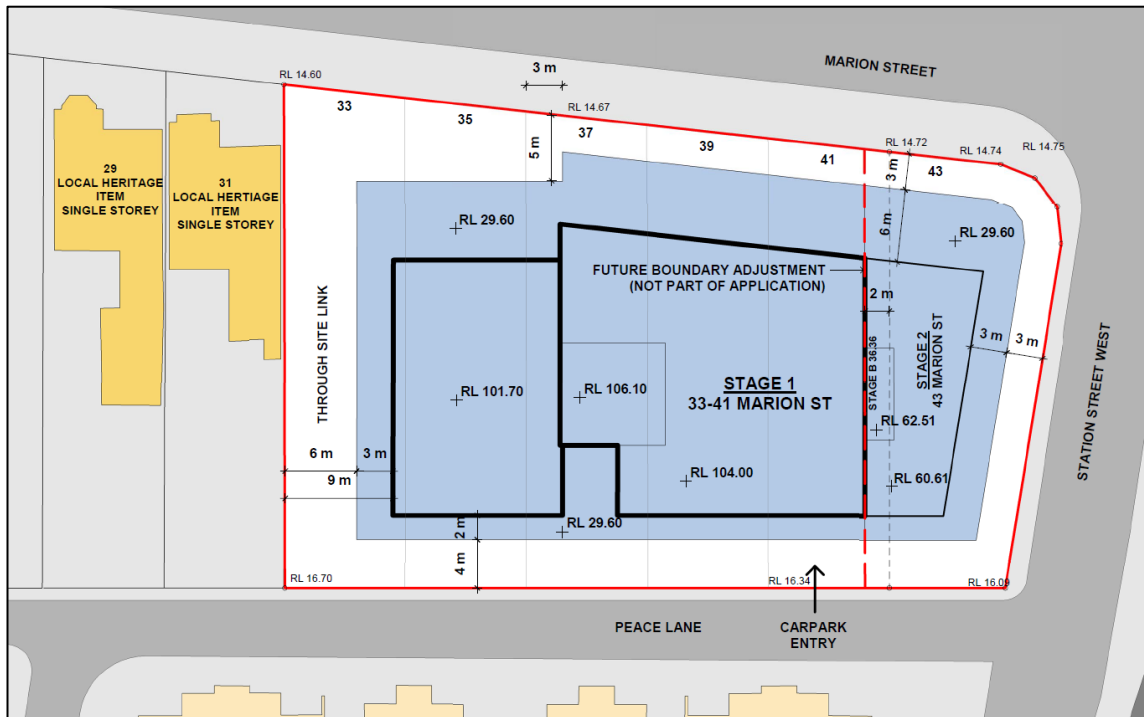


Figure 3: Masterplan Concept

The application includes a massing envelope to the maximum building height provided for by the site of being 92 metres with design excellence under Clause 7.10 of the Parramatta LEP 2011.

The concept plan, has been designed to meet the objectives of the B4 Mixed Use zone under the Parramatta LEP 2011, while realising the objectives of the ARH SEPP and the EP&A Act 1979.

The concept design seeks to achieve the following outcomes for the site:

- To facilitate a vibrant, viable and accessible mixed-use development next to major transport infrastructure in Sydney's second CBD.
- To deliver the objectives of the B4 mixed use zone in a tower and podium development format.
- To provide much needed affordable housing and student accommodation in an accessible location, close to education, jobs and services.
- Incorporate a 6-metre landscaped through site link, connecting Marion Street to the north through to Peace Lane to the south.
- To ensure sufficient setbacks and design response to the locally listed heritage dwelling houses at 29 and 31 Marion Street to the west.
- To provide vehicular access from Peace Land and ensure the Marion Street and Station Street West frontages are pedestrian friendly-- activated frontages.
- To provide a minimum 3 metre setback to Marion Street, increasing to the west and the built form heritage interface.
- To maximise solar amenity through design and massing of buildings.

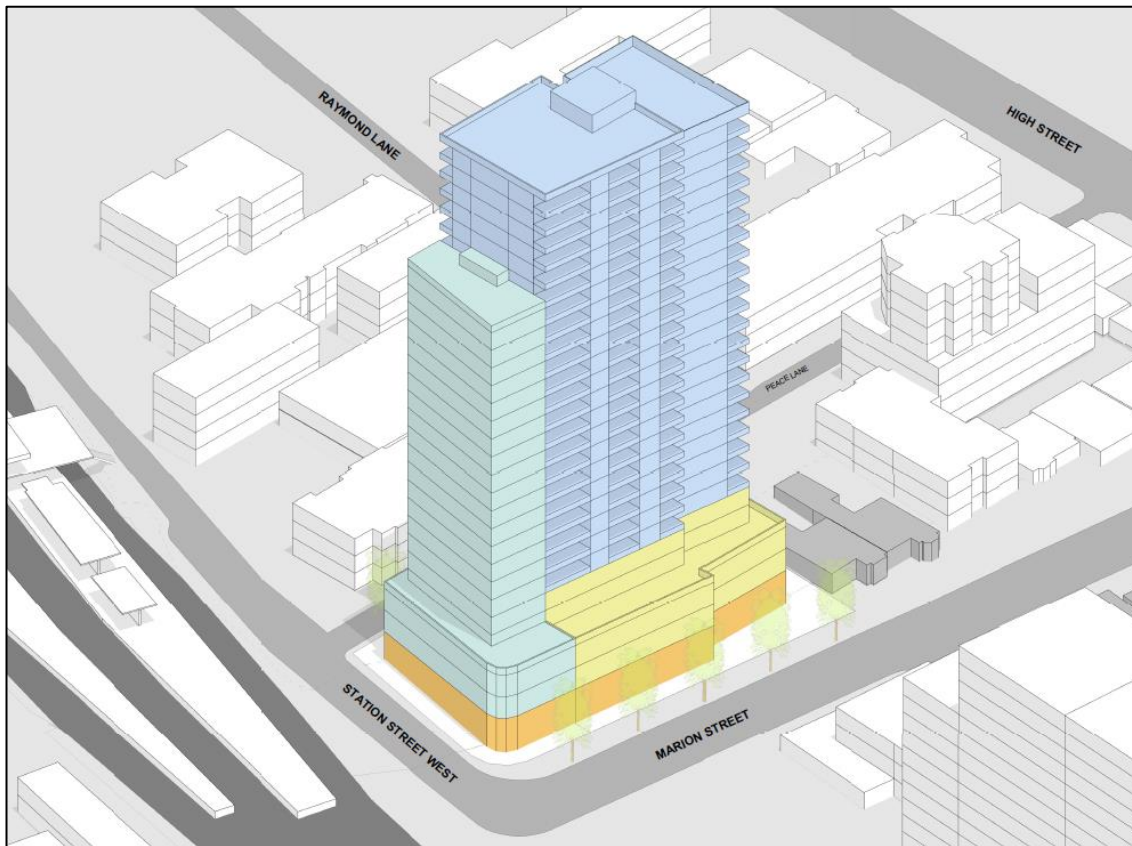


Figure 4: North and eastern elevation

1.4 Floor space ratio under clause 4.4(2)

Under the Parramatta LEP 2011, the maximum floor space ratio (FSR) control that applies to the subject site is 6:1 (6.9:1 to 7.2:1 with design excellence under Clause 7.10 of the LEP).

- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.*

2.0 Overview of Provisions

Summary of Legal Context and Proposed Variation	
EPI applicable:	Parramatta Shire Local Environmental Plan 2011
Zoning:	Land Use Zone B4 Mixed Use
Objectives of the zone:	<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. To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.
Standard being varied:	Clause 4.4 Floor Space Ratio 6:1 6.9:1 (with design excellence)
Numeric measure of variation:	Proposed FSR 7.245:1 (4.87%)
FSR Calculation:	<p><u>33-41 Marion Street</u> Mapped FSR – 6:1 Design Excellence bonus (15%) – 6.9:1 Clause 4.6 (4.87%) – 7.245:1 ARH bonus (20%/1.575:1) – <u>9.168:1</u></p> <p><u>43 Marion Street</u> Mapped FSR – 6:1 Design Excellence bonus (15%) – 6.9:1 Clause 4.6 (4.87%) – <u>7.245:1</u></p> <p><u>Average across 33-43 Marion Street – 8.82:1</u></p>
Objectives of development standard:	<p>(1) The objectives of this clause are as follows—</p> <p>(a) to regulate density of development and generation of vehicular and pedestrian traffic,</p> <p>(b) to provide a transition in built form and land use intensity within the area covered by this Plan,</p>

	<p>(c) to require the bulk and scale of future buildings to have regard to heritage sites and their settings,</p> <p>(d) to reinforce and respect the existing character and scale of low density residential areas.</p>
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Table 2: Description of Planning Instrument, Development Standard and Proposed variation

2.1 Clause 4.6 Operation

Clause 4.6 Exceptions to Development Standards establishes the framework for varying development standards.

The Objectives of Clause 4.6 are as follows:

- (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(3)(a) and 4.6(3)(b) require that development consent must not be granted for 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:

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

Clause 4.6(4) require 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.*

Clause 4.6(5) requires that the 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 following principles have been considered in preparing this cl 4.6 request:

- The consent authority must “be satisfied that:
 - The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a) and cl 4.6(4)(a)(i)),
 - The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)),
 - The proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)),
 - The proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)).”
 - *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112 at [31], citing *Initial Action Pty Ltd v Woollahra Municipal Council* (2008) 236 LGERA 256, and
 - The consent authority must “in fact” be satisfied of the matters in the first two dot points above, in reliance only on matters set out in the relevant cl 4.6 request (*SJD DB2* at [32], citing *RebelMH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130), but may satisfy itself as to the public interest matters in the last two dot points (*SJD DB2* at [34]).

The common ways to demonstrate that compliance with a development standard is unreasonable or unnecessary are:

- (a) the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
- (b) the underlying objective or purpose of the development standard is not relevant to the development, so that compliance is unnecessary;
- (c) the underlying objective or purpose would be defeated or thwarted if compliance was required, so that compliance is unreasonable;
- (d) the development standard has been abandoned by the council;
- (e) the zoning of the site was unreasonable or inappropriate so that the development standard was also unreasonable or unnecessary (note this is a limited way of establishing that compliance is not necessary as it is not a way to effect general planning changes as an alternative to strategic planning powers). (*SJD DB2* at [35], citing *Initial Action*)

2.2 Overview of Variation

The Concept DA will facilitate a 27-storey mixed-use development incorporating ground floor retail, commercial and office space, and residential development including student and affordable housing. The overall land use outcome facilitated by the Concept DA:

- 258sq.m ground floor retail
- 2,857sq.m commercial floorspace contained within the built form on No. 43
- 3,000sq.m of student accommodation
- 14,345sq.m of residential floorspace
- 50% of residential floorspace utilised as affordable housing
- A total floorspace of 20,948sq.m
- A total FSR of 8.82:1 (9.168:1 for 33-41 Marion Street and 7.245:1 for 43 Marion Street)

The site is substantial in size at 2,374.9sq.m and contains 7 lots. No.43 is included within the application. However, and whereas the possibility for the total development to proceed in one final stage is available in the future for construction; there is no commercial arrangement at this time that provides certainty of that outcome. As such, the progression of a Concept application was considered a more appropriate mechanism to properly consider the final development outcome and the requirements for the design excellence competition process.

The maximum floor space ratio (FSR) control for the subject site under the Parramatta LEP 2011 is 6:1 pursuant to Clause 4.4. With the 15% design excellence bonus, the permitted maximum FSR is 6.9:1. This is relevant across the entire site (33-43 Marion Street).

Clause 4.6 of PLEP allows for a “*development standard*” to be varied. However, clause 4.6(8) limits the maximum variation allowable for this site (given it is in the Parramatta City Centre) to 5%. It reads:

- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
- (ca) *a development standard that relates to the height of a building, or a floor space ratio, in Parramatta City Centre (as referred to in clause 7.1(1)) by more than 5%,*

The following is noted in the supporting memorandum of advice provided by Justin Doyle how any variation is to be calculated. It observes:

“It seems plain enough that the maximum FSR mapped under clause 4.4, read together with the allowances provided by either clause 7.10 or clause 7.22, relevantly fix standards for density for the site. The controls under those clauses are therefore “development standards” applying the definition for that phrase. The maximum allowable under the bonus provisions calculated under those clauses are therefore amenable to variation under clause 4.6.”

Therefore, while a variation under clause 4.6 will require a merit assessment of the impacts of the increased density, applying clause 4.6 to the development standards stated for development to which clause 7.10 applies, the following maximum achievable density limits can be calculated:

- Residential building: 6.9:1 plus 5% = 7.245:1
- Commercial building 7.5:1 plus 5% = 7.875:1

The Concept application utilises the provisions of Division 1 of the ARH SEPP to facilitate a 20% bonus. The mechanism to determine the “*existing maximum FSR*” under Clause 13(2) of the ARH SEPP and thus the extent of the bonus is also detailed in Mr Doyle’s attached Memorandum of Advice. This has informed the total FSR proposed by the Concept application, being an average of 8.82:1 across the site, noting the affordable rental housing bonus is only applied to 33-41 Marion Street.

This report therefore considers whether such impacts of the noncompliance that are anticipated will be acceptable, such that it would be unreasonable or unnecessary not to permit the variation, such that the height of the building will not increase about that provided for in the LEP, and the envelope and anticipated traffic impacts are consistent with the anticipated character of the area and objectives of the zone.

3.0 Assessment of Proposed Variation – FSR

The requirements of 4.6 (4) are addressed in *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191. Moore J, addressing the requirements of those subclauses says there are 4 things an Applicant needs to establish before a 4.6 request to permit contravention of a development standard. They are that:

- (1) The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and
- (2) The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)); and
- (3) The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); and
- (4) The proposed development will be in the public interest because it is consistent with the objectives of the R4 High Density Residential Zone (cl 4.6(4)(a)(ii)).

Each of those matters is addressed below and particularly the request:

- (a) sets out why compliance is unreasonable or unnecessary in the circumstances of the concept DA,
- (b) explains why there are sufficient environmental planning grounds to justify contravening the development standard (as required by clause 4.6(3)); and
- (c) describes why it is in the public interest to allow the development standard to be contravened 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.

3.1 Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

In the decision of Pain J in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90), (upheld subsequently by the Court of Appeal (albeit for procedural reasons) in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248) her Honour made the following observations as to the breadth of the discretion allowed by clause 4.6 at [26]:

"26. The EPA Act and the LEP contain no definition of "unreasonable" or "unnecessary". There are limiting words to some extent in subclause (3)(a) in that what is "unreasonable or unnecessary" must relate to "the circumstances of the case". The circumstances of the case are not defined in any way suggesting a wide scope in the meaning of that phrase. Subclause (3)(b) requires a written report to demonstrate that sufficient environmental planning grounds support the contravention of a development standard. The EPA Act or the LEP do not define "sufficient" or "environmental planning grounds". As the Appellant submitted these phrases are of wide generality enabling a variety of circumstances or grounds to justify contravention of the particular development standard. The "sufficient ... grounds" must be "environmental planning grounds" by their nature. The word "environment" is defined in the EPA Act to mean "includes all aspects of the surroundings of humans, whether affecting any human as an individual or in his or her social groupings".

To consider whether compliance with the development standard is unreasonable or unnecessary, it is important to consider the objectives of the clause:

The objectives of clause 4.4 are as follows:

- (a) to regulate density of development and generation of vehicular and pedestrian traffic,
- (b) to provide a transition in built form and land use intensity within the area covered by this Plan,
- (c) to require the bulk and scale of future buildings to have regard to heritage sites and their settings,
- (d) to reinforce and respect the existing character and scale of low density residential areas.

Considering the wide scope of the 'circumstances of the case' in the context of the Concept application for 33-43 Marion Street, the following matters are relevant in achieving the objectives for the site across the planning framework:

- The Concept Application complies with the maximum height limit under the Parramatta LEP 2011 of 92 metres (including design excellence). In fact, the concept creates a variety of heights to create some visual variety and amenity that will contribute to the Parramatta skyline. These variety of built forms comprise the following heights: 21 storeys (approx. 70 metres); 26 storeys (approx.. 87 metres); and 27 storeys (approx. 90 metres).
- The Concept Application provides a 6 metres setback to the heritage items to the west creating a through site link and connecting Marion Street to the north and Peace Lane to the south. This is consistent with the VPA which provides for a 3 metre publicly accessible area, and the DCP which provides for a 6 metre setback.
- The DCP provides for a built footprint that includes a podium and tower form. The inability to achieve a commercial agreement with No.43 has resulted in a slight change to the outcome, but the built form outcome proposed in the Concept DA is similar to the structure plan in the DCP, while achieving a lower height on this part of the building.
- The Concept DA, while providing for the building footprint, massing and elevation will be subject to a design excellence competition. During this time, the circumstances of the case, the built form outcome, and the issues around No.43 will be further interrogated in order to get the best possible design outcome from a competitive process.
- Further, the exact gross floor area associated with the development will be determined during the design excellence competition process, and the design of development level plans.

While the consistency of the proposed Concept with the zone and clause objectives is discussed further below, it can be seen that the Concept is consistent with the objectives and accordingly achieves the underlying objectives of the cluse and the DCP.

The principle objectives of the clause and DCP is the focus on building interface with street frontages and adjoining heritage items and to do this in a way that reinforces and respects the existing character and scale of low density residential areas.

The stated objectives of the DCP for 33-43 Marion Street, Parramatta are:

The objectives have been developed to respond to the context of the site, and in doing so maximise the building interface with the two primary frontages, encourage permeability at the ground plane and to manage the interface between existing and new development.

Objectives

- O.1 To facilitate the provision of a mixed-use development on the site.*
- O.2 To provide an improved, pedestrian-friendly environment.*
- O.3 Activate ground floor space, particularly along Marion Street.*
- O.4 Ensure a suitable interface with adjoining heritage items.*
- O.5 Create a permeable ground plane through visual and physical connections and maximise permeability.*
- O.6 Ensure through site links provide a high level of pedestrian amenity, safety and security.*
- O.7 To provide for access and vehicular movements away from the two key active frontages along Marion Street and Station Street West.*

As the proposal is a Concept and does not seek consent for development at this time, the provisions of the DCP are relevant as far as relevant to the footprint, massing and elevation.

The setbacks and layout however, go some way to achieving consistency with all the objectives of the DCP. The podium is generally setback 3 metres from the site boundary for footpath widening and landscape along Marion Street, with increased boundary setback up to 5 metres to 7.6 metres at the north-west corner to facilitate a street view down Marion Street to the heritage dwelling on the western boundary. This will ultimately provide an 8 metre pavement width at the east end of the development ranging up to 11.6 metres to the west and the interface with the heritage items.

The 6 metre setback to the west (31 Marion Street) also achieves the ground floor permeability and through links that prioritises pedestrian amenity throughout the concept. In summary, consideration of the site specific objectives is considered below:

Controls	Response
Objectives	
O.1 To facilitate the provision of a mixed-use development on the site.	Achieved.
O.2 To provide an improved, pedestrian-friendly environment.	Achieved. Upgraded footpaths and addition of a new through-site pedestrian linkage along the western edge of the site.
O.3 Activate ground floor space, particularly along Marion Street.	Achieved. Retail activation will occur to Marion Street and Station Street West.
O.4 Ensure a suitable interface with adjoining heritage items.	Setbacks and the creation of a pedestrian link through the site provides an appropriate interface. The building envelope in the site-specific controls have been subject to an urban form analysis and heritage analysis.
O.5 Create a permeable ground plane through visual and physical connections and maximise permeability.	Achievable for the two respective street frontages (for Stages 1 and 2) and possibly to the lane as well, subject to final designs and layout.
O.6 Ensure through-site links provide a high level of	Achieved. The pedestrian link connects with the Marion Street courtyard.

pedestrian amenity, safety and security.	
O.7 To provide for access and vehicular movements away from the two key active frontages along Marion Street and Station Street West.	Achieved. The main vehicular access is from Peace Lane. A loading area is set aside in the basement, as noted on the plans.

Table 3: Site Specific DCP Objectives

Therefore, compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of this proposed development for these reasons:

- the objectives of the development standard are achieved notwithstanding non-compliance with the standard, and
- the underlying objective or purpose would be defeated or thwarted if compliance were required with the consequence that compliance is unreasonable.

The proposed development is, through its built form, bulk and scale, address to the corner of each street, compatibility with the streetscape, and relationship to adjoining heritage items, consistent with the character envisaged for the site. It has no impact on surrounding development beyond that which would result from a complying development.

3.1.1 *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary.*

The standard's purpose and objectives remain relevant.

3.1.2 *The underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.*

The underlying purpose of the objective relates to achieving higher densities at appropriate locations. Therefore, if the merits of this proposal can be demonstrated and the character is compatible then strict compliance would thwart the achievement of the underlying purpose which is to allow for appropriate increases in density.

3.1.3 *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 standard has not been abandoned.

3.1.4 *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 zoning is appropriate.

3.2 There are sufficient environmental planning grounds to justify contravening the development standard.

3.2.1 Environmental Context

The site is located within the Marion Street Precinct within the southern interface area of the Parramatta CBD. The site adjoins the railway line to the east, with the Harris Park train station less than 50 metres away. Being within the Parramatta CBD, the area has undergone detailed study to inform the current development controls, land uses and site-specific outcome for the site.

An extract of the Marion Street Precinct Plan is included below and illustrates the change and revitalisation that is envisaged and promoted to occur in the future. A number of heritage items are clustered within the centre of the Precinct. Importantly, the Hector Abraham Architects study, when seeking to balance growth with protecting heritage and interface, illustrates that development can occur adjacent to heritage items.

The focus for the interface of development with heritage is resolved at the ground/street level and therefore interface is generally unaffected by height. The focus therefore of the clause and DCP objectives is focussed on the right outcome at pedestrian level, which defines the bulk and scale of the building

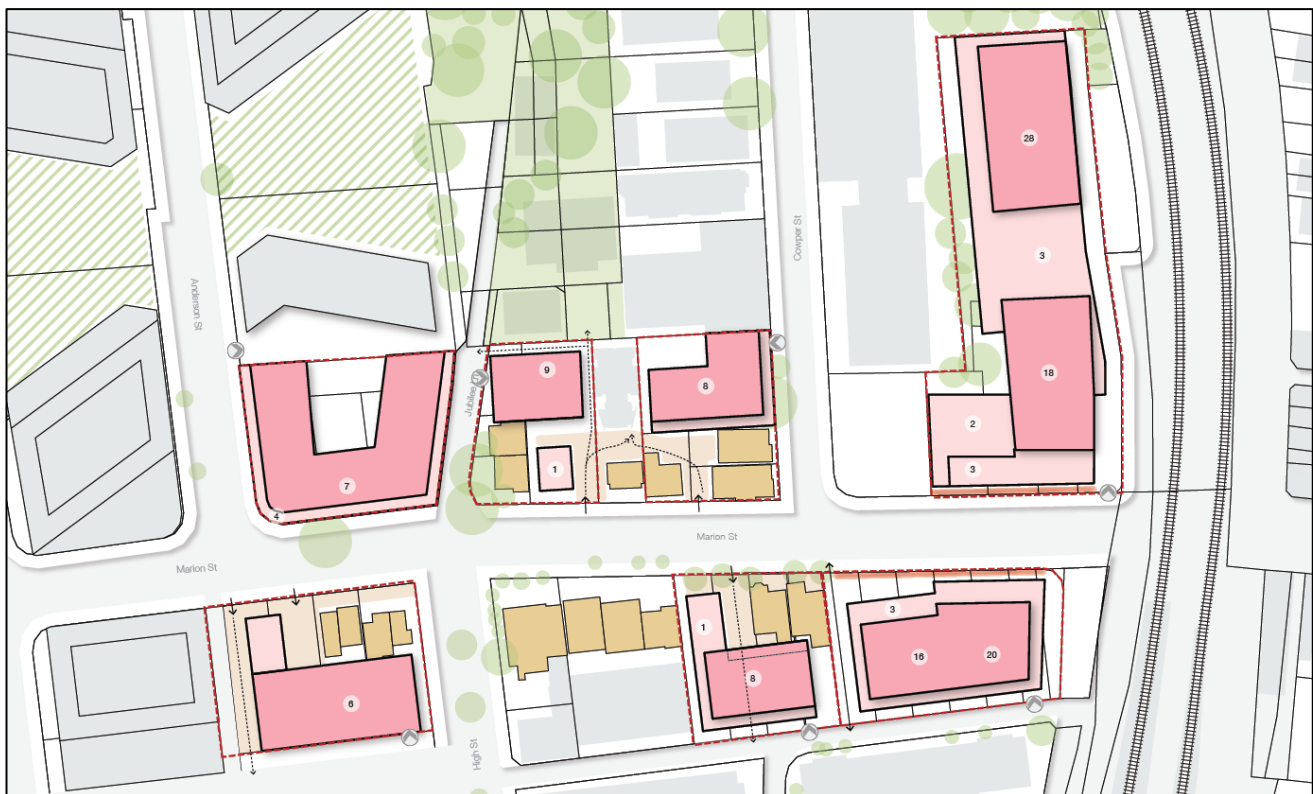


Figure 5: Marion Street Precinct Plan (Source: SJB)

The site includes a row of two to three storey commercial buildings defines the eastern end of the site at the Marion Street Station Street West intersection. Three single dwelling houses define the western end of the subject site. All development across the site has been approved for demolition. The site does not contain any

item of environmental significance and the application will facilitate the provision of a mixed use development of compatible uses, in accordance with the objectives of the zone and objective O1 of the DCP.

Therefore, Sufficient environmental grounds exist to justify contravening the development standard, in this case. In relation to the extent of non-compliance and the form of development it is noted that:

1. The variation to the floor space ratio control is approximately 5%, and will not be appreciated from either the public or private domains, and does not lead to any impact beyond that which is contemplated by the maximum height of building control and the site-specific DCP.
2. The Concept provides for a mixture of compatible land uses, including student housing close to education, residential (including affordable) close to public transport, and jobs and employment in the Parramatta CBD.
3. The Concept supports generous setbacks on all sides creating significant benefits to the public realm, permeability and through site links, and an improved pedestrian-friendly environment that supports a high level of pedestrian amenity, safety and security.
4. The Concept provide for access and vehicular movements away from the two key active frontages along Marion Street and Station Street West.
5. The proposed traffic generation calculated for this Concept is less in the PM Peak hour and only 4 vehicles greater in the AM peak Hour to that considered through the Planning Proposal process that informed the applicable development standard. The increase in traffic volumes is insignificant.

A development proposal that was forced to be compliant with the standard fails to recognise that:

- The site has three street frontages and can adopt varied setbacks and unique building elements to define the corner location;
- The variation is minor and imperceptible to any viewer of the site and the form and scale of the building is consistent with that envisaged for the site through the height of building control and site-specific DCP; and
- There are no significant environmental benefits that would result from strict compliance.

3.2.2 Consistency with the EP&A Act 1979

The Environmental Planning Grounds must, by their nature, be grounds that relate to the subject matter, scope and purpose of the Environmental Planning and Assessment Act 1979 (NSW) (EPA Act)(including section 1.3 of the EPA Act);

As set out in Section 1.3, the objectives of the Act are: -

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) *to promote the orderly and economic use and development of land,*
- (d) *to promote the delivery and maintenance of affordable housing,*

- (e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) *to promote good design and amenity of the built environment,*
- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) *to provide increased opportunity for community participation in environmental planning and assessment.*

The proposed variation satisfies the above stated objectives of the Act:

- It is an orderly and economic use of the site. It adopts a building footprint that generally complies with all primary setback controls, facilitates publicly accessible areas, fosters permeability and activates the ground floor spaces.
- It makes a modest increase in density, while complying with the maximum height limit; lowering heights to create visual variety in built form; and supporting a footprint that is consistent with the DCP.

Further, A key and recently adopted objective of the EP&A Act 1979 is *“to promote the delivery and maintenance of affordable housing”* (refer Clause 1.3(d) Objects of the Act).

The objective of the Act is, in part, implemented through the provisions of the Affordable Rental Housing SEPP 2009. A critical objective of the SEPP is *“(b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards”*.

While the ARH SEPP bonus is above that provided for by the *“existing maximum floor space ratio”* it is considered as part of the Concept application and forms a direct connection to achieving objective (d) above. In this context, the legal framework provides the environmental planning justification, through the objectives of the Act, the objectives of the SEPP, and the issued SCC. A variation to the FSR control is therefore the basis within which the social benefit and better outcome can be achieved to the benefit of the community.

This proposed variation to the standard will not hinder the objects of the Act.

The ‘grounds’ put forward as justification for the requested variation are within the subject matter, scope and purpose of the Act.

3.3 The Public Interest

As set out in *Gejo Pty Ltd v Canterbury-Bankstown Council* [2017] NSWLEC 1712, the proposed development will be in the public interest if 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.

The proposed development will be in the public interest *because* it will directly achieve the objectives of Section 1.3 of the EP&A Act 1979 to promote the orderly and economic development of the land, the objectives of the zone, and the objectives of clause 4.4 of the Parramatta LEP 2011.

The development is consistent with the objectives of the B4 Mixed Use zone under the Parramatta LEP 2011. The following are of particular relevance:

Zone Objective	
To provide a mixture of compatible land uses.	Provides a mix of compatible uses including residential and commercial in an accessible location, opposite the Harris Park train station and approximately 600 metres from the entrance to the Parramatta train station.
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	Supports the urban renewal of an under-developed site, with generous setbacks to create active and vibrant frontages.
To create opportunities to improve the public domain and pedestrian links	Improves the public domain around the site in a prominent location and provides for a pedestrian link to improve connectivity, pedestrian movements and create a permeable public realm.
To support the higher order Zone B3 Commercial Core while providing for the daily commercial needs of the locality.	Supports the growth of the Parramatta CBD in its role as Sydney's second CBD by providing ground floor retail that serve the daily needs of the community while activating street frontages.
To protect and enhance the unique qualities and character of special areas within the Parramatta City Centre.	Ensures that impacts to nearby heritage conservation areas and items of historical significance is minimised and opportunities to respond are maximised.

Table 4: Zone Objective

Further, the development and variation is in the public interest because it is consistent with the objectives of the floor space ratio standard:

FSR objectives	
To regulate density of development and generation of vehicular and pedestrian traffic,	The objective seeks to provide for a density for the subject site, which as previously discussed, is mapped as 6:1, with a bonus of 15% under Clause 7.10 for design excellence, and a further bonus of 5% under Clause 7.22. For the purpose of the Concept DA, the potential bonus provisions under Clause 7.22

	<p>are not exercised, however, given the proposed built form, massing and height is generally consistent with the envisaged by maximum height under Clause 4.3 and the DCP, a 5% variation to the density has been included. This is aside from the additional bonus under the ARH SEPP that seeks to facilitate a social need in a central location within Parramatta CBD to support the provision of student accommodation and affordable housing.</p> <p>Having negligible impact of the density, regard to the impact on traffic and pedestrian movement is relevant. Firstly, in relation to traffic, the proposed traffic generation calculated for this Concept application is less in the PM Peak hour and only 4 vehicles greater in the AM peak Hour to that considered through the Planning Proposal process that informed the applicable development standard. The increase in traffic volumes is insignificant.</p> <p>Secondly, pedestrian movements were always considered a key component of the design, as can be considered by the objectives of the DCP. Generous setbacks, through-links and publicly accessible areas have been provided around the site (note the VPA) which will support a significant area of public domain and support the quantum of pedestrians both from the proposed development and movements through and around the site. A detailed landscape strategy is proposed to be prepared through the design excellence process to ensure this is a truly excellent space.</p>
<p>To provide a transition in built form and land use intensity within the area covered by this Plan,</p>	<p>The Concept application adopts the maximum building height and ground floor setbacks envisaged for the site. It is noted that a variation has occurred to the eastern setback due to the inability to enter in to a commercial arrangement with the owner of No.43, and the ground floor setback has been reduced from 6 metres to 3 metres as a result, and to enable No. 43 to develop. Further, while the DCP appears to indicate a 12 metre tower setback to the west, this seems to be inconsistent with the representation of built form on the plans which appears to be 9 metres, which has been adopted.</p> <p>Notwithstanding, the discussion in the heritage interface report prepared by Hector Abraham Architects which found that a tower form can sit comfortably next to heritage items or lower density development, which is common within the CBD already, provided architectural design and ground floor interface is properly studied and resolved. It is</p>

	noted that while the setbacks have been provided to transition development that further study and analysis will occur during the design excellence competition phase.
To require the bulk and scale of future buildings to have regard to heritage sites and their settings,	<p>The site is within the Marion Street Precinct. The Marion Street Precinct Plan studied the existing character of the Precinct and the relationship of future high density mixed use development to existing lower density and sensitive development. The Precinct Plan recommended taller buildings towards the eastern end of Marion Street in proximity to the railway line and away from sensitive heritage items; and mid rise development through the centre and western end of the precinct where sensitive land uses are located.</p> <p>The focus for the recommendations for the site included the resolution of interface and the relationship at ground and street level, which was resolved through setbacks and a focus on the public domain.</p> <p>This was also informed by the Parramatta CBD informing study by Hector Abraham Architects which found that development can occur adjacent to heritage items providing interface and the relationship at ground and street level is resolved. The recommendations were adopted in the DCP and thus the Concept application.</p>
To reinforce and respect the existing character and scale of low density residential areas.	

Table 5: FSR Objectives

For the reasons given above, it is considered that there are sufficient environmental planning grounds to justify contravening the development standard.

4.0 Conclusion

Clause 4.6(4) establishes preconditions that a Consent Authority must be satisfied of, before it can grant a variation to a development standard. This written request has addressed all of these required matters:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances; and
2. Sufficient environmental planning grounds to justify contravening the development standard; and
3. The proposed development will be in the public interest because it is consistent with the objectives of the development standard and the zone;

This submission has addressed each precondition for considering any variation. It has been structured so that all relevant tests established by Land & Environment Court judgments have been addressed and the application can be determined.

The objectives of clause 4.6 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.*

This justification has demonstrated *how* this proposed development has jumped the necessary hurdles required to ensure “achievement” of the density objective and compliance with the zone and site-specific DCP objectives.

Strict compliance with the development standard is unreasonable and unnecessary in this instance and it would thwart the “better outcomes” noted in support Objective (b) of Clause 4.6 (noted above).

The site does not contain any item of environmental significance and the application will facilitate the provision of a mixed use development of compatible uses, in accordance with the objectives of the zone and objective O1 of the DCP.

For the reasons given in this report, it is considered that there are sufficient environmental planning grounds to justify contravening the development standard.