



Report to Sydney Central City Planning Panel

SCCPP reference	PPSSCC-340																	
DA No.	53/2022																	
Date of receipt	21 January 2022																	
Proposal	Construction of seven 10-13 storey buildings comprising 620 residential units, child care centre for 110 children, 1,735sqm of 17 neighbourhood retail shops and 864 basement car parking spaces; publicly accessible open spaces and through site links; roads; landscaping; and tree removal.																	
Street address	263-273 Pennant Hills Road and 18 Shirley Street Carlingford																	
Property Description	<table><tr><th>Address</th><th>Lot and DP</th></tr><tr><td>263 Pennant Hills Road</td><td>Lot 22, DP21386</td></tr><tr><td>265 Pennant Hills Road</td><td>Lot 2, DP9614</td></tr><tr><td>267 Pennant Hills Road</td><td>Lot 3, DP9614</td></tr><tr><td>269 Pennant Hills Road</td><td>Lot 4, DP9614</td></tr><tr><td>271 Pennant Hills Road</td><td>Lot 62, DP819136</td></tr><tr><td>273 Pennant Hills Road</td><td>Lot 61, DP819136</td></tr><tr><td>18 Shirley Street</td><td>Lot 1 DP1219291</td></tr></table>		Address	Lot and DP	263 Pennant Hills Road	Lot 22, DP21386	265 Pennant Hills Road	Lot 2, DP9614	267 Pennant Hills Road	Lot 3, DP9614	269 Pennant Hills Road	Lot 4, DP9614	271 Pennant Hills Road	Lot 62, DP819136	273 Pennant Hills Road	Lot 61, DP819136	18 Shirley Street	Lot 1 DP1219291
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Applicant	Karimbla Properties (No. 61) Pty Ltd																	
Owner	Karimbla Properties (No. 61) Pty Ltd																	
Submissions	7 unique submissions																	
Relevant s4.15 matters	<ul style="list-style-type: none">• Environmental Planning and Assessment (EP&A) Act 1979• EP&A Regulations 2021• State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings and Apartment Design Guide (ADG)• State Environmental Planning Policy (BASIX) 2004• State Environmental Planning Policy (Transport and Infrastructure) 2007• State Environmental Planning Policy (State Regional Development) 2011• State Environmental Planning Policy (Biodiversity and Conservation) 2021• State Environmental Planning Policy (Precincts - Central River City) 2021• SEPP (Planning Systems) 2021• State Environmental Planning Policy (Resilience and Hazards (2021)• Parramatta (Former The Hills) Local Environmental Plan 2012																	

	<ul style="list-style-type: none"> • The Hills Development Control Plan 2012 • Draft Parramatta Local Environmental Plan 2020
Attachments	Attachment 1- Masterplan Architectural Drawings Attachment 2 – Landscape Report Attachment 3 – Clause 4.6 Variation Building Height & Floor Space Ratio Attachment 4 – Design Excellence Advisory Panel Recommendations 20 October 2022
Clause 4.6 Requests	Parramatta (Former The Hills) Local Environmental Plan 2012 <ul style="list-style-type: none"> • Clause 4.3 – Height of Buildings • Clause 4.4 Floor Space Ratio
Summary of key submissions	<ul style="list-style-type: none"> • Traffic Impact (increased congestion, access and safety concerns, impact on street parking) • Height Breach (and associated view loss, solar access to adjoining properties and impact on character and overlooking) • Adverse impact on existing property values and local businesses • Incorrect information contained within the application (Traffic Impact Assessment) • Water runoff impact on properties down the hill.
Recommendation	Refusal
Report by	Bianca Lewis, Executive Planner

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 summarised 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 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	N/A (Refusal)
Have draft conditions been provided to the applicant for comment ?	

1. Executive summary

Assessment of the application against the relevant planning framework and consideration of matters by Council's technical departments reveals that most matters for consideration have not been satisfactorily addressed.

The Clause 4.6 variation request for both height of buildings and floor space ratio standards is not supported by Council as the proposal is not consistent with the objectives of the zone or development standards. There is not sufficient environmental planning grounds to justify the departure, in particular departures from the Apartment Design Guide and The Hills DCP. Further, Council Officers do not consider that the former development consent or associated planning agreement are matters to justify the variation to the development standards.

The application does not satisfy the majority of design principles nominated in the State Environmental Planning Policy (SEPP) 65 (Design Quality of Residential Apartment Development) including inconsistency of its bulk, scale and height with the surrounding development and lack of integration with the public domain and landscape. There are noted non-compliances with Part 3 and 4 of the Apartment Design Guide, including solar access to units, cross ventilation, adequate building separation, overshadowing and provision of adequate communal open space and deep soil.

The proposal is inconsistent with the Desired Future Character and Structure Plan of The Hills Development Control Plan (2012) for the Carlingford Precinct. Part of the subject site (18 Shirley Street) is identified as a Key Site in the Precinct and it is envisaged that this site provide strong connections to the local open space green spine and optimise deep soil planting, communal open space, shared views and landscape and contribute to the garden suburb theme. Further, the heights (established by the LEP) would be the tallest around the light rail station and those developments furthest away (such as the subject site) have reduced heights so that the tallest buildings diminish when viewed in its topographic context.

Furthermore, Council considers that there are outstanding site planning matters that are required to be resolved, including site isolation of neighbouring properties, stormwater management, design and dedication of roads and parks and overlooking and wind impacts in relation to the childcare centre.

In summary, given its size and location, the site has the potential to provide an important connection between the Carlingford Light Rail Stop and the shopping precinct, as well as delivering key open space for community. The current site layout does not respond to its surrounds, nor provide appropriate design solutions to navigate the topography. Further the public domain is not well defined or integrated with the surrounding streets.

On balance the application is therefore not satisfactory when evaluated against section 4.15 of the Environmental Planning and Assessment Act 1979. Accordingly, this report recommends that the application be refused, for the reasons set out in Section 20.

2. Key Issues

SEPP65 & Apartment Design Guide

- **Design Principles** - The majority of the design principles are not met.

- **3B-1** – Orientation of buildings result in poor outcomes
- **3B-2** - overshadowing of neighbouring properties and communal open space
- **3D: Communal and Public Open space** – poor quality and quantity of communal open space for a site of this size
- **3E: Deep Soil** – poor quality and quantity of deep soil zones for a site of this size
- **3F: Visual Privacy** – non-compliant distances to neighbouring sites.
- **4A Daylight / Solar Access** – does not comply with minimum requirements for solar access.
- **4B : Natural Ventilation** – does not comply with minimum requirements for cross ventilation and concerns with noise attenuation and ability to achieve cross ventilation for units along Pennant Hills Road.
- **4E: Private open space and balconies** – minimum depths of balconies (therefore minimum areas) are not achieved throughout the development
- **4F: Common circulation and spaces** – Building C has a corridor over 12m.

SEPP BASIX 2004

- **ESD** – there are errors and omissions in relation to the BASIX stamped plans and certificates.

SEPP (Transport & Infrastructure) 2021

- **RMS** - – Concerns with outstanding information relating to traffic modelling; land dedication; stormwater discharge onto roads; landscaping and excavation details.
- **Child Care** – privacy, overlooking and wind impacts.

Parramatta (Former The Hills) Local Environmental Plan 2012

- **R4 High Density Residential Zone Objectives** – inconsistent with the zoning objectives.
- **4.3 Height of Buildings** - Acceptability of Clause 4.6 variation.
- **4.4 Floor Space Ratio** – Acceptability of Clause 4.6 variation and drawing floor space from the SP2 Infrastructure zoned land.
- **4.6 Exception to Development Standards** – Acceptability of Clause 4.6 variation.
- **Clause 5.1A Classified Road** – unresolved dedication of land and impact on design.

The Hills Development Control Plan 2012

- **Desired Future Character and Structure Plan** – Inconsistency with Part D Section 12 Carlingford Precinct
- **Setback to Pennant Hills Road** – provision of a min. 10m setback which facilitates deep soil and planting of trees
- **Additional overshadowing to adjoining properties** – 27 & 29 Lloyds Ave and 2-6 Shirley Street
- **Potential site isolation** - 29 and 27 Lloyds Avenue
- **Water management** – outstanding matters, provision of WSUD to communal open space and open space.

3. Site location, description and related applications

3.1 Site location and description

The land the subject of this application is irregular in shape and made up of seven allotments known as 18 Shirley Street and 263, 265, 267, 269, 271 and 273 Pennant Hills Road Carlingford (refer Figure 1). It has a site area of 27,987 square metres. Refer Figure 1.

The site features a 275m frontage to Pennant Hills Road (a classified state main road) to the east, and a 255m frontage to Shirley Street (a local road) to the north and west. The site slopes from north-eastern (Pennant Hills Road frontage) to south-western corner by approximately 21.1 metres across its length. The site falls from the northern to the western corner by approximately 14 metres.

The site is located approximately 400 metres east from the planned Carlingford Light Rail stop and 60 metres to the south of the Carlingford Village shopping centre along Pennant Hills Road. It is one of the largest land holdings within the Carlingford precinct, which is undergoing redevelopment for high density development.

The site is cleared of the single dwellings, a former access road (known as Janell Crescent) and majority of vegetation, with remaining trees located on former residential blocks fronting Pennant Hills Road. Refer Figures 2 and 3.

Two easements, which contain underground electricity cables within concrete channels, managed by Ausgrid, are located in the north western portion of 18 Shirley Street and run in a northwest to southeast direction from Pennant Hills Road to Shirley Street.

The Carlingford Memorial Gardens, a locally listed heritage item under the Parramatta LEP 2011 is located directly opposite the site along Pennant Hills Road. The site is not flood affected.



Figure 1: Locality plan

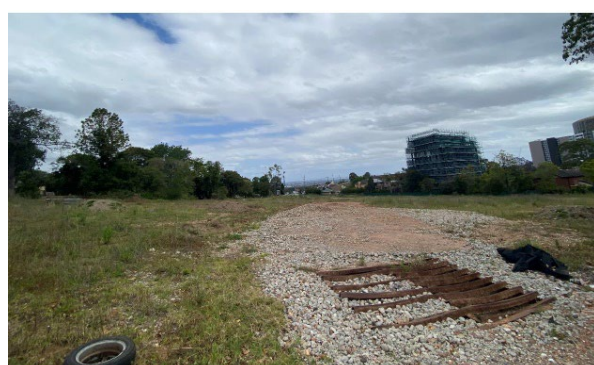


Figure 2: Existing condition as viewed from Shirley St
(Source: Statement of Environmental Effects, Planning Ingenuity)

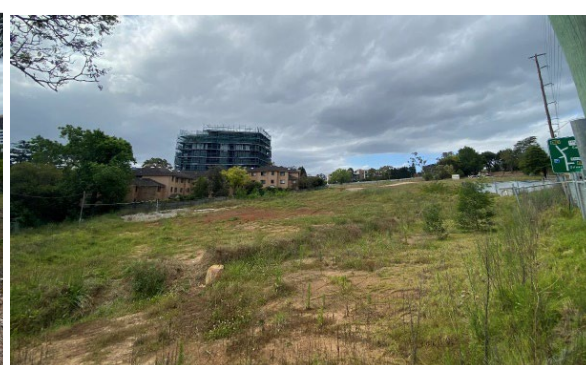
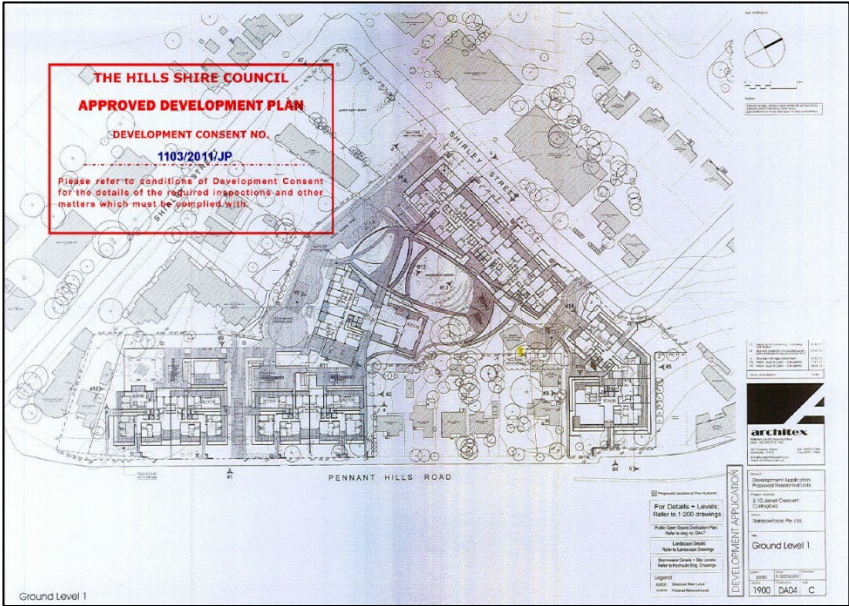


Figure 3 existing condition as viewed from Pennant Hills Road

3.2 Related applications

The site has a complicated history as summarised in Table 1. It is noted that the site was formerly within The Hills Council, prior to 12 May 2016 Council amalgamations.

Table 1: Summary of related matters

<p>LEP Amendment 20. Baulkham Hills LEP 2012</p>	<p>Amendment 20 of the Baulkham Hills LEP 2005 was made on 3 March 2011 pertaining to the rezoning of the Carlingford Precinct (including the subject site), namely land bounded by Jenkins Road, Pennant Hills Road and Moseley Street, Carlingford, specifically:</p> <ul style="list-style-type: none"> • Rezoning part of the site to Open Space (6a) (located where RE1 zoned land is currently) • Floor space ratio (as it applies to the R4 zoned area) of 2.3:1 and no floor space ratio (as it applies to the area zoned for open space) • A maximum height of buildings of part 27m and part 33m (as it applies to the R4 zoned area) and no height (as it applies to the area zoned for open space) • Introducing a clause which requires the undergrounding of 132kV double circuit power lines in determining whether to grant development consent. <p>The associated Development Control Plan and Contributions Plan came into force on 15 March 2011.</p>
<p>DA/1103/2011/JP (The Hills)</p>	<p>This application was approved (deferred commencement) by the Sydney West JRPP on 11 April 2012 for the:</p> <ul style="list-style-type: none"> - demolition of existing dwellings and associated structures; - construction of 5 apartment buildings 9-11 storeys containing 450 units and basement carparking containing 662 car parking spaces. <p>The site area of the application is 23,482sqm which applied only to 18 Shirley Street (formerly the consolidated 23 residential allotments at address as 247-261, 277-281 Pennant Hills Road and 14-30 Shirley Street). The deferred commencement conditions relate to the registration of drainage easements.</p> <p>The application has been subsequently activated by the demolition and other early works.</p>  <p>Figure 4: Former Dyldam development application (DA/1103/2011/JP) – Stamped Ground Floor Plan</p>
<p>Various modification applications DA/1103/2011/A; B; C; and D (The Hills Council)</p>	<ul style="list-style-type: none"> • Modification A - This modification application sought to amend the approved development, however this application was withdrawn. • Modification B - This modification application sought to amend the approved development to basement car parking and increases to height of buildings. The application was approved. • Modification C - This modification application sought to amend the approved development to reconfiguration of basement parking, vehicular access to basement car parking. The application was approved. • Modification D - This modification application sought to amend the approved development for various matters relating to basement car parking, internal configurations, reduction in adaptable units. The application was approved.

Planning Agreement	<p>A Planning Agreement operates in relation to (part) of the site, 18 Shirley Street Carlingford (previously 247-261 & 277-281 Pennant Hills Road and 14-30 Shirley Street) in connection with DA/1103/2011/JP. The Planning Agreement was entered into in April 2015 between The Hills Shire Council and the then owners of the site (Golden Mile 1888 Pty Ltd, Pennant Hills Estate 88 Pty Ltd and Rainbowforce Pty Ltd).</p> <p>The Planning Agreement was transferred from Hills Shire Council to City of Parramatta on 12 May 2016, when the land moved into the City of Parramatta local government area. In December 2020, the former owners sold 18 Shirley Street to Karimbla Properties (No. 61) Pty Ltd. Subsequently a Deed of Novation was executed in respect of the Planning Agreement between Karimbla Properties and City of Parramatta Council.</p> <p>The detail of this Planning Agreement is at Section 10 of this report.</p>
Planning Proposal (RZ/4/2021)	<p>The Planning Proposal is seeking to amend the Parramatta (Former The Hills) Local Environmental Plan (LEP) 2012 as follows:</p> <ul style="list-style-type: none"> • Addition of shops, food and drink premises, business premises and recreational facility (indoor) as additional permitted uses (limited to a maximum of 2,000sqm) to Schedule 1; and • Addition of 263-273 and 279R Pennant Hills Road and 18 Shirley Street, Carlingford to the Additional Permitted Uses Map. <p>In order to facilitate retail floor space, metro style supermarket along with specialty retail, business, and recreational uses. The Planning Proposal was placed on public exhibition between 12 October and 9 November 2022.</p>

4. The proposal

In summary the application comprises the following:

- The construction of a mixed use development comprising seven (7) separate buildings with residential accommodation, a child care centre, neighbourhood shops and public open space with associated landscaping and basement carparking.
 - Building A – 11 storey building with 97 residential apartments.
 - Building B – part 10 and part 11 storey building with 192 residential apartments.
 - Building C – part 9 and part 10 storey building with 69 residential apartments and a child care facility.
 - Building D1 – part 9 and part 10 storey building with 54 residential apartments.
 - Building D2 – part 9 and part 10 storey building with 62 residential apartments and 2 neighbourhood shops.
 - Building E – part 12 and part 13 storey building with 68 residential apartments and 5 neighbourhood shops.
 - Building F – part 12 and part 13 storeys with 78 residential apartments and 10 neighbourhood shops.
- Vehicular access provided by two access points from Shirley Street (to the east and west) and internal private road and pedestrian network.

The overall development, including those elements already completed, would therefore comprise:

- 620 residential apartments (comprising 125 x one (1) bedroom; 321 x two (2) bedroom, 156 x three (3) bedroom and 18 x four (4) bedroom apartments of which 29 are adaptable and 128 livable);

- Centre based child care facility for a total of 110 children and 20 staff with a 776sqm internal area and 842sqm outdoor area. (Note: fit out of centre subject to a future detail development application);
- 1,735 square metres of 17 neighbourhood shops.
- 864 car parking spaces (comprising 608 resident, 124 resident visitor, 38 childcare and 94 retail spaces)
- 5,382sqm of new public parks dedicated to Council including the 'Central Park 3,303sqm; Community Park 2,079sqm.
- A publicly accessible forecourt and roadway to create access from Pennant Hill Road to the site and on to Shirley street.

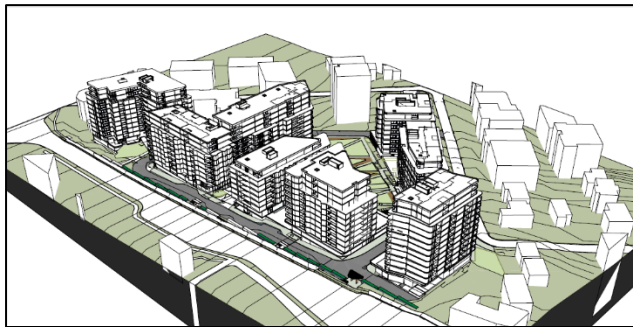


Figure 5: Massing of Development
(Source: submitted 3D Visualtion Report)



Figure 6: Photomontage from Pennant Hills Road

4.2 Application Assessment History

The applicant lodged a pre-lodgement application (refer PL/78/2021) with Council on 9 July 2021, however the applicant specifically requested only a Design Excellence Advisory Panel (DEAP) assessment of the proposed development. No assessment of the scheme was made by any of Council's technical specialists. Due to the significant size, history and unique site constraints, Council Officers consistently advised the applicant to undertake a full formal pre-lodgement application process with Council, however this was not followed.

The application was lodged with Council on 18 January 2022. The application was notified for a 21-day period between 2 February 2022 and 23 February 2022. Letters to the applicant requesting additional information were sent on 8 April 2022 and 12 August.

The Application was subject to a number of briefings with the Sydney Central City Planning Panel (SCCPP) (these are summarised in Section 12 of this report). Following its briefing on 28 July 2022, the SCCPP resolved on 12 August 2022 that the applicant should submit information in response to Council (forthcoming) correspondence listing matters to be addressed or information that remains outstanding in relation to the development application by 31 August 2022. Further, that following this date that SCCPP will not entertain the receipt of further information.

The applicant submitted revised plans via the Planning Portal on 31 August 2022. Council subsequently placed the amended plans on a 21-day notification period between 16 September and 10 October 2022.

5. Referrals

The following referrals were undertaken during the assessment process:

5.1 Design Excellence Advisory Panel

Council's Design Excellence Advisory Panel (DEAP) considered the application at four meetings held between August 2021 and July 2021, prior to the lodgement of the amended proposal. The following table summarises the DEAPs key concerns and conclusion in relation to each meeting.

Table 2: Summary of Key issues and recommendation – DEAP

DEAP Meeting Date	Key issues & Recommendation
26 August 2021 (as part of DEAP-only formal pre-lodgement process)	<ul style="list-style-type: none"> - The proposal is in its early stages of development and DEAP comments relate primarily to the broader planning and urban design aspects of the proposal. - The analysis of context should be used to develop a public domain plan for the site with strong links to surrounding streets, open spaces and landmarks. - Internal roads need to be designed and constructed as if they are fully public roads as an extension of the surrounding road (and pedestrian/cycle) network. - Concern with regard to the number of vehicle entry and exit points with traffic all concentrating on one main and one secondary entrance in Shirley Road and the impact of that on the internal public domain. Provide a clear distinction between road, footpath, cycle and pedestrian paths. - Buildings on Shirley Road should address the existing street and have their own entrances, parking and vehicle access. - Create a clear and direct link for pedestrians moving to/from the Carlingford retail strip to/from the central spine that links to the light rail station. - The proposed "village square" is considered a good idea however unconvincing in form and reads more as a terrace or forecourt. - The complex cross falls throughout the site need to be effectively coordinated with the Public Domain plan. Creating large retaining walls and excessive stair runs in the public realm is a poor outcome and will reduce the effectiveness of the public realm - Subject to the applicant addressing the relevant planning requirements (breaches of height and FSR controls), the Panel supports the view that development should concentrate its height, bulk and scale to the southern boundary along Pennant Hills Road and towards the higher end of the site and transition down to neighbouring development on Shirley Road north east and north west. A more detailed assessment of building heights should be provided in future and when sections and elevations are provided. - Minimise overshadowing of the central open space by lowering the height and by providing breaks in the built form adjacent to Shirley Road. - Design the interface between the buildings and the public domain to provide adequate surveillance, activation, privacy for lower level residential units with appropriate landscaping and level changes. Entrances should be clear, identifiable and direct from the street or pathway. - Avoid blank walls at street level where podiums and parking garages may rise above natural ground level. - The architectural style of individual buildings should be varied to avoid repetition and to avoid the overall development reading as a gated community.

DEAP Meeting Date	Key issues & Recommendation
	<ul style="list-style-type: none"> - Due to the preliminary status of the proposal, the panel has not commented yet on the design and layout of individual buildings or units. It is expected that these will be designed and will ultimately be assessed in accordance with ADG requirements. - In future submissions show all relevant environmental sustainable development measures. <p>Panel recommendation: Amber. Once the applicant and design team have addressed the issues outlined, the panel looks forward to reviewing the next iteration</p>
21 March 2022 (DA)	<ul style="list-style-type: none"> - There has been little progress on the broader urban design issues from previous iteration seen by the Panel. The Panel was expecting further resolution and for the meeting to move on to other aspects of the proposal in Pre-DA format. - The Panel's overwhelming view is that Part 1 of the ADG that addresses building typology, character and context, and scales has not been properly considered. The development still presents as an isolated gateway style development. - There are many examples of quality developments both locally and internationally that should be considered and included for discussion as part of the submission. - The proposed open space connections to surrounding areas were queried with regard to contextual fit. The rationale for the open space is hard to gauge. The connections between the proposed retail component of the development and the existing retail precinct to the east of the site remain convoluted and weak. - The Panel queried the site analysis and the basis for building alignments, street wall heights, paths of travel and view corridors. - A critical path identified very early in the design phase linking the site to the new light rail station now appears to terminate at its eastern end by crashing into a building. - The main central spine could be considered as a street with footpaths that would provide a clear and direct pathway through the development with no stairs; provide access to the RE1 open space for local and surrounding residents; be lined with buildings that activate the street and that provide surveillance to the public domain; and be lined with trees for shade and to define the edge of the RE1 open space, the street and the interface with the unit blocks. - The north south road linking Shirley Street and Pennant Hills Road is to be designed as a public road with proper footpaths, street trees, and buildings along its edge that provide activation, and surveillance in typical streetscape fashion. The Panel also queried the need for the dog-leg at the south end of the street resulting in convoluted spaces and irregular setbacks. The street should be more legible and more clearly defined by the built form. - The Panel acknowledges that the topography poses some challenges for pedestrian circulation, the Panel notes that Shirley Street has a similar gradient and that it has what appears to be an incline that can be easily negotiated. Ramps should only be provided on site where entirely necessary and stairs to be avoided as much as possible. - Another major concern raised by the Panel is the overshadowing of the RE1 public open space. The Panel advised that at DA level the lack of attention to detail for such a significant component of the development means that the presentation cannot be considered at a high level in its current form.

DEAP Meeting Date	Key issues & Recommendation
	<ul style="list-style-type: none"> - The length and massing of Building D was queried. Could the building be broken up into a series of smaller sized buildings. - To minimise the overshadowing of the RE1 space and to better transition from the taller buildings elsewhere on the site, Building D should be considered as finer grain development possibly 3 or 4 smaller blocks fronting Shirley Street with 12m gaps between them. - The RE1 space should be fully accessible and inviting to both the wider community and not only for the subject development. This is further reasoning for the establishment of public roads through the site. It seemed nearly all internal roads are to be privately owned and further discussion with Council in this regard is necessary. The privatisation of open space and claiming of deep soil from the RE1 public spaces was also noted. - The scheme as submitted does not meet the ADG minimum requirement of communal open space, deep soil - only achieved by reliance upon all of the RE1 land. - The Panel queried the way buildings address the street and in some case overhang footpaths. - What the desired future context is, what the street wall heights should be and how the massing should be disposed on site needs further clarity. - Plans and sections with more detail and context should be provided to demonstrate how the building and public domain interface works, and to show street activation, surveillance, privacy issues and materiality. - The Panel has little confidence in the landscape plans which seem poorly coordinated with the architectural plans in particular. - The internal road along Pennant Hills Road is primarily a service road and does not resemble a typical neighbourhood street. This outcome will create a very large non treed roadway section due to the inability to plant trees in the verge of Pennant Hills Road due to the roads status as a State / RMS roadway. - Details of proposed ESD strategies should be clearly outlined for the Panel to consider in future - The Panel considers that there are still fundamental issues that need to be addressed before the individual building layouts are discussed. <p>Panel recommendation: Red. The Panel recommends that the applicant/proponent contact the Council to discuss</p>
8 June 2022 (DA)	<p>Central Park:</p> <ul style="list-style-type: none"> - The main central park has been redesigned with removal of the zigzag path through the park and increased size of useable green space. A key consideration is the interface with Block D to the north and Block's B, C, F & E to the south side of the RE1 space. - It is important to provide level useable and sun filled public open space that acts as a central focus for the precinct. Block D to the north has been redesigned to provide a large gap that allows sun in and a pedestrian link. Block D should be no higher than 8 storeys and upper levels setback in order to maximise sun access to the public park. <p>Internal roads and pathways</p> <ul style="list-style-type: none"> - The Panel would encourage the applicant to go further to make the road network read and function as fully public roads comprising footpaths, street trees, and active street frontages. The public domain needs to operate as an extension of the surrounding public spaces and not to appear nor function as a gated development.

DEAP Meeting Date	Key issues & Recommendation
	<ul style="list-style-type: none"> - The east west pathway on the south side of the public park from the top of the hill to Shirley Street where it connects to the pathway to the light rail station, should be a public road and not merely a pedestrian path as proposed. The road may be two-way or one-way if necessary due to site limitations, however it must be treated as a proper road for vehicles with parallel parking. Part of the RE1 may be used as a combined landscaped pathway and cycleway and with seating areas to complement the green open space to its north. On the south side of the central road a footpath and typical street, public/private interface is to be provided. - This important roadway should influence where pedestrian and car / services drop off areas located for buildings B, C, F & E. An important Sydney precedent that represents a successful narrow one-way shared service and pedestrian laneway adjacent retail and RE1 land is the Laneway at The Canopy Development at Lane Cove. - A stronger connection between the subject development and the existing Carlingford shopping strip needs to be provided. Connections on both the front side of the strip where it meets the southeast corner of the site and the rear / northern side of the strip where it meets the northeast corner of the site was discussed. The applicant may consider using the masterplan in the DCP as a guide for the future development of the precinct. - The Panel queried the design of the proposed village "square" – the space is too fragmented and open to function as a square. It should have clearly defined edges and clear pedestrian sightlines and physical links to surrounding areas including the shopping strip to the east and public park to the west. - To date the Panel has necessarily focused on the broader planning issues relating to the development and the surrounding context. The Panel considers this to be the most important issue and upon satisfactory resolution the Panel will address other ADG requirement. - The RE1 zone is not to be relied upon for any deep soil calculations. - The detailed Landscape plans to include street trees and other landscape elements throughout the public realm. - A simple ownership be provided that clearly demarcates private / body corporate land and Council owned / public assets including RE1 and road/lanes and footpaths. - Submit clear plans that indicate all the ground level pedestrian and vehicular service entry points throughout the development. - A single or two-way public loop road on the south side of the RE1 public park and connecting to Shirley Street on the east and west ends of the park. The road should include space for parallel parking. A 3m wide footpath should be provided on the south side of the road with sufficient space for a continuous row of canopy trees and a cycleway on the northern side of the road possibly within the RE1 public park. The interface between the buildings along the south side of the road to include entrances, gardens/terraces and balconies overlooking the road and park beyond. Garage entrances should be avoided in this zone instead provide vehicle access from the private road on the south side of the site adjacent to Pennant Hills Road. - A private road parallel to Pennant Hills Road to service buildings A, B, C and F as well as the supermarket and retail buildings which connects back to the public loop road. Adjacent to the private road would be a 6m wide landscaped strip with large canopy trees as a buffer to Pennant Hills Road. The landscaped strip is to be

DEAP Meeting Date	Key issues & Recommendation
	<p>separate from the required footpath along Pennant Hills Road. A footpath on the northern side of the new private road also to be provided resulting in a total setback of 12m-15m from Pennant Hills Road.</p> <p>Panel recommendation: Amber. Once the applicant and design team have addressed the issues outlined, the panel looks forward to reviewing the next iteration</p>
<p>19 July 2022 (note meeting facilitated by Department of Planning's Project Delivery Unit)</p>	<ul style="list-style-type: none"> - The applicant deliver all of the RE1 park adjacent to the proposed laneway not ½. Sections B and C to be revised accordingly. - Sections presented to the Panel are very basic and lacking detail. The Panel requires more sections. - Buildings should not overhang landscape areas. - Where privacy and security issues arise for ground floor/lower-level apartments, show measures to address this. - The road reserve including parking verge with trees should not encroach on the RE1 land. Parking spaces with trees should be on both sides of the road or on the building side opposite the park if one row of parking is provided. The RE1 park should extend to the edge of the RE1 zone other than the required footpath. - the Panel does not consider that steep gradients should prevent or hinder the achievement of quality urban design/design excellence for the development. - The basement needs to be setback from all boundaries to allow for deep soil planting. The Panel does not support the basement extending under driveways, footpaths, verges or other deep soil landscape areas. - Identify what is public land, common open space and private open space, not just the roads. - Provide details for the public realm including changes in levels, public/private interface with internal floor levels and ground planes. - Show ground floor site plans with building entrances. Where are these to be located particularly off the one-way internal road adjacent to the park. Are the buildings facing the park at street level blank walls, basement edges etc. How do they activate the street and contribute to a quality street environment? - Provide a full DDA compliant analysis of building entrances & grades of public & private pathways. - Landscape plans to include a comprehensive tree planting strategy for the site that is coordinated with the hierarchy of roads, paths courtyards/forecourts and other open spaces. - The proposal needs to demonstrate how potentially conflicting child care facility and residential uses will be managed with regard to potential overlooking and noise impacts. - The Panel notes the proposal to increase building heights along Pennant Hills Road with applicant seeking to add more levels to buildings A, B, C, E and F. As previously advised, the Panel has no objection in principle to some increase of building heights adjacent to Pennant Hills Road. - The support of the Panel to increase building heights over the maximum allowable height limits is subject to the consideration of amenity impacts on surrounding properties and to the achievement of design excellence under the ADG for the overall development. - Further consideration of the building heights will be undertaken by the Panel upon the submission of plans that the Panel considers capable of achieving design excellence.

DEAP Meeting Date	Key issues & Recommendation
	<ul style="list-style-type: none"> - The Panel again encourages the applicant to use well designed and industry acknowledged best practice precedent to guide the design and development of the site <p>Panel conclusion: The Panel looks forward to the next iteration of plans that address the above requirements with a view to achieving design excellence for the development.</p>

The revised plans submitted by the applicant on the 31 August 2022 were circulated to the DEAP for comment. The Panel provided comments on the revised scheme and concluded that they do not support the proposal and consider *“the application is lacking in the appropriate level of understanding of its context and detail required for such a significant development proposal”*. The DEAP raise the following key issues:

- The proposed layout and structure has not responded to the existing or desired future character of the area. The public park and associated east west link connecting the light rail and shopping precinct has been compromised by removing previously proposed road.
- The development is not in keeping with the surrounding development and future character of the area due to the bulk and scale, large building footprints and inadequate landscaping.
- Whilst there is an opportunity to provide high density on the site it is the level of amenity in the current proposal that is of concern, specifically in relation to design of the public domain, the street environment and interface between public and private areas.
- There are no details with regard to sustainability. Given the scale of development, a comprehensive strategy covering relevant aspects of sustainability should be provided.
- Note significant non-compliances with Part 3 of the Apartment Design Guide including inadequate communal open space, the inclusion of RE1 land as part of the landscape of the site, poorly located and insufficient deep soil zones. Greater landscape amenity is required along Pennant Hills Road, and there is opportunity for large long term canopy tree growth.
- Note significant non-compliances with Part 4 of the Apartment Design Guide including solar access, cross ventilation and length of corridors with or without sunlight.
- The removal of the internal road on the south side of the park is not supported and results in poor access, poor safety conditions poor access for Council maintenance and unacceptable DDA access opportunities.
- The built form appears the same for all buildings and there is no understanding of how it relates to existing or future context.

The full comments from the DEAP of 30 October 2022 are included at Attachment 4.

5.2 External

Table 3: External referrals

Authority	Comment
Ausgrid	Outstanding matters – refer section 7.5
Transport for NSW (Roads and Maritime Services)	Outstanding matters – refer section 7.5.
Sydney Water	Acceptable subject to conditions.
Endeavour Energy	Acceptable subject to conditions.

5.3 Internal

Table 4: Internal referrals

Area	Comment
Landscape	Outstanding information – see section 9
Development Engineer	Concerns raised – see section 9
Catchment Management Engineer	Concerns raised – see section 9
Parks and Open Space	Concerns raised – see section 9
Public Domain	Concerns raised – see sections 7 and 9.
Traffic	Outstanding information – see section 9
Waste Services Supervisor	No objections.
Environmental Health (Waste)	Outstanding matters – see section 9.
Environmental Health (Acoustic & Air Quality)	No objections.
Environmental Health (Contamination)	Refer section 7.4
Social Outcomes	Concerns raised, refer section 7.5.3
Accessibility	Concerns raised – see section 9.
Crime Prevention	No objections.
External ESD consultant	Concerns raised - see section 7.2 and 7.3.
Reflectivity	Concerns raised - see section 7.2.
External wind consultant	Concerns raised - see section 7.5.3

6. Environmental Planning and Assessment Act 1979

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

6.1 Section 1.7: Significant effect on threatened species, populations or ecological communities, or their habitats

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 4.15(1): Evaluation

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

Table 5: Matters for consideration

Provision	Comment
Section 4.15(1)(a)(i) - Environmental planning instruments	Refer to section 7 below
Section 4.15(1)(a)(ii) - Draft planning instruments	Refer to section 8 below
Section 4.15(1)(a)(iii) - Development control plans	Refer to section 9 below
Section 4.15(1)(a)(iiia) - Planning agreements	Refer to section 10 below

Provision	Comment
Section 4.15(1)(a)(iv) - The Regulations	Refer to section 13 below
Section 4.15(1)(b) - Likely impacts	Refer to section 14 below
Section 4.15(1)(c) - Site suitability	Refer to section 15 below
Section 4.15(1)(d) - Submissions	Refer section 16 below
Section 4.15(1)(e) - The public interest	Refer to section 18 below

7. Environmental Planning Instruments

7.1 Overview

The instruments applicable to this application comprise:

- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Buildings and Apartment Design Guide (ADG)
- State Environmental Planning Policy (BASIX) 2004
- State Environmental Planning Policy (Resilience and Hazards) (2021)
- State Environmental Planning Policy (Transport and Infrastructure) 2007
- State Environmental Planning Policy (Biodiversity and Conservation) 2021
- SEPP (Planning Systems) 2021
- Parramatta (Former The Hills) Local Environmental Plan 2012.

Compliance is addressed below.

7.2 State Environmental Planning Policy 65 – Design Quality of Residential Apartment Development

This Policy aims to improve the design quality of residential flat development. This proposal has been assessed against the following matters relevant to SEPP 65 for consideration:

- Design Excellence Advisory Panel;
- The 9 SEPP 65 Design Quality Principles; and
- The Apartment Design Guide (ADG).

7.2.1 Design Quality Principles

Part 4 of the Policy introduces 9 design quality principles. These principles do not generate design solutions but provide a guide to achieving good design and the means of evaluating the merits of proposed solutions. A response to those design principles, prepared by the project architect, supports the application as required by the Environmental Planning and Assessment Regulation.

The following table provides an assessment of the proposal against those principles having regard to the comments of the Design Excellence Panel and assessment by Council's officers:

Table 6: Response to SEPP 65 design principles

Principle	Comment
Context and neighbourhood character	<p>Whilst it is recognised that Carlingford is transforming to a high density residential precinct, the development does not accord with the desired future character nominated by the LEP and DCP.</p> <p>Given its significant size and location, the proposed site layout does not respond to the existing or future character. The site has the potential to provide an important connection between the Carlingford Light Rail Stop and the shopping precinct in Carlingford, however the design provides only a narrow pathway and does not provide appropriate design solutions to navigate the topography of the site. Further the public domain is not well defined or integrated with surrounding streets and therefore reads as a gated community.</p>
Built form and scale	<p>The bulk, scale and height of the development is not in-keeping with the surrounding development and the future character envisaged by the LEP and DCP for the Carlingford Precinct. The proposal has large building footprints, inadequate communal open space and deep soil provision and the public domain is not well defined. Building B is excessive in length. The interface between the public domain and the buildings does not achieve appropriate scale.</p>
Density	<p>There is concern that the design of the proposal results in sub-optimal amenity for future residents due to insufficient communal open space, poor public domain and connections to surrounding streets.</p> <p>The density proposed is in excess of the LEP floor space ratio controls and what is projected within Council's strategic planning documents.</p>
Sustainability	<p>The proposal has not demonstrated provisions in relation to sustainability. Given the scale of the development, a comprehensive strategy covering areas relating to passive thermal design, use of sustainable materials, deep soil planting and water sensitive urban design.</p>
Landscape	<p>The proposal does not demonstrate that the public domain or landscape areas and buildings are designed in an integrated manner. The proposal's communal open space is currently fragmented and lacks function. There is poorly located deep soil zoned within the site, particularly in the south west. A development application of this scale should submit a wayfinding plan, lighting and urban elements plan. Greater landscape amenity should be achieved along Pennant Hills Road to facilitate large long term tree canopy. There is poor interface between the proposed public Central Park and the apartments facing it. There is poor safety conditions to provide passive surveillance and there is a potential for privatisation of this space by the residents.</p>
Amenity	<p>There are noted non-compliances with Part 4 of the ADG for the proposed residential apartments in relation to solar access, cross ventilation and balcony sizes.</p>
Safety	<p>The proposal's communal open space is currently fragmented and lacks function, which may lead to safety concerns. For example the communal open space around Building A is a linear space located between the building and boundary fence line. The proposed public Central Park has poor vehicular and pedestrian access to the units that face it. There is poor safety conditions to provide passive surveillance and there is a potential for privatisation of this space by the residents.</p>
Housing diversity and social interaction	<p>Apartment mix and sizes are achieved. However, the communal open space quality and design are of concern (as stated above).</p>


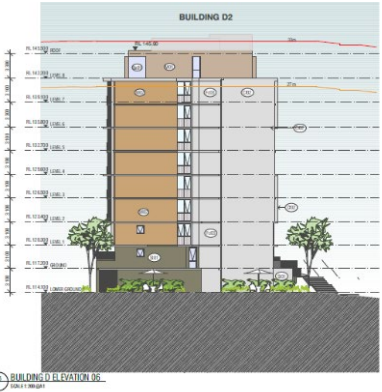
Principle	Comment
Aesthetics	The proposed facades of all buildings are the same and do not respond to the existing or future context.

7.2.2 Apartment Design Guide (ADG)

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

Table 7: Response to ADG provisions

Standard	Requirement	Proposal	Compliance
Part 3			
3B-1: Orientation	Buildings A, B, C and F are orientated to the northwest to southwest. The orientation results in overshadowing to neighbouring properties and communal open space and do not meet the design guidance standards. These buildings do not meet the minimum solar access to apartments consistent with Part 4A of the ADG. It is acknowledged that the location of the RE1 lands centrally in the site creates constraints.		
3B-2: Overshadowing	The proposal does not meet the requirements of 4A – solar access receive a minimum of 2 hours direct sunlight to living rooms and private open space to at least 70% of apartments in Buildings A, B, C and F. Further 21% of units do not receive no direct sunlight between 9am and 3pm midwinter. The proposal has not demonstrated that it has a reasonable overshadowing impact on adjoining properties at 27 & 29 Lloyd Avenue and 2-6 Shirley Street. In order to reduce this impact, the revised scheme has not increased setbacks or reduced heights. Furthermore the majority of communal open space does not receive adequate solar access.		
3C: Public Domain Interface	The proposed residential lobbies do not relate to the street nor the pedestrian network through the middle of the site. There are further opportunities for multiple entries to be provided for each building in order to activate the street and park edge. If an internal road with shared footpath and tree planting, as requested by Council, was introduced at the southern edge of the Central Park, improved public domain and building interface.		
3D: Communal & Public Open Space	Min. 25% of site area (5,335sqm) Min. 50% direct sunlight to main COS > two (2) hours 9:00am & 3:00pm, June 21	5,335sqm (25%) (excluding RE1 lands) comprising: - 4,843sqm at ground communal open space - 610sqm pool and gym located each in Buildings B and F >50% will receive 2 hours of sunlight in midwinter.	No (refer discussion below) No , but due to fragmentation it is unclear which is the principle useable part.
3E: Deep Soil	Min. 7% with min. dimensions of 6m (1494sqm as calculated excluding RE1 lands) For sites greater than 1,500sqm – 15% of the site. Basement below building footprint	1,494m ² (7%) >6m dimension Basement extends beyond footprint	Yes No (refer discussion below) No

Standard	Requirement	Proposal	Compliance
	Use of increased front and side setbacks	No increase in front and side setbacks	No
3F: <i>Visual Privacy</i>	9 storeys and above (over 25m): <ul style="list-style-type: none"> • 24m between habitable rooms/balconies • 18m between habitable and non-habitable rooms • 12m between non-habitable rooms 	Areas of non-compliance with separation distances between buildings are as follows: <ul style="list-style-type: none"> - 29 Lloyds Avenue Street boundary and Building A –proposes approx. 8m. A min of 9m at ground level to up to 8 storeys to be provided and 12m above 9 storeys. - Buildings A and B – 18m at 9th storey - Building E and 283 Pennant Hills Road – proposed 6.5m to site boundary, will require min. 9m up to 8 storeys and 12m above 9 storeys. - Buildings D1 and D2 – 12.5m – 13.5m (D2 habitable to blank wall). 	No
<p>In order to address the visual privacy criteria, Building D2 has been designed with a blank wall. Acceptability of this design measure will be dependant on better articulation as viewed by the public.</p> <div style="display: flex; justify-content: space-around; align-items: center;">   </div> <p>Figure 7: Elevation of Buildings D1 and D2 as viewed from pedestrian link. Source: FK Rev AR6 Building Plans</p>			
3G: <i>Pedestrian Access and Entries</i>	<p>Building A residential entrance is accessed via a ramp, setback off the internal road. It is not at grade and is located at a distance from the street. Building B residential entrance is located via steps or ramp directly off the internal road.</p> <p>Building C common entry for the residential and child care and Building F's residential entry are both via the internal road parallel to Pennant Hills Road. The entry to access the common circulation area for the ten retail spaces for Building F is via the internal road. Building E's five retail spaces can each be accessed directly from ground floor. The residential lobby for Building F is located on the internal road</p>		

Standard	Requirement	Proposal	Compliance
	<p>Building D1 residential lobby entry is via the through site link and Building D2 residential entry is via Shirley Street. The retail units on the ground floor of Building D2 are accessed from ground floor.</p> <p>The proposed entry locations do not relate to the street nor the pedestrian network through the middle of the site. There are opportunities for multiple entries to be provided for each building in order to activate the street and park edge. Due to its size, a wayfinding plan, signage and lighting plans should be provided.</p> <p>If an internal road, as requested by Council, was introduced at the southern edge of the Central Park, additional entry points could be located on the street to address the park.</p> <p>Pedestrian entry off Pennant Hills Road at the northern most point of the site adjacent to Building E directly conflicts with the wide loading zone and car park entry. This is a potential safety issue.</p>		
3H: Vehicle Access	<p>One large basement car park (and loading areas) connect beneath Buildings A, B, C and F. Vehicle access for Buildings A and B is via Building A (to shared basement) via an internal road accessed via Shirley Street. Vehicle access for Buildings A, B C and F is via Building C located off the internal road parallel to Pennant Hills Road.</p> <p>One connected basement car park for Buildings D1 and D2 is provided with one vehicle access entry located via driveway off the southern most internal road to Building D1. Building E vehicle access to the basement parking and loading dock is located via the eastern side the building via an internal road.</p> <p>Driveway entries are generally located behind building lines. Concern is raised in relation to single entry points for large connected basements which reduce the opportunity for deep soil on the site. There is potential to provide vehicle entry points for each building as there is sufficient internal road space and therefore contain basement below individual buildings and increase opportunity for landscaping and deep soil.</p>	 <p>Figure 8. Drawing showing extent of connected basement for Buildings A, B, C, F (from left to right) (Source FK Architects Drawing DA-250)</p>	
3J: Bicycle and car parking	<p>The site is <800m from Carlingford Light Rail stop, as such the applicable <i>minimum</i> car parking rate is the rate specified in the RMS Guide to Traffic Generating Development or the DCP, whichever is less. The RMS rates require 612 residential spaces and 124 visitor spaces. The proposed residential development has four car parking spaces shortfall. This is considered acceptable considering the proximity to the Parramatta Light Rail, bus network and shopping precinct.</p> <p>For bicycle parking assessment see The Hills DCP assessment below.</p> <p>Electric vehicle charging is not provided which is inconsistent with Objective 3J-2 in the context of current NSW policy direction toward significantly accelerating the uptake and use of electric vehicles.</p>		

Standard	Requirement	Proposal	Compliance
Part 4			
4A: <i>Daylight / Solar Access</i>	Min. 2hr for 70% of apartments living & POS 9am & 3pm mid-winter (>147)	Overall 62% of units receive min 2 hours. Non-compliant Buildings: <ul style="list-style-type: none"> - Building A – 63.9% of units comply - Building B – 52.6% of units comply - Building C – 58% of units comply - Building F – 57.7% of units comply 	No
	Max 15% apartments receiving no direct sunlight 9am & 3pm mid-winter (<32)	Overall 21% of units receive no direct sunlight between 9am and 3pm midwinter. Non-compliant Buildings: <ul style="list-style-type: none"> - Building B – 40.6% get no solar access - Building C – 26% get no solar access - Building D2 – 17.7% get no solar access - Building F – 21% get no solar access 	No
	Design incorporates shading and glare control	The proposal currently shows unshaded glass that may direct solar reflections into traffic. A Reflectivity Report was been provided. However further information is required to address this matter in full (refer detail below)	No
4B: <i>Natural Ventilation</i>	Min. 60% of apartments below 9 storeys naturally ventilated (>34)	Development achieves dual aspect ventilation to 45% of the apartments below 9 storeys.	No
	Council's ESD consultant has reviewed the proposal and raises concerns in relation to the adequacy of the methodology applied. The single aspect apartments do not provide an acceptable alternative solution for natural cross ventilation. Refer comments in relation to 4J: <i>Noise and pollution</i> and the ability of noise impacted units to provide natural ventilation.		
4C: <i>Ceiling heights</i>	Ground: 4m Mixed use: 3.3m Habitable rooms 2.7m Non-habitable 2.4m	The proposal minimum internal heights for residential (>3.1m) and ground floor retail (>4m) meet the criteria. It is noted that a minor non-compliance for neighbourhood shop proposed in Building D2 of 3.1m.	Yes No (Building D2, minor non-compliance)

Standard	Requirement	Proposal	Compliance
4D: Apartment size & layout	1 bedroom 50m ² 2 bedroom (1 bath) 70m ² 2 bedroom (2 bath) 75m ² 3 bedroom 95m ²	Minimum unit sizes are achieved for Buildings A, B, C, D1, D2 and E and F	Yes
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.	Complies	Yes
	Kitchens should not be located as part of the main circulation space in larger apartments (such as hallway or entry)	Complies	Yes
	Habitable room depths are limited to a maximum of 2.5 x ceiling height (7.25m).	Complies	Yes
	Open plan max habitable room depth is 8m from a window.	Complies	Yes
	Master bedrooms 10m ² Other bedrooms 9m ² (excluding wardrobe space).	Complies	Yes
	Bedrooms have a minimum dimension of 3m.	Complies	Yes
	Living rooms or combined living/dining rooms have a minimum width of: - 3.6m (1 bed apartments) - 4m (2+ bed apartments)	Complies	Yes
	4E: Private open space & balconies	1 Bedroom = 8m ² X 2m 2 Bedroom = 10m ² X 2m 3 Bedroom = 12m ² x 2.4m	Minimum depths (of 1m) are not achieved throughout the development therefore not achieving balcony area minimums.
Principle private open spaces are provided off living rooms with secondary access from bedrooms where possible			
4F: Common circulation & spaces	Max. apartments –off circulation core on single level: 8-12	Complies	Yes
	The applicant has submitted a lift report outlining that the proposed lifts would provide an acceptable level of service.		
	Corridors >12m length from lift core to be articulated.	Building C does not comply.	No
	The corridors are also provided with extra width and natural light. It is not clear if the corridors will benefit from natural ventilation. A condition would included in any consent requiring the corridor windows be operable.		
4G: Storage	1 bedroom 6m ² 2 bedroom 8m ² 3 bedroom 10m ²	Discrepancies between the architectural plans and compliance table.	No
	Min. 50% required in units		
	There are inconsistencies between the storage requirement calculations		

Standard	Requirement	Proposal	Compliance
	provided in the Compliance table and what is detailed on the architectural plans. Whilst the proposal does not demonstrate compliance, it is considered that there would be sufficient room in the basement and units to provide the required storage. Minimum storage requirements would be required by condition.		
4H: Acoustic Privacy			
4J: Noise and pollution	Noise impacts need to be considered in the assessment of natural cross ventilation. Refer detail assessment below.		
4K: Apartment Mix	The proposal complies with the Hills DCP requirements for apartment mix.		
4O: Landscape Design	The site has an opportunity to provide improved quality and quantity of deep soil zones and communal open space. The proposed landscape, stormwater and arboricultural report do not appear to have been co-ordinated in their entirety, therefore may impact on tree protection zones. Concerns are raised in relation to the design of the Central Park, refer discussion in Section 9.4.		
4P: Planting on structures	Further information is required in relation to: <ul style="list-style-type: none"> - The stepped seating and accessible walkway including tree planting to clearly show there will be adequate soil volume m3 for the proposed tree species. - Landscaping on roof terrace at ground level Building C, two at levels 1 of Buildings E and F, one at Level 5 Building D and one on level 9 Building F plans are to be provided. 		
4Q: Universal Design	20% Liveable Housing Guidelines Silver Level design features (>43)	43	Yes
	This matter would be subject to any conditions of consent.		
4S: Mixed Use	The proposal provides for 1,735sqm of neighbourhood shops which is considered appropriate for its location. The shops in Building E have direct entries to the street. With Building F providing an internal retail lobby.		
4T: Awnings and Signage	Awnings are proposed to the front entrances. It is not considered to be necessary to provide an awning to the public footway. No signage is proposed, however should be considered for the public domain and central park due to the sites location between the light rail stop and the shopping precinct.		
4U: Energy Efficiency	The proposal does not demonstrate compliance with BASIX (refer Section 7.3) below.		
4V: Water management	Due to the size of the site and the location of the central park, there is an opportunity for the site to incorporate water sensitive design systems. Refer discussion Section 9 - The Hills DCP.		
4W: Waste management	A waste management plan has been prepared by a qualified consultant demonstrating the location and design of the waste holding room and bulk waste storage area for Council collection is acceptable. The applicant has updated plans to show 4.5mt clearance throughout for trucks travel path. Separate waste storage for commercial uses is provided.		

Communal Open Space

The ADG requires communal open space to be consolidated into well-designed, easily identifiable and usable areas that cater to a variety of users. The communal open space areas proposed are primarily made up of entryways to buildings, the 'plaza forecourt' in front of the retail of Building E and boundary setback spaces (e.g. linear strips surrounding Building A). In relation to the plaza forecourt Council Officers do not consider a space of this nature to be genuine communal open space for residents, in particular due to its location between the road and shopping precinct. Therefore the plaza should not be included in the calculation for

communal open space.

It is considered that a site of this size has the capacity to consolidate communal open space at ground level to create larger well landscaped spaces and to incorporate a variety of uses and functions. An opportunity has also been missed to provide rooftop communal open space for residents.

Deep Soil

Due to the site's size (>1,500sqm) the ADG design guidance recommends 15% of the site as deep soil. Currently the deep soil is located in poor locations and fragmented across the site, in particular at the southwestern part of the site (around Building A) and between Buildings A and B and B and C. In accordance with ADG Design Guidance basements should be consolidated beneath building footprints. Basement car park encroach into the setbacks along Shirley Street, alongside Central Park and on Pennant Hills Road. Council Officers consider that at a minimum the proposed development should locate basement car parks beneath buildings in order to provide greater amount of and consolidated deep soil zones.

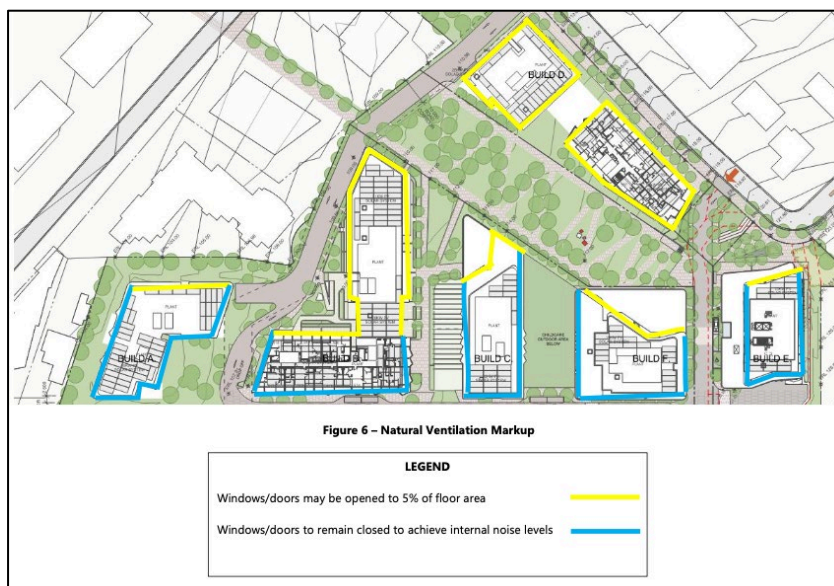
Reflectivity

Council Officers request provision of a solar reflectivity report in relation to Buildings A to E which have frontage to Pennant Hills Road. The proposal currently shows unshaded glass that may direct solar reflections into traffic. A Reflectivity Report has been provided. Council's external consultant has reviewed and the following information is requested to confirm solar reflectivity is adequately addressed:

- Additional information is requested on the testing of impacts for northeast bound motorists on Pennant Hills Road. The predicted veiling glare for this scenario appears very low. It is not clear that the line of sight vector considers the steep incline of the road.
- The requirement for additional screening devices on the north facade of Buildings D1 and D2 should be shown on the DA drawings.
- The requirement for no greater than 7% visible light reflectivity from the glazing should be confirmed as achievable when BASIX requirements are also considered.

Noise affected units and natural ventilation

The Acoustic report submitted confirms that the apartment facades facing and adjacent to Pennant Hills Road are noise affected and cannot provide natural ventilation and the same time as an acceptable acoustic amenity in living areas and bedrooms. Figure 9 is detailed in the acoustic report to illustrate the extent of noise impacts (indicted by a blue line):



The Acoustic report requires that where the recommended internal noise levels cannot be achieved with open windows, so confirmation of the ventilation requirements for the apartment is needed. The natural ventilation and acoustic reports are misaligned and there is no confirmation of how ventilation requirements are to be met where apartment are noise affected.

The noise from Pennant Hills Road will also impact natural cross ventilation. Natural ventilation is required by 4B-1 of the ADG. However, this is not acknowledged in the natural cross ventilation report, and numerous noise-impacted apartments are counted as naturally cross ventilated. 4J-1 of the ADG allows for alternative solutions for natural cross ventilation, and the project should be considered in that context.

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

The purpose of this Policy to reduce household electricity and water use by setting minimum sustainability targets for new and renovated homes. Evidence of compliance is to be demonstrated through the provision of a Certificate.

Council Officers have submitted two formal requests for information to address outstanding matters in relation to BASIX requirements. Review of the revised package of information by Council's sustainability consultant identified the following outstanding errors or omissions:

- The BASIX stamped plan set does not contain the necessary certifier stamp and QR for building D and E. The stamped drawings for buildings D and E include only a certified stamp for buildings A, B, C and F. The plans must be stamped with the QR codes relevant to the buildings shown.
- The BASIX certificates have some incorrectly numbered apartments and state incorrect adjusted heating and cooling loads for all apartments cross-checked.
- The BASIX certificates must correctly record the NatHERS certificate heating/cooling loads and the apartment numbers shown on the plans.
- Class 2 Summary certificates were not provided. Class 2 Summary certificates are to be provided with the BASIX certificates.
- In the NatHERS certificates that were able to be reviewed (Building D and E not accessible), the Exposure Category was found to be inconsistently applied not allow for the wind shielding effect of close obstructions.
- The Exposure Categories applied in NatHERS are to be reviewed, and Open or Exposed categories should not be used where there is significant obstruction at a similar height.

While it may be the case that these matters can be resolved, for the purposes of this assessment the BASIX details provided are not sufficient to demonstrate that the requirements of this Policy are satisfied.

7.4 State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4.6 of this Policy requires that the consent authority must consider if land is contaminated and, if so, whether it is suitable, or can be made suitable, for a proposed use.

An Environmental Assessment of the subject site was undertaken in order to evaluate the potential for contamination resulting from past site activities and to draw conclusions regarding the suitability of the site for residential redevelopment. It is noted that a Clean-up Notice was issued for part of the site by the EPA in February 2019 relating to the placement of waste materials on site, including asbestos waste. The EPA has confirmed that the Clean-up Notice

was complied with and the asbestos waste was removed from the site and disposed of at a lawful facility. The site investigation assessment report concluded, “The site is considered suitable for the proposed high-density residential development after the implementation of asbestos management measures”.

7.5 State Environmental Planning Policy (Transport and Infrastructure) 2021

7.5.1 Traffic Generating Development & Classified Road

Clause 2.118 – Development on proposed classified road

The proposal is located on land partially dedicated for potential future upgrades to Pennant Hills Road. Transport for NSW has advised that accordingly, no structures are permitted within this land. Any new building or structures, together with any improvements integral to the future use of the site, to be erected clear of the land required for road (unlimited in height or depth) and wholly within the freehold property (unlimited in height or depth), along the Pennant Hills Road boundary. Refer further comments in relation to Clause 5.1A of the LEP.

Clause 2.119 – Development with frontage to classified road

TfNSW advise that no referral required in accordance with Cl. 2.119 noting access to site via Shirley Street/local road. Accordingly, Council as consent authority to ensure following:

- Access is achieved other than via the classified road where possible;
- The safety, efficiency and operation of the classified road is not adversely affected by the design of the access, the activities of the proposal and the type/volume of traffic attending the site; and
- The development is not sensitive to noise or vehicle emissions

Council Officers considers as there is no direct access to Pennant Hills Road this clause is satisfied.

Clause 2.112 – Traffic Generating Development

The proposal is considered to constitute a ‘traffic generating development’ per Schedule 3 of the SEPP (as it proposes more than 50 or more car parking spaces on a site with access to a classified road or to a road that connects to classified road).

This clause requires that a consent authority must not determine a development application of a type nominated in Schedule 3 of this policy unless:

- TfNSW has been advised and its comments taken into consideration;
- The accessibility of the site has been evaluated with regard to the efficiency of movement to and from the site, the extent of multi-purpose trips, potential to minimise travel by car and to maximise movement of freight;
- Any potential traffic safety, road congestion or parking implications.

Relative to those clauses, TfNSW advises that despite the submission of additional information a number of matters of concern remain unresolved. In summary, those key issues are:

1. The SP2 zoned land will require dedication and relates to a future (currently unfunded) upgrade of Pennant Hills Road / Evans Road / Shirley Street / Lloyds Avenue intersection, however the cost of this dedication will not be incurred by TfNSW. Accordingly, no structures permitted within this land to be dedicated. Any new building or structures, together with any improvements integral to the future use of the site, to be erected clear of the land required for road (unlimited in height or depth) and wholly within the freehold property (unlimited in height or depth), along the Pennant Hills Road boundary.

2. Traffic modelling undertaken to inform the Traffic Impact Assessment (TIA) is required to be updated to consider the following:
 - The layout for the intersections at Cumberland Hwy/Moseley St and Pennant Hills Road/Evans Road/Lloyds Avenue with Channelised Right (CHR) are not modelled to reflect real time delays that would be experienced at these intersections and the surrounding road network. The layout in the model should be amended appropriately to assist TfNSW to potentially determine whether upgrades/changes to the road network would be required;
 - The proposed upgrade for Pennant Hills Road/Carlingford Road intersection should be considered in the SIDRA modelling, noting the traffic generated by the proposal could amplify the congestion/delay along Pennant Hills Road corridor given the proximity between the subject site and said intersection;
 - The trip rates as per TIA, are from a survey of large shopping centres. A later 2018 survey of small shopping centres identified much larger trip generation rates per 100m² GLFA than for larger shopping centres. This report should be used as the basis for subsequent discounting for diverted and undiverted drop-in trips.
 - Assumptions in relation to trip generation data at AM and PM peaks to be addressed.
3. Matters raised in relation to hydraulic calculation and catchment discharge to Pennant Hills Road. TfNSW require the total post development discharge to Pennant Hills Road should not exceed the pre- development discharge, and the post-development bypass shown, discharging to Pennant Hills Road should not exceed the pre-development bypass. Further that new kerb and gutter and stormwater pits on Pennant Hills Road are to be provided to the standard TfNSW.
4. That proposed high landscaping, trees, vegetation, etc. along the frontage of Pennant Hills Road should not hinder sight visibility for drivers and vegetation should not overhang the Pennants Hills Road carriageway.
5. Design drawings and documents relevant to the excavation of the site and support structures to be submitted to TfNSW for review.

The above request for further information indicate that TfNSW cannot support the application in its current form. Given this advice, Council consider the matters relating to traffic modelling do not address the matters under the SEPP and therefore are not satisfactorily addressed. Matters relating to catchment management and design drawings and documentation can likely be addressed via condition. The matter raised by TfNSW in relation to landscaping along Pennant Hills Road further highlights the need to provide a significant deep soil setback which can safely accommodate landscaping as per the DCP controls and detailed in Section 9.3 of the report.

7.5.2 Electricity Easement

The subject site contains underground electricity cables within concrete channels, which run in a northwest to southeast direction from Shirley Street to Pennant Hills Road (refer Figure 10 below). In accordance with Clause 2.48 of the SEPP (Transport and Infrastructure) 2021, the proposal was referred to Ausgrid.

Ausgrid raised concerns in relation buildings or structures, or parts thereof constructed may encroach the easement. In response to their referral advice, Council Officer sought to clarify these concerns.

Correspondence from Ausgrid on 22 November 2022 sought clarification in relation to a proposed cable bridge to support the Ausgrid cables which was included in the former development consent, however the current application does not. This bridge was to allow for a driveway beneath the cables which would connect between two buildings. The applicant has subsequently clarified that the former DA removed the bridge as part of a modification and that the current application does not propose to provide the bridge. At the time of writing this report no response has been provided by Ausgrid as to the acceptability of the development proposal

in relation to its easement.

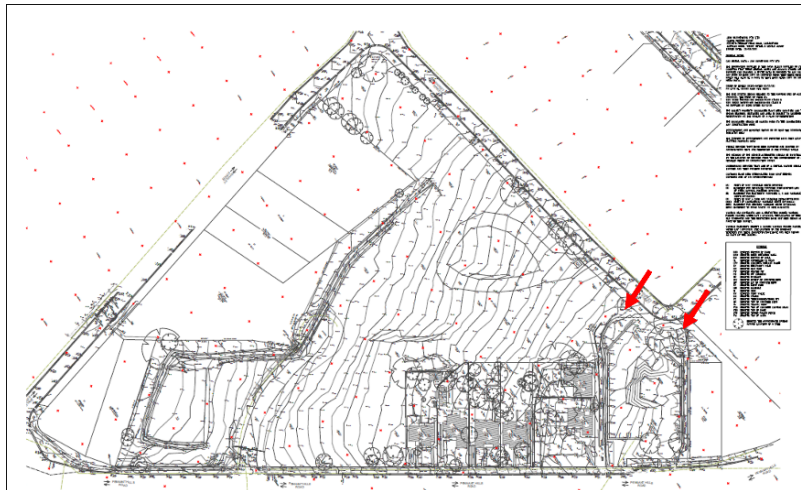


Figure 10: Site Survey Plan (Source FK Drawing DA-003). Council Officer red arrows indicating location of easement.

7.5.3 Child Care Centre

The proposal includes a ‘centre-based child care facility’ and as such is subject to the requirements of Part 3.3 of the SEPP. The childcare centre would have capacity for 110 children aged between 0-5 years and 20 staff. The proposal only seeks approval for the use of the site. Detailed fit out would be subject to a future detailed DA, for which a condition could be included to this effect in any consent.

The SEPP seeks to facilitate delivery of educational and child care facilities by establishing a clear regulatory framework. An assessment of the proposed child care centre against the relevant provisions of the SEPP is outlined below:

Child Care Centre

The proposal includes a ‘centre-based child care facility’ and as such is subject to the requirements of Part 3.3 of the SEPP. The childcare centre would have capacity for ~110 children. The proposal only seeks approval for the use of the site. Detailed fit out would be subject to a future detailed DA. A condition would be included to this effect in any consent.

The SEPP seeks to facilitate delivery of educational and child care facilities by establishing a clear regulatory framework. An assessment of the proposed child care centre against the relevant provisions of the SEPP is outlined below:

Table 8: SEPP (Transport and Infrastructure) 2021 – Part 3.3 ‘Child Care’ Assessment

Control	Proposal
Part 3.3 Early Education and Care Facilities – Specific Development Controls	
3.22 Centre-based child care facility – concurrence of Regulatory Authority required for certain development Concurrence required if less than mandated indoor or outdoor space provided per child (3.25sqm and 7sqm respectively).	The proposal includes: <ul style="list-style-type: none"> 835sqm outdoor play (7.59sqm/child) 768sqm internal play (6.98sqm/ child)
3.23 Centre-based child care facility—matters for consideration by consent authorities Consideration any applicable provisions of the Child Care Planning Guideline.	See table below.
3.26 Centre-based child care facility—non-discretionary development standards	

<p>Cannot be refused for the following reasons:</p> <ul style="list-style-type: none"> • Non-compliance with local controls requiring minimum separation distances to other such centres. • Indoor/outdoor play space provided as per Regulations • Non-compliance with local site area and site dimension requirements • Non-compliance with local building material controls 	<ul style="list-style-type: none"> • Noted, not a reason for refusal. • Appears capable of compliance. Will be confirmed at detailed DA stage. • Noted, not a reason for refusal. • Noted, not a reason for refusal.
<p>3.27 Centre-based child care facility—development control plans</p> <p>The following local DCPs controls do not apply:</p> <ul style="list-style-type: none"> • Operational/Management Plans • Demand or need for child care centres • Proximity to other child care centre • Any matters set out in Child Care Planning Guidelines except height, setbacks and car parking 	<p>Noted Noted Noted Noted (see assessment in table below)</p>

Child Care Planning Guideline 2021

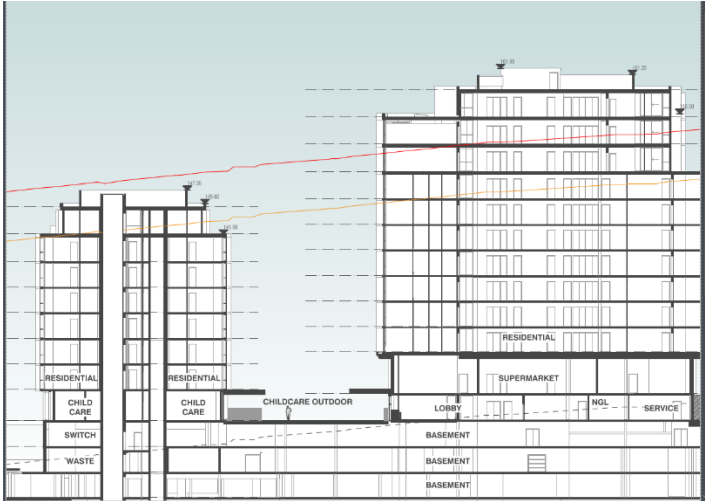
The SEPP requires consideration of the provisions contained within the Child Care Planning Guideline. An assessment is provided below.

Table 9: SEPP (Transport and Infrastructure) 2021 – Child Care Planning Guidelines Assessment

Part 2 – Design Quality Principles	
Context	The centre would form part of a larger mixed-use building consistent with the desired future character of the area. It is located in Building C, between Building C and Building F. The building form is assessed elsewhere in this report. Detailed design will be subject to a future application.
Built Form	
Adaptive Learning Spaces	The proposal provides indoor and outdoor spaces to allow for a variety of settings. Building design and learning space fit out will be subject to a future application.
Sustainability	Solar access to the internal and outdoor space is poor, with minimal, if any, sun access between 8am and 3pm. The centre will enjoy the benefits of cross ventilation owing to openings on adjacent elevations. Sustainability objectives would be considered at future detailed DA stage.
Landscape	The Child Care outdoor space has no deep soil zones and planting to the perimeter of the site.
Amenity	The child care centre entrance, indoor areas and outdoor play spaces would all be accessible step-free and as such would be efficient and accessible. Storage spaces will be considered further in the detailed DA.
Safety	The reference scheme demonstrates that the child care use can be safely accommodated with off-street drop-off, a private and well separated outdoor play space. Detailed material and plant selection will be subject to the future detailed application.
Part 3 – Matters for Consideration	
3.1 Site Selection and Location	
C1 Objective: To ensure that appropriate zone considerations are assessed when selecting a site.	The proposed use is within a high density residential zone, which is appropriate for the use of a childcare centre.
C2 Objective: To ensure that the site selected for a proposed child care facility is suitable for the use.	The site is not in close proximity to any restricted premises, injecting rooms, drug clinics or the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door

	<p>premises or sex services premises.</p> <p>The site has a local road with drop off facilities in front of it as well as parking within the basement, The level of the CCC is also higher than Pennant Hills Rd and an appropriately sized acoustic barrier and landscaping will be provided to the boundary.</p>
C3 Objective: To ensure that sites for child care facilities are appropriately located.	The site is in close proximity to compatible uses including schools, public open space and local shops.
C4 Objective: To ensure that sites for child care facilities do not incur risks from environmental, health or safety hazards.	The site is not located near industry, waste transfer depots, landfill sites, service stations, water cooling or warming systems, air pollutant generating uses or any other land use that would create environmental hazards.
3.2 Local Character, Streetscape and Public Domain Interface	
C5 Objective: To ensure that the child care facility is compatible with the local character and surrounding streetscape.	The child care use is consistent with the desired future character of the area being a high density residential precinct. Car parking is integrated into the building. Detailed design will be subject to a future application.
C6-8 Objective: To ensure clear delineation between the child care facility and public spaces.	The reference scheme demonstrates that an appropriate delineation and relationship with the public domain can be achieved. The child care centre has a dedicated access and open space.
<p>C9-10 Objective: To ensure that front fences and retaining walls respond to and complement the context and character of the area and do not dominate the public domain.</p> <p><i>High solid acoustic fencing may be used when shielding the facility from noise on classified roads. The walls should be setback from the property boundary with screen landscaping of a similar height between the wall and the boundary.</i></p>	<p>The proposal has a minimum 2.4m solid high barrier proposed to the outdoor space facing the local road and Pennant Hills Rd. 1.8m high fence with a canopy at a 45° angle that adds the additional 600mm height. The canopy can be made with a clear Perspex material to minimise visual impact.</p> <p>Given the slope of the land this fence may be more than 4m at the most southern point of the outdoor area. if including retaining walls.</p> <p>While it is setback from the street boundary and this treatment is supported by the acoustic report to provide sufficient acoustic support from Pennant Hills Rd there should be further</p>

	landscaping between the fence/retaining wall and the local road to provide better treatment.
3.3 Building Orientation, Envelope and Design	
<p>C11 Orient a development on a site and design the building layout to:</p> <ul style="list-style-type: none"> • Ensure visual privacy and minimise potential noise and overlooking impacts on neighbours by: <ul style="list-style-type: none"> ○ Facing doors and windows away from private open space, living rooms and bedrooms in adjoining residential properties; ○ Placing play equipment away from common boundaries with residential properties; ○ Locating outdoor play areas away from residential dwellings and other sensitive uses; • Optimise solar access to internal and external play areas; • Avoid overshadowing of adjoining residential properties; • Minimise cut and fill; • Ensure buildings along the street frontage define the street by facing it; and • Ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions. 	<p>The proposed outdoor space is located between two apartment buildings, with residential apartments located from the first floor above. These apartments have direct viewing into the child care outdoor space. It is not considered that the proposal has adequately located the outdoor play area away from residential dwellings and sensitive spaces.</p> <p>Solar access to the internal and outdoor space is poor. The submitted shadow diagrams show that approx. 34% of the open space area receives sun access between 12 and 1pm. With all other times receiving either no solar access or between 0.6% -24%.</p> <p>Fill levels for the outdoor space will be up to 2m facing the local road. Given the context within a high density residential precinct and the sites slope this can be accepted.</p> <p>The childcare centre entrance will be via the first floor of building C and not via the street.</p> <p>The applicant has submitted a wind report, which concludes that all locations except the childcare outdoor area satisfy the target pedestrian comfort criteria. It states that there may be times where the winds will channel between building F and Cs façade and mitigation relies on trees along the local road. While there maybe an expectation that the features would enable the area to satisfy the target comfort criterion (standing), SLR have not quantified the effectiveness. Further Council would not accept landscaping as a mitigation measure in relation to wind impact on the child care outdoor area. Any mitigation in the form of awnings may also compromise the quality of open space. Therefore this is not considered an acceptable outcome.</p>

<p>C12 The following matters may be considered to minimise the impacts of the proposal on local character:</p> <ul style="list-style-type: none"> • Building height should be consistent with other buildings in the locality; • Building height should respond to the scale and character of the street; • Setbacks should allow for adequate privacy for neighbours and children at the proposed child care facility; • Setbacks should provide adequate access for building maintenance; and • Setbacks to the street should be consistent with the existing character.  <p>Figure 11: Architectural Plans Section Buildings C and F (Source FK)</p>	<p>The location of the open space for the child care centre is located between buildings C and F (refer Figure 11). Balconies have direct sightlines into the outdoor open space and therefore do not provide adequate privacy to the childcare open space. This is not considered an acceptable outcome.</p>
<p>C13 Where there are no prevailing setback controls minimum setback to a classified road should be 10 metres. On other road frontages where there are existing buildings within 50 metres, the setback should be the average of the two closest buildings. Where there are no buildings within 50 metres, the same setback is required for the predominant adjoining land use.</p>	<p>A 10m setback to Pennant Hills Rd is provided.</p>
<p>C14 On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.</p>	<p>The childcare centre is located within a high density building and single dwelling setbacks would not be appropriate in this circumstance.</p>
<p>C15 Entry to the facility should be limited to one secure point which is:</p> <ul style="list-style-type: none"> • Located to allow ease of access, particularly for pedestrians; • Directly accessible from the street where possible; • Directly visible from the street frontage; • Easily monitored through natural or camera surveillance; • Not accessed through an outdoor play area; and • In a mixed-use development, clearly defined and separate from entrances to other uses in the building. 	<p>The entry is considered to be consistent with the Guidelines for the following reasons:</p> <ul style="list-style-type: none"> • There is a single entry point. • It provides level access from the street. • Can be monitored through camera surveillance. • Not accessed through a play area. • Directly visible from the street. • The pedestrian entrance is separated from vehicular entrance.
<p>C16 Accessible design can be achieved by:</p>	<p>The proposal provides step-free access from the street to all</p>

<ul style="list-style-type: none"> • Providing accessibility to and within the building in accordance with all relevant legislation; • Linking all key areas of the site by level or ramped pathways that are accessible to prams and wheelchairs, including between all car parking areas and the main building entry; • Providing a continuous path of travel to and within the building, including access between the street entry and car parking and main building entrance. Platform lifts should be avoided where possible; and • Minimising ramping by ensuring building entries and ground floors are well located relative to the level of the footpath. <p>NOTE: The <i>National Construction Code</i>, the <i>Discrimination Disability Act 1992</i> and the <i>Disability (Access to Premises – Buildings) Standards 2010</i> set out the requirements for access to buildings for people with disabilities.</p>	internal areas and a dedicated lift from basement and street level.
3.4 Landscaping	
<p>C17 Appropriate planting should be provided along the boundary integrated with fencing. Screen planting should not be included in calculations of unencumbered outdoor space. Use the existing landscape where feasible to provide a high quality landscaped area by:</p> <ul style="list-style-type: none"> • Reflecting and reinforcing the local context; and • Incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping. 	Landscaping is provided between the local road and Pennant Hills Road which will screen the retaining wall and the acoustic fence from that road, however no screen is provided to the local road from the fence.
<p>C18 Incorporate car parking into the landscape design of the site by:</p> <ul style="list-style-type: none"> • Planting shade trees in large car parking areas to create a cool outdoor environment and reduce summer heat radiating into buildings; • Taking into account streetscape, local character and context when siting car parking areas within the front setback; and • Using low level landscaping to soften and screen parking areas. 	Car parking is provided underground.
3.5 Visual and Acoustic Privacy	
<p>C19 Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.</p>	Does not comply, Building C and F both have balconies which have direct viewing into the open space (refer Figure 11 above). This is not considered an acceptable outcome.
<p>C20 Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through:</p> <ul style="list-style-type: none"> • Appropriate site and building layout; • Suitably locating pathways, windows and doors; and • Permanent screening and landscape design. 	Indoor rooms have a higher FFL than the ground floor level. Outdoor spaces cannot be viewed from any public spaces.
<p>C21 Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through:</p> <ul style="list-style-type: none"> • Appropriate site and building layout; • Suitable location of pathways, windows and doors; and • Landscape design and screening. 	The child care centre is at ground level only and is surrounded by appropriate screening and as such will not unacceptably overlook adjoining properties.
<p>C22 A new development, or development that includes alterations to more than 50 per cent of the existing floor area, and is located adjacent to residential accommodation should:</p> <ul style="list-style-type: none"> • Provide an acoustic fence along any boundary where the adjoining property contains a residential use. (An acoustic fence is one that is a solid, gap free fence); and 	An acoustic barrier up to 2.4m has been proposed largely to protect the users of the childcare centre from Pennant Hills Rd noise.

<ul style="list-style-type: none"> • Ensure that mechanical plant or equipment is screened by solid, gap free material and constructed to reduce noise levels e.g. acoustic fence, building, or enclosure. 	<p>The Acoustic report has recommended a number of protective glazing to reduce noise impacts from the childcare centre to adjoining residential buildings.</p>
<p>C23 A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters:</p> <ul style="list-style-type: none"> • Identify an appropriate noise level for a child care facility located in residential and other zones; • Determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use; and • Determine the appropriate height of any acoustic fence to enable the noise criteria to be met. 	<p>The acoustic report has been reviewed and deemed satisfactory by Councils Environmental Health Officers.</p>
<p>3.6 Noise and Air Pollution</p>	
<p>C24 Adopt design solutions to minimise the impacts of noise, such as:</p> <ul style="list-style-type: none"> • Creating physical separation between buildings and the noise source; • Orienting the facility perpendicular to the noise source and where possible buffered by other uses; • Using landscaping to reduce the perception of noise; • Limiting the number and size of openings facing noise sources; • Using double or acoustic glazing, acoustic louvres or enclosed balconies (wintergardens); • Using materials with mass and/or sound insulation or absorption properties, such as solid balcony balustrades, external screens and soffits; and • Locating cot rooms, sleeping areas and play areas away from external noise sources. 	<p>An acoustic report has been provided which recommends a 2.4m high sound barrier for the outdoor space facing Pennant Hills Rd.</p> <p>No operable windows are facing Pennant Hills Rd and internal locations of rooms will be considered further in the detailed fitout DA.</p>
<p>C25 An acoustic report should identify appropriate noise levels for sleeping areas and other non-play areas and examine impacts and noise attenuation measures where a child care facility is proposed in any of the following locations:</p> <ul style="list-style-type: none"> • On industrial zoned land; • Where the ANEF contour is between 20 and 25, consistent with AS 2021 – 2000; • Along a railway or mass transit corridor, as defined by <i>State Environmental Planning Policy (Infrastructure) 2007</i>; • On a major or busy road; and • Other land that is impacted by substantial external noise. 	<p>The location of sleeping areas and non play areas will be considered further in the future detailed DA assessment.</p>
<p>C26 Locate child care facilities on sites which avoid or minimise the potential impact of external sources of air pollution such as major roads and industrial development.</p>	<p>The location of the child care centre in relation to Pennant Hills Rd has sufficient setbacks and screening. It is not considered that there would be any undue impacts from air pollution from the main road.</p>
<p>C27 A suitably qualified air quality professional should prepare an air quality assessment report to demonstrate that proposed child care facilities close to major roads or industrial developments can meet air quality standards in accordance with relevant legislation and guidelines. The air quality assessment report should evaluate design considerations to minimise air pollution such as:</p> <ul style="list-style-type: none"> • Creating an appropriate separation distance between the facility and the pollution source. The location of play areas, sleeping areas and outdoor areas should be as far as practicable from the major source of air pollution; 	<p>The DA has been submitted with an air quality report which has found that the location of the Child Care Centre is unlikely to experience significant additional cumulative exceedances of air quality.</p>

<ul style="list-style-type: none"> • Using landscaping to act as a filter for air pollution generated by traffic and industry. Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway; and • Incorporating ventilation design into the design of the facility. 	
3.7 Hours of Operation	
C28 Hours of operation within areas where the predominant land use is residential should be confined to the core hours of 7.00am to 7.00pm weekdays. The hours of operation of the proposed child care facility may be extended if it adjoins or is adjacent to non-residential land uses.	The hours of operation of the child care centre will be considered further under the future detailed assessment DA.
C29 Within mixed use areas or predominantly commercial areas, the hours of operation for each child care facility should be assessed with respect to its compatibility with adjoining and co-located land uses.	See above.
3.8 Traffic, Parking and Pedestrian Circulation	
C30 Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land.	Refer assessment at section 9 – The Hills DCP of this report.
C31 In commercial or industrial zones and mixed use developments, on street parking may only be considered where there are no conflicts with adjoining uses, that is, no high levels of vehicle movement or potential conflicts with trucks and large vehicles.	The proposal does not rely on on-street parking.
C32 A Traffic and Parking Study should be prepared to support the proposal to quantify potential impacts on the surrounding land uses and demonstrate how impacts on amenity will be minimised. The study should also address any proposed variations to parking rates and demonstrate that: <ul style="list-style-type: none"> • The amenity of the surrounding area will not be affected; and • There will be no impacts on the safe operation of the surrounding road network. 	A Traffic and Parking report has been provided which concludes that the proposal will have an acceptable impact on traffic and provides sufficient parking.
C33 Alternate vehicular access should be provided where child care facilities are on sites fronting: <ul style="list-style-type: none"> • A classified road; and • Roads which carry freight traffic or transport dangerous goods or hazardous materials. <p>The alternate access must have regard to:</p> <ul style="list-style-type: none"> • The prevailing traffic conditions; • Pedestrian and vehicle safety including bicycle movements; and • The likely impact of the development on traffic. 	Access is provided via an internal road, and not provided from Pennant Hills Rd.
C34 Child care facilities proposed within cul-de-sacs or narrow lanes or roads should ensure that safe access can be provided to and from the site, and to and from the wider locality in times of emergency.	The site is not within a cul-de-sac.
C35 The following design solutions may be incorporated into a development to help provide a safe pedestrian environment: <ul style="list-style-type: none"> • Separate pedestrian access from the car park to the facility; • Defined pedestrian crossings included within large car parking areas; • Separate pedestrian and vehicle entries from the street for parents, children and visitors; • Pedestrian paths that enable two prams to pass each other; 	<p>The proposal is considered capable of accommodating a safe pedestrian environment for the following reasons:</p> <ul style="list-style-type: none"> • Access is provided from the car park to the child care centre. • There will be sufficient access to the entry to allow prams to pass.

<ul style="list-style-type: none"> • Delivery and loading areas located away from the main pedestrian access to the building and in clearly designated, separate facilities; • In commercial or industrial zones and mixed use developments, the path of travel from the car parking to the centre entrance physically separated from any truck circulation or parking areas; and • Vehicles can enter and leave the site in a forward direction. 	<ul style="list-style-type: none"> • Delivery and loading is separate to the primary pedestrian entrance. • The path of travel from parking spaces to the basement entrance is separate from truck circulation areas. • Vehicles can enter and exit the site in a forward direction.
<p>C36 Mixed use developments should include:</p> <ul style="list-style-type: none"> • Driveway access, manoeuvring areas and parking areas for the facility that are separate to parking and manoeuvring areas used by trucks; • Drop off and pick up zones that are exclusively available for use during the facility's operating hours with spaces clearly marked accordingly, close to the main entrance and preferably at the same floor level. Alternatively, direct access should avoid crossing driveways or manoeuvring areas used by vehicles accessing other parts of the site; and • Parking that is separate from other uses, located and grouped together and conveniently located near the entrance or access point to the facility. 	<p>The basement will not be capable of accommodating large trucks.</p> <p>The drop off requires crossing the path of travel for resident vehicles. Line marking and signage will be necessary at future fit out DA stage to address this issue.</p> <p>The child care centre car parking is located in close proximity to the child care centre lift lobby.</p>
<p>C37 Car parking design should:</p> <ul style="list-style-type: none"> • Include a child safe fence to separate car parking areas from the building entrance and play areas; • Provide clearly marked accessible parking as close as possible to the primary entrance to the building in accordance with appropriate Australian Standards; and • Include wheelchair and pram accessible parking. 	<p>The car parking area is in the basement.</p> <p>Accessible parking is in close proximity to the child care centre lift lobby.</p>
<p>Part 4 – Applying the National Regulations to Development Proposals</p>	
<p>4.1 Indoor Space Requirements</p>	
<p>Regulation 107 Education and Care Services National Regulations</p> <p>Every child being educated and cared for within a facility must have a minimum of 3.25m² of unencumbered indoor space.</p> <p>Unencumbered indoor space excludes any of the following:</p> <ul style="list-style-type: none"> • Passageway or thoroughfare (including door swings) used for circulation; • Toilet and hygiene facilities; • Nappy changing area or area for preparing bottles; • Area permanently set aside for the use or storage of cots; • Area permanently set aside for storage; • Area or room for staff or administration; • Kitchens, unless the kitchen is designed to be used predominately by the children as part of an educational program e.g. a learning kitchen; • On-site laundry; and • Other space that is not suitable for children. 	<p>Required: 110 children x 3.25m²/child = >357.5m² Provided: 768m²</p>
<p>Verandahs as indoor space</p> <p>For a verandah to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space.</p>	<p>No verandahs proposed for indoor space</p> <p>The reference drawings demonstrate there is likely to be sufficient space for storage.</p>

<p>Storage</p> <p>Storage areas including joinery units are not to be included in the calculation of indoor space. To achieve a functional unencumbered area free of clutter, storage areas must be considered when designing and calculating the spatial requirements of the facility. It is recommended that a child care facility provide:</p> <ul style="list-style-type: none"> • A minimum of 0.3m³ per child of external storage space; and • A minimum of 0.2m³ per child of internal storage space. 	<p>Confirmation subject to future fit out DA.</p>
<p>4.2 Laundry and Hygiene Facilities</p>	
<p>Regulation 106 Education and Care Services National Regulations</p> <p>There must be laundry facilities or access to laundry facilities; or other arrangements for dealing with soiled clothing, nappies and linen, including hygienic facilities for storage prior to their disposal or laundering. The laundry and hygienic facilities must be located and maintained in a way that does not pose a risk to children.</p>	<p>The reference drawings demonstrate there is sufficient space to provide laundry facilities. Confirmation subject to future fit out DA.</p>
<p>4.3 Toilet and Hygiene Facilities</p>	
<p>Regulation 109 Education and Care Services National Regulations</p> <p>A service must ensure that adequate, developmentally and age-appropriate toilet, washing and drying facilities are provided for use by children being educated and cared for by the service; and the location and design of the toilet, washing and drying facilities enable safe use and convenient access by the children. Child care facilities must comply with the requirements for sanitary facilities that are contained in the <i>National Construction Code</i>.</p>	<p>The reference drawings demonstrate there is sufficient space to provide sanitary facilities. Confirmation subject to future fit out DA.</p>
<p>4.4 Ventilation and Natural Light</p>	
<p>Regulation 110 Education and Care Services National Regulations</p> <p>Services must be well ventilated, have adequate natural light, and be maintained at a temperature that ensures the safety and wellbeing of children. Child care facilities must comply with the light and ventilation and minimum ceiling height requirements of the <i>National Construction Code</i>. Ceiling height requirements may be affected by the capacity of the facility.</p>	<p>The reference drawings demonstrate there is sufficient ceiling height for the use, and that there can be sufficient cross ventilation and light. Confirmation subject to future fit out DA.</p>
<p>4.5 Administrative Space</p>	
<p>Regulation 111 Education and Care Services National Regulations</p> <p>A service must provide adequate area or areas for the purposes of conducting the administrative functions of the service, consulting with parents of children and conducting private conversations.</p>	<p>The reference drawings demonstrate there is sufficient space to provide administrative facilities. Confirmation subject to future fit out DA.</p>
<p>4.6 Nappy Change Facilities</p>	
<p>Regulation 112 Education and Care Services National Regulations</p> <p>Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children. Child care facilities must also comply with</p>	<p>The reference drawings demonstrate there is sufficient space to provide nappy changing facilities. Confirmation subject to future fit out DA.</p>

the requirements for nappy changing and bathing facilities that are contained in the <i>National Construction Code</i> .	
4.7 Premises designed to facilitate supervision	
Regulation 115 <i>Education and Care Services National Regulations</i> A centre-based service must ensure that the rooms and facilities within the premises (including toilets, nappy change facilities, indoor and outdoor activity rooms and play spaces) are designed to facilitate supervision of children at all times, having regard to the need to maintain their rights and dignity. Child care facilities must also comply with any requirements regarding the ability to facilitate supervision that are contained in the <i>National Construction Code</i> .	The reference drawings demonstrate there is sufficient space to provide supervision. Confirmation subject to future fit out DA.
4.8 Emergency and Evacuation Procedures	
Regulations 97 and 168 <i>Education and Care Services National Regulations</i> Regulation 168 sets out the list of procedures that a care service must have, including procedures for emergency and evacuation. Regulation 97 sets out the detail for what those procedures must cover including: <ul style="list-style-type: none"> • Instructions for what must be done in the event of an emergency; • An emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit; and • A risk assessment to identify potential emergencies that are relevant to the service. 	Emergency planning would be subject to assessment at future fit out DA stage.
4.9 Outdoor Space Requirements	
Regulation 108 <i>Education and Care Services National Regulations</i> An education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0m ² of unencumbered outdoor space. Unencumbered outdoor space excludes any of the following: <ul style="list-style-type: none"> • Pathway or thoroughfare, except where used by children as part of the education and care program; • Car parking area; • Storage shed or other storage area; • Laundry; and • Other space that is not suitable for children. Calculating unencumbered space for outdoor areas should not include areas of dense hedges or plantings along boundaries which are designed for landscaping purposes and not for children's play (refer to Figures 9 and 10).	Required: 110 children x 7m ² /child = >770m ² Provided: ~835m ²
4.10 Natural Environment	
Regulation 113 <i>Education and Care Services National Regulations</i> The approved provider of a centre-based service must ensure that the outdoor spaces allow children to explore and experience the natural environment.	Subject to future fit out DA.
4.11 Shade	
Regulation 114 <i>Education and Care Services National Regulations</i>	Subject to future fit out DA.

The approved provider of a centre-based service must ensure that outdoor spaces include adequate shaded areas to protect children from overexposure to ultraviolet radiation from the sun.	
4.12 Fencing	
Regulation 104 Education and Care Services National Regulations Any outdoor space used by children must be enclosed by a fence or barrier that is of a height and design that children preschool age or under cannot go through, over or under it. This regulation does not apply to a centre-based service that primarily provides education and care to children over preschool age, including a family day care venue where all children are over preschool age. Child care facilities must also comply with the requirements for fencing and protection of outdoor play spaces that are contained in the <i>National Construction Code</i> .	Subject to future fit out DA.
4.13 Soil Assessment	
Regulation 25 Education and Care Services National Regulations Subclause (d) of regulation 25 requires an assessment of soil at a proposed site, and in some cases, sites already in use for such purposes as part of an application for service approval. With every service application one of the following is required: <ul style="list-style-type: none"> • A soil assessment for the site of the proposed education and care service premises; • If a soil assessment for the site of the proposed child care facility has previously been undertaken, a statement to that effect specifying when the soil assessment was undertaken; and • A statement made by the applicant that states, to the best of the applicant's knowledge, the site history does not indicate that the site is likely to be contaminated in a way that poses an unacceptable risk to the health of children. 	The DA has been submitted with a detailed soil assessment, this has been reviewed against the relevant SEPP controls and is considered to be satisfactory by Councils Environmental Health staff.

7.6 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.

7.7 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, except for the objective of improved water quality. That outcome would be achieved through the imposition of suitable conditions to address the collection and discharge of stormwater water during construction, and upon completion.

7.8 Parramatta (The Former Hills) Local Environmental Plan 2012

The relevant objectives and requirements of LEP have been considered in the assessment of the development application and are contained within the following table.

Table 10: Summary of Parramatta (The Former Hills) LEP 2011 compliance

Development Standard	Proposal	Compliance
2.3 Zoning		
Permissible uses within the R4 and RE1 zone	<p>The proposal is a mixed-use development comprising the following uses with the R4 High Density Residential zoned land:</p> <ul style="list-style-type: none"> • Centre-based child care facility • Neighbourhood shops • Shop Top Housing • Residential flat building <p>The proposed development located within the RE1 Public Recreation:</p> <ul style="list-style-type: none"> • Roads • Recreation areas 	Yes
Zone Objectives		
<p>R4 High Density Residential</p> <p>RE1 Public Recreation</p>	<p>The proposal is considered not to be in keeping with the following objectives of the R4 High Density Residential zone:</p> <ul style="list-style-type: none"> • <i>To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.</i> • <i>To ensure the scale and type of development is compatible with the character and amenity of a neighbourhood centre.</i> • <i>To allow for residential development that contributes to the economic and social vitality of the neighbourhood centre and does not detract from the primary objective of the zone.</i> • <i>To promote commercial activities in locations that encourage walking and cycling to and from the neighbourhood centre</i> <p>The proposal is generally considered to be in keeping with the following objectives of the RE1 Public Recreation zone:</p> <ul style="list-style-type: none"> • <i>To enable land to be used for public open space or recreational purposes.</i> • <i>To provide a range of recreational settings and activities and compatible land uses.</i> • <i>To protect and enhance the natural environment for recreational purposes.</i> 	<p>No (refer discussion Clause 4.6 variation)</p> <p>Yes</p>
4.3 Height of Buildings		
Part 27m; and part 33m (relating to R4 High Density Residential zoned land)	<ul style="list-style-type: none"> - Building A – 42.75m (58.3% variation to 27m height) - Building B – 39.6m (46.6% variation to 27m height) & 39.8m (20.6% variation to 33m height) - Building C – 32.3m (19.6% variation to 27m height) - Building E – 43.4m (60.7% variation to 27m height) - Building F- 41.95m (55.3% variation to 27m height) 	No (refer assessment below)

Development Standard	Proposal	Compliance
	Buildings D1 and D2 along Shirley Street are compliant with the 33m height of building control.	
4.4 Floor Space Ratio		
2.3:1 (as it applies to the R4 High Density Residential zoned land)	<p>The applicant's revised Clause 4.6 Variation request for FSR seeks a variation of 31.1% of the FSR standard, that is 2.3:1 (49,084sqm of GFA) to 3:1 (64,370sqm of GFA).</p> <p>The application has incorrectly included for the purposes of calculating FSR that land zoned SP2 land (shown for acquisition purposes) along Shirley Street, which does not have FSR allocated to it.</p>	No (refer assessment below)
4.6 Exceptions to Development Standards		
	Variation to building height and floor space ratio standards.	No (refer assessment below)
Clause 5.1A Classified Road		
SP2 applies to part 18 Shirley Street (along Pennant Hills Road)	The submitted plans indicate that no works are proposed over this portion of land. Transport for NSW have identified that dedication is required. The application has failed to identify the mechanisms for the dedication of land and how the landscaping setback along Pennant Hills Road will be adjusted following dedication.	No
Clause 5.4 Controls relating to miscellaneous permissible uses		
The retail floor area must not exceed 100 square metres.	The floor area of the proposed neighbourhood shops located in Buildings E, F and D2 are 100sqm or less in area.	Yes
Clause 5.10 Heritage Conservation		
	<p>The site does not contain any heritage items and does not sit within a heritage conservation area.</p> <p>The site is located opposite a heritage item 'I26' Carlingford Memorial Park on Pennant Hills Road. It is acknowledged that some additional overshadowing will occur between 1pm – 3pm due to the additional height, however this is compliant with the DCP control for overshadowing on adjoining properties.</p>	Yes
Clause 7.8 Underground Power Lines at Carlingford		
Clause 7.8 requires that in relation to 18 Shirley Street "(2) In determining whether to grant development consent to development on land identified as "Area A" on the Key Sites Map, the consent authority must consider whether all 132kV double circuit electricity power lines in	<p>This was satisfied as part of the commencement of the development consent for DA/1103/2011/JP.</p> <p>Council Officers understand from records from Ausgrid undergrounding occurred in 2016.</p>	Yes

Development Standard	Proposal	Compliance
<i>relation to that development will be placed underground."</i>		

7.8.1 Clause 4.6 Variation Assessment Floor Space Ratio

Clause 4.6 of Parramatta (former The Hills) LEP 2012 allows the consent authority to provide an appropriate degree of flexibility in applying certain development standards, where flexibility would achieve better outcomes.

The subject application seeks to further increase the FSR standard of 2.3:1 (49,084sqm of GFA) **by a variation of 31.1% of the FSR standard** to 3:1 (64,370sqm of GFA).

The applicant has submitted a clause 4.6 request seeking to justify the non-compliance and is provided at Attachment 3.

a) 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"*

b) Clause 4.6(2) – Operation of clause 4.6

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

The proposal does not comply with the Clause 4.4 'Floor Space Ratio' development standard and as such the applicant has submitted a request to vary the height standard under Clause 4.6 of the Parramatta (the Former Hills) LEP 2012.

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

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

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

The applicant has provided the following justifications for the non-compliance with the development standard. The written request is extensive, however the key reasons are summarised below. The full request is included at Attachment 3.

1. Previous Approval

The previous application (DA1103/2011/JP) is a relevant and specific consideration in assessing the merits of the current application, and establishing the acceptable density of development on the subject site (the Land and Court Judgement, *Abrams v The Council of the City of Sydney* (no 2) [2018] NSWLEC 85 is cited). That the proposal will provide distinct public benefits over and above the previous (active) development application and it is consistent with the density already established by DA1103/2011/JP.

That the previous approval relied upon the land zoned Open Space 6(a) (now RE1) under the previous BLEP 2005 for the purposes of calculating FSR and to demonstrate compliance with the 2.3:1 standard. Whilst the applicant agrees this may not be a technically correct approach, it

supports the merit of applying the same methodology of site calculation to the approved development, the proposal would comply with the FSR control.

2. Voluntary Planning Agreement

The subject site benefits from an existing voluntary planning agreement (VPA) established under DA1103/2011/JP and applies to any approved current and future application under Clause 12 of the VPA. Section 4.15(1)(ia) of the EP&A Act states that any planning agreement is a matter for consideration for a development application. As the original approval established an increase in density supported by the public benefit afforded by the VPA, this is similarly maintained by the current application.

Further, to deny the variation and require strict compliance, the proponent would be forced to either construct the current approval which will result in an inferior form, and/ or lodge a separate application for the remaining R4 zoned land, seek the consent authority to acquire the RE1 land and therefore limit the public benefits afforded by the VPA and delivery of the subject application.

3. The RE1 zone forms part of the visual and physical character of the site

It is considered that the RE1 lands contributes to the form and density of development which can be reasonably anticipated on the subject site, given its significant area and dimensions, frontage characteristics, single ownership structure and highly accessible location. The amended proposal therefore provides an overall form and density which would be expected, visually and contextually, if the site was not burdened by the privately held RE1 zone.

4. Site Characteristics, Location and Accessibility

The site's proximity to Carlingford Light Rail, business zoned land and public open spaces, in conjunction with its considerable size and frontages, permits an increase in density without any adverse impact on the character and amenity of the locality. The distribution of FSR on the site sensitively addresses the northern boundary to Shirley Street, providing for additional mass and height on the less sensitive part of the site fronting Pennant Hills Road. The FSR variation does not bring with it a density of development that is greater than what is anticipated and permitted for the site, when considered against DA1103/2011/JP.

5. The proposal demonstrably achieves design excellence

The design of the proposal, including building massing and envelopes, represents a significant improvement when compared to the DCP concept masterplan and approved development application. The proposal achieves an urban design outcome which will significantly improve the character of the locality and public open spaces through the distribution of additional floor space along the higher elevated portion of Pennant Hills Road. To ensure design excellence is achieved, the proposed variation to FSR will not have any impact on the site coverage, communal open space and deep soil calculations. The proposal is predominantly compliant with the Apartment Design Guide and Carlingford Precinct DCP.

6. The distribution of additional floor area does not result in any adverse impacts to the character of the locality

The additional GFA is situated away from natural ground level in order to maintain a significant curtilage around the buildings on the subject site where they interact with the public open space, various communal areas and vehicular and pedestrian access. The non-compliant floor area is setback appropriately from Pennant Hills Road (per DCP) and incorporates appropriate building separation (in accord with the ADG) as to mitigate impact. The amended proposal provides open spaces and access points beyond what is anticipated by the LEP and DCP despite the variation.

The additional FSR is located on upper levels fronting highly trafficked roadway away from Shirley Street and the ground plane, as to align with the future development envisaged in the locality and objectives of the Carlingford Precincts. Figure 12 below shows the potential relocation of floor area to the ground floor plane and lower levels which would be inferior.



Figure 14 Potential relocation of floor area to ground floor plane and lower levels which would be inferior

Figure 12: potential relocation of GFA to ground plane Source: Figure 14, Amended Clause 4.6 Variation Building Height, Planning Ingenuity 13 October 2022

7. Orderly and Economic Use of Land

The proposed development achieves an environmental planning outcome by providing additional housing within a high density zone, in close proximity to public transport and various land uses without having adverse impact on the amenity of adjoining properties and being compatible with the character and built form of the locality.

8. Minimal Environmental Impacts

The FSR creates no significant overshadowing when compared to a compliant building envelope. The non-compliant FSR will have no bearing on the amenity of neighbouring properties. The FSR breach does not result in any significant additional privacy impacts. Where residential accommodation opposes the neighbouring properties, this is provided with predominately complaint building separation per ADG. The FSR does not create any significant additional view loss.

9. Other

The proposed development meets the objectives of the development standard and the R4 High Density Residential zone. The proposal achieves the objects in Section 1.3 of the EP&A Act, specially through the orderly and economic use of land through the redevelopment of an underutilised site for residential uses; and the development promotes good design and amenity. Further the variation will give better effect to the aims of SEPP 65.

10. Consistency with the Zone and Floor Space Ratio Objectives

That the proposed development is consistent with objectives contained in Clause 4.4 Floor Space Ratio of the LEP. The amended proposal has been designed to ensure the compatibility with the existing and desired future character of the locality, despite the non-compliance. The burden of strict compliance would be unreasonable and unnecessary outcome give that the bulk and scale of the proposal is consistent with the desire character of the subject site. The proposal has been designed with a FSR which has been permitted and established by the development as approved under DA1103/2011/JP. The existing buildings in the locality have been considered by the proposal. The development is in accordance with the objectives set by the Key Sites within the Carlingford Precinct DCP.

That the proposed development is consistent with objectives of the R4 High Density Residential Zone, as it provides for the housing needs of the community through providing a mixture of apartment typologies within a high density environment. The proposal includes the provision of centre based child acre and neighbourhood shops which will meet the day to day needs of the residents on the site and surrounds. The development is in close proximity to B2 zoned land, public open space and the Carlingford light rail.

d) Clause 4.6(4) - Consent Authority Consideration 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.”*

Unreasonable and Unnecessary

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.*

The written request contends that the development is consistent with the standard and zone objectives.

Table 11: Assessment of written Clause 4.6 Request against Clause 4.4 FSR Objectives

Clause 4.4 Floor Space Ratio Objectives	Council Officer Assessment
<i>(a) to ensure development is compatible with the bulk, scale and character of existing and future surrounding development,</i>	<p>The development has not demonstrated that it is compatible with the bulk and scale and character of existing and future surrounding development.</p> <ul style="list-style-type: none">- The height and density of the Carlingford Precinct has been established based on design principles set out in The Hills DCP 2012 - Carlingford Precinct, to facilitate the tallest towers around the light rail station to create landmarks and those developments further away (such as the subject site) are designed so heights are diminished when viewed in its topographic context. The proposed variation to height and density are not consistent with these design principles.- The bulk and scale of the development is not in keeping with the surrounding development or proposed due to its large building footprints and inadequate landscaping. The amount and location of communal open space and lack of deep soil for large shade trees, safety issues and poor connectivity is inconsistent with the design principles within the ADG and the principles for Key Sites in Carlingford Precinct - The Hills DCP 2012 to create a “garden setting”.- The built form appears the same for all buildings and there is no evidence provided how the built form responds to the design character of the surrounding streetscape.- The proposal does not meet apartment solar access, natural ventilation, building separation and other key design criteria of the Apartment Design Guide.- To date, the proposal has not adequately demonstrated how a compliant scheme may address the outstanding site planning and built form issues and be consistent with the design principles for the Carlingford Precinct.

Clause 4.4 Floor Space Ratio Objectives	Council Officer Assessment
<i>(b) to provide for a built form that is compatible with the role of town and major centres.</i>	<p>The non-compliance with the FSR standard does not deliver a built form outcome that is compatible with the role of Carlingford.</p> <ul style="list-style-type: none"> - The site is significant due to its large landholding and important connector between the Light Rail station and the shopping precinct. The proposed site layout and structure has not demonstrated it has adequately responded to this role. For example, only a narrow pathway is provided between the buildings and the central park. - The scheme is lacking information regarding the relationship with the future adjacent shopping precinct and does not contribute to the enhancing the quality or identity of the area. - The site's RE1 zoning provides an opportunity to deliver significant open space for the Carlingford precinct. The built form surrounding the central park has been designed with poor vehicular and pedestrian access to the units that face the park, poor safety conditions to provide passive surveillance and poor access for people with disabilities from the proposed pathways with steps into the residential units. There is potential for privatisation of the park by the residents.

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

The written request does not challenge the underlying objective or purpose is not relevant to the development.

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

The written request contends that the objectives would be thwarted if compliance was required.

As detailed below, Council Officers assessment concludes that a compliant scheme would achieve the objectives of the zone whilst the current proposal does not. Council's key strategic planning documents recognise that the Carlingford Precinct has current sufficient capacity for high density residential development.

Furthermore, the applicant has not provided a compliant scheme to Council to demonstrate (or otherwise) that it would be unreasonable to comply with the standard, and, if a compliant scheme would be best able to address the significant outstanding planning matters.

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 written request states that strict compliance is unreasonable or unnecessary as the development standard has been virtually abandoned or destroyed by Council's own actions in granting consents departing from the standard. The former development consent (DA1103/2011/JP) is cited specific to this site, as it is considered that the FSR standard has been abandoned and / or destroyed by the consent authority given the extent of variation approved. It is noted that DA1103/2011/JP is an active consent.

Council Officers do not consider that the FSR or GFA approved as part of the former DA is a 'benchmark' in which the current application can justify a variation to the development standard for the following reasons:

- The former DA was recommended for approval by The Hills Council's Officers and subsequently approved by the Joint Regional Planning Panel and, prior to the City of Parramatta Council's and the current Sydney Central City Planning Panel roles as assessment and consent authorities;
- The former DA may be a consideration, however Council Officers are not beholden by it and the current application must be assessed against the relevant planning controls under Parramatta (former The Hills) LEP 2012 and The Hills DCP;
- The RE1 zoned land can never be included in the site area for the purposes of calculating the FSR in accordance with clause 4.5 of LEP 2012;
- Council does not agree that the former DA and its allowance to draw GFA from the open space zoned lands would relate to the matters that must be positively satisfied under Clause 4.6 (that is, it is in the public interest and sufficient environmental grounds); and
- It has significant concerns in relation to the planning mechanism employed which drew FSR from that part of the site which did not assign FSR either under an existing or draft instrument.

Therefore, it is Council Officers view that the development standard has not been abandoned or destroyed.

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 written request does not challenge that the zoning is inappropriate or that the standard is unreasonable or unnecessary.

Sufficient Environmental Planning Grounds

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. Furthermore, the decision in the Land and Environment Court case of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 established that the focus must be on the aspect of the development that contravenes the development standard, not the development as a whole.

It is considered that the written request does not demonstrate sufficient environment planning grounds for the Clause 4.6 variation to floor space ratio, as there are significant outstanding site planning matters and non-compliances with key planning controls that have not been addressed by the amended proposal. In particular, the proposed site layout and structure does not respond to the desired future character of the area due to its bulk and scale, large building footprints and inadequate communal open space and landscaping. The proposed buildings do not meet the criteria under the SEPP 65 - Apartment Design Guide in relation to natural ventilation of apartments, solar access to apartments, length of corridors, adequate building separation; provision and quality of communal open space and deep soil zones; and poor interface with the central public park. Further, the proposal does not meet the objectives and controls of The Hills DCP 2012 as its buildings do not adequately address public open space, encroach of basements

into setbacks, insufficient landscape setback to Pennant Hills Road and the proposal does not address site isolation of neighbouring properties at 27 and 29 Lloyd Avenue.

Council Officers disagree with the written justification that Pennant Hills Road can be burdened with additional density, and that the GFA has been 'moved away' from the ground plane where it would create the most impact. The proposed buildings along Pennant Hills Road have large building footprints and large connected basements which encroach on the communal open space and setback areas, creating little and fragmented opportunities for landscaping and deep soil. The significant landscape buffer which is required along the Pennant Hills Road frontage in accordance with The Hills DCP, has not been realised fully. For such a significant development site, these matters are critical.

Furthermore, the variation to floor space ratio also relies on two key reasons as put by the applicant for the variation:

- In the applicant's view the previous approval of the subject site (DA/1103/2011/JP) should be a relevant and specific consideration in assessing the merits of the current application and "*establishing the acceptable density of development on the subject site.*" It is noted that the former DA relied upon the part of the subject site that is zoned Open Space 6(a) (now RE1 Public Recreation) to be included for purposes of calculating FSR; and
- In the applicant's view, that the public benefits of the Voluntary Planning Agreement (VPA) relating to the former development consent would not be delivered if this development, and its associated non-compliance, does not proceed.

Council Officers consider that relying on the former development consent and associated VPA are not sufficient environmental planning grounds for the Clause 4.6 variation for the following reasons:

- The former DA may be a consideration, however Council Officers are not legally bound or otherwise beholden by it and the current application must be assessed against the relevant planning controls under Parramatta (former The Hills) LEP 2012 and The Hills DCP;
- Council does not agree that the former DA and its allowance to draw GFA from the open space zoned lands would relate to the matters that must be positively satisfied under Clause 4.6. Doing so for the current application would constitute an error in application of Clause 4.5;
- When the former DA and current application are compared (as only applied to 18 Shirley Street), 938sqm of GFA above what was approved is being sought by the applicant. Furthermore, based on smaller average dwelling size the proposal is seeking an additional 70 units;
- Council has concerns in relation to the planning mechanism employed which drew FSR from that part of the site which did not assign FSR either under an existing or draft instrument.
- The public benefit in the Planning Agreement fails to justify the contravention of the floor space ratio standard. Rather, it focuses upon the perceived benefits of carrying out the development as a whole rather than that part of the development which is non-complaint.
- Accordingly, Council Officers contends that the planning agreement does not apply to the current development application therefore this is not a matter for consideration.
- Notwithstanding the above, s7.4 (9)(a) of the EP&A Act outlines the limitation of a planning authority's obligation in relation to a planning agreement as follows: "(9) A planning agreement cannot impose an obligation on a planning authority— (a) to grant development consent, or (b) to exercise any function under this Act in relation to a change to an environmental planning instrument.
- Furthermore, s2.1 of City of Parramatta Council's Planning Agreements Policy (2018) states that (b) Council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, Regulation or any Act or law" and "(d) the consideration,

negotiation and assessment of a proposed planning agreement will, to the extent reasonably practicable, be separate from the consideration of the planning merits of a development application or planning proposal.”

- Council contends that reliance on the Planning Agreement as justification under clause 4.6 for departure from the development standard would not be consistent with the legislated and policy obligations and would fetter the exercise of the functions of the EP&A Act.

In summary, a number of the environmental planning grounds relied upon in the Clause 4.6 request do not relate to the particular aspect of the development that is non-compliant with the development standard and instead promote the benefits of the development as a whole.

Public Interest

Clause 4.6(4)(a)(ii) requires that the consent authority be satisfied that the development is in the public interest because it is consistent with the relevant zone objectives. The objectives of the R4 High Density Residential zone and planners assessment is provided below:

Table 12: Assessment of written Clause 4.6 Request against R4 Zone Objectives

R4 Zone Objectives	Proposal
<ul style="list-style-type: none"> <i>To provide for the housing needs of the community within a high-density residential environment.</i> 	It is noted that a compliant scheme meets the strategic land use policies of the City of Parramatta. The City of Parramatta's key strategic land use policies in relation to the Carlingford Precinct, namely the Local Strategic Planning Statement 2020 (LSPS) Council's Local Housing Strategy 2020 (LHS) 2020) identify that housing growth in City of Parramatta LGA is forecast to exceed it's 20-year Central City District Plan dwellings target as the most of this growth is already accounted for in the growth precincts, including Carlingford. This means that the Carlingford Precinct is already zoned to support substantial housing growth and has capacity under the existing controls to accommodate new housing so dwelling targets can be achieved.
<ul style="list-style-type: none"> <i>To provide a variety of housing types within a high density residential environment.</i> 	The proposal comprises of residential apartments and does not contribute any variety of housing type within the general residential zone.
<ul style="list-style-type: none"> <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> 	The proposal provides neighbourhood shops and child care centre.
<ul style="list-style-type: none"> <i>To encourage high density residential development in locations that are close to population centres and public transport routes.</i> 	The argument presented in the Report implies that Council should accept, through the development application, additional density within Carlingford Precinct, due to its proximity to centres and public transport. As outlined above, a compliant scheme would achieve the objectives of the zone as Council's key strategic planning documents identify that that Carlingford has sufficient capacity for residential development.

Concurrence

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 20-002 dated 5

May 2020. There is no limit to the level of non-compliance for which concurrence can be assumed.

e) Conclusion

In summary, it is considered that the applicant's request to vary the floor space ratio standard should be not supported for the following reasons:

- The proposal is not consistent with the objectives floor space ratio standard, as it is not compatible with the bulk, scale and character of the existing and future surrounding development, nor in consistent with its role within the Carlingford Precinct;
- There are not sufficient environmental planning grounds to justify the departure, in particular the departures from the design criteria of the SEPP 65 – Apartment Design Guidelines and objectives and controls of The Hills DCP 2012. Further Council Officers do not consider the former development consent and Planning Agreement relating to the land to be valid considerations to justify the variation to the floor space ratio standard.

The proposal is not in the public interest and not consistent with the zone objectives, as a compliant scheme would meet the housing needs of the Carlingford Precinct and the City of Parramatta.

7.8.2 Clause 4.6 Variation Assessment Height

Clause 4.6 of Parramatta (former The Hills) LEP 2012 allows the consent authority to provide an appropriate degree of flexibility in applying certain development standards, where flexibility would achieve better outcomes.

The subject application **seeks to further increase the height** as follows.

- Building A – 27m to 42.75m (**58.3% variation**)
- Building B – 27m (where it applies) to 39.6m (**46.6% variation**) & 33m (where it applies) to 39.8m (**20.6% variation**)
- Building C – 27m to 32.3m (**19.6% variation**)
- Building E – 27m to 43.4m (**60.7% variation**)
- Building F- 27m to 41.95m (**55.3% variation**)

Buildings D1 and D2 along Shirley Street are compliant with the 33m height of building control.

The applicant has submitted a clause 4.6 request seeking to justify the non-compliance and is provided at Attachment 3.

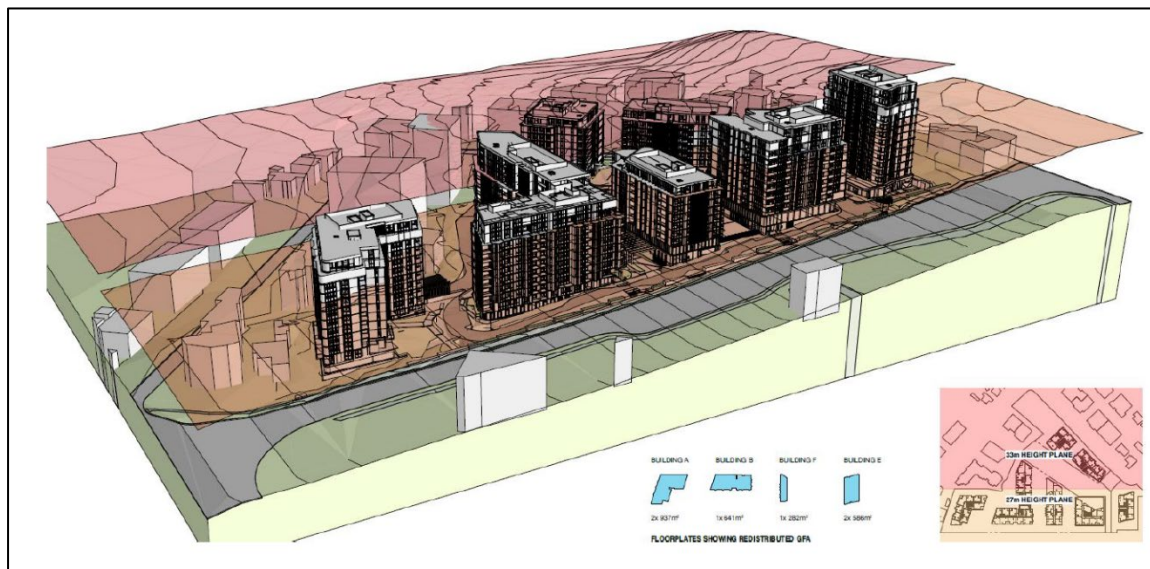


Figure 13. Proposed breach of height limit (red shading represents that area below the 27m or 33m height standard). Source: Amended Clause 4.6 Variation Building Height, Planning Ingenuity 13 October 2022

a) 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”*

b) Clause 4.6(2) – Operation of clause 4.6

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

The proposal does not comply with the Clause 4.3 ‘Height of Buildings’ development standard and as outlined in Figure 2 above, and as such the applicant has submitted a request to vary the height standard under Clause 4.6 of the Parramatta (former The Hills) 2012.

c) Clause 4.6(3) - The Applicant’s written request

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

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

The applicant has provided the following justifications for the non-compliance with the development standard (relevant extracts provided). The written request is extensive and the justifications are summarised below. The full request is included at Attachment 3.

1. The redistribution of proposed floor space

The height breach is at its greatest where buildings face Pennant Hills Road at its highest elevation, which is created through the distribution of floor area away from the ground plane and Shirley Street. The greatest height will address the widest frontage which is to a significant arterial road which assists in moderating scale. The building form that addresses the RE1 open space provides for compliant height to the northern side, providing reduced scale to Shirley Street.

2. The height control anomaly

It is considered that the spilt height controls for the subject site is anomalous in the fact that greater height (of two storeys) is allowed fronting Shirley Street (33m) whilst reduced height is

expected to face Pennant Hills Road (27m). There is no urban design reason for this approach. The proposal distributes height away from the most sensitive part of the site and the non-compliance along Pennant Hills Road is more reflective of the density desired along a major road corridor, contract to the current LEP building height mapping.

3. Voluntary Planning Agreement

The subject site benefits from an existing voluntary planning agreement (VPA) established under DA1103/2011/JP and applies to any approved current and future application under Clause 12 of the VPA. Section 4.15(1)(ia) of the EP&A Act states that any planning agreement is a matter for consideration for a development application. As the original approval established an increase in density and height supported by the public benefit afforded by the VPA, this is similarly maintained by the current application.

Further, to deny the variation and require strict compliance, the proponent would be forced to either construct the current approval which will result in an inferior form, and/ or lodge a separate application for the remaining R4 zoned land, seek the consent authority to acquire the RE1 land and therefore limit the public benefits afforded by the VPA and delivery of the subject application.

4. The variations allow distinct improvements to ground plane and public domain

The proposal has relocated floor area on the upper levels fronting Pennant Hills Road to ensure that significant curtilage is provided around the built forms and to ensure the activation and permeability of the open space. The non compliant height along Pennant Hills Road is superior to providing at this ground plane or along Shirley Street. Alternatively creating larger footprints at ground level is an inferior outcome given the bulk of the development will be adversely increased where is most prominent (at pedestrian scale).

5. The non-compliances achieve a high level of design excellence, based on site analysis

The proposal exhibits design excellence, despite non-compliance. The proposal has undergone a proponent-initiated design competition, in-depth site analysis, numerous iterations and critical internal (and external) conclusion and refinement to reach the amended outcome. Based on feedback provided by Council and the DEAP, as well as detailed review by the applicant's design team, redistribution of floor area on the upper levels along Pennant Hills Road results in the most suitable streetscape appearance, whilst protecting amenity to neighbouring properties.

The non-compliant elements of the development are designed with a variety of faced modulations and undulations, parapet roofing, framed elements, balcony articulation and glazed panelling. The non-compliance elements are generally located within recessed uppermost levels and have been purposefully designed with physical separation between buildings to improve spatial articulation.

The amended proposal provides a built form which is generally consistent with the HDGP, ADG and character of the locality.

6. The non-compliance is entirely consistent with the character of the locality and is supported by the site's unique strategic location

The proposal's height variation directly contributes and enables to ability to meet the objectives of The Hills Development Control Plan (DCP) Section 2.2 Key Sites – to provide landmark buildings, provide street level active uses and human scale in the village centre, provide a substantial number of residential units in close proximity to the training station and contribute to the local open space network.

The overall master planning of open space, buildings, and the provision of high levels of through permeability ensures that the development will comfortably nestle within the locality. The site will also provide a suitable relationship within the surrounding locality pending redevelopment of the properties which are currently underdeveloped relative to the LEP standards. Figure 14 below provides a perspective of the proposed development with surrounding potential future development.



Figure 12 Wide shot aerial perspective of proposed development with (potential) future surrounds

Figure 14. Wide shot aerial perspective of proposed development with (potential) future surrounds) Source: Amended Clause 4.6 Variation Building Height, Planning Ingenuity 13 October 2022

The variations along Pennant Hills Road will create its own inherent streetscape character. Given the high trafficked vehicular nature of Pennant Hills Road, in addition to the physical (four lane) width of the roadway, there are inherently lesser pedestrian movements and therefore the physical bulk and scale impacts are lessened. The residential flat buildings and open spaces on the opposite of Pennant Hills Road do not form an established streetscape character that need to be followed.

7. Orderly and economic use of land

The social benefits of providing additional housing stock within a highly sought after and strategically important location should be given weight in the consideration of the variation request. It would be a loss to the community (and contrary to the public interest) to deny the variation and require the removal of apartments with high levels of amenity, located conveniently proximate to public transport.

8. Limited environmental impacts

The extent of height creates no adverse additional overshadowing impacts to adjoining development to the west and south of the subject site when compared to a compliant building envelope and the approved development on the subject site. The non-compliant height does not result in any adverse privacy impacts and separation distances between the subject buildings are consistent with the objectives of the ADG. The height of buildings breach does not result in view loss. The height variations permit numerous benefits which outweigh any negative impacts by the proposal.

9. Other

The proposed development meets the objectives of the development standard and the R4 High Density Residential zone. The proposal achieves the objects in Section 1.3 of the EP&A Act, specially through the orderly and economic use of land through the redevelopment of an underutilised site for residential uses; and the development promotes good design and amenity. Further the variation will give better effect to the aims of SEPP 65.

10. Consistency with the Zone and Height of Building Objectives

That the proposed development is consistent with objectives contained in Clause 4.3 Height of Buildings of the LEP. The amended proposal has been designed to ensure compatibility with the existing and future character of the locality, despite non-compliances. The non-compliances directly respond to the objectives of the Key Sites within the Carlingford Precinct DCP. The proposal has been designed with adequate separation to improve solar access gain to the neighbouring properties. The amended proposal will result in less overshadowing when compared to the approved development. The proposal has been designed with adequate setbacks between neighbouring properties and between proposed buildings on the subject site to maintain visual privacy.

That the proposed development is consistent with objectives of the R4 High Density Residential Zone, as it provides for the housing needs of the community through providing a mixture of apartment typologies within a high density environment. The proposal includes the provision of centre based child care and neighbourhood shops which will meet the day to day needs of the residents on the site and surrounds. The development is in close proximity to B2 zoned land, public open space and the Carlingford light rail.

d) Clause 4.6(4) - Consent Authority Consideration 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.”*

Unreasonable and Unnecessary

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.*

The written request contends that the development is consistent with the standard and zone objectives.

Table 13: Assessment of written Clause 4.6 Request against Clause 4.3 Height Objectives

Clause 4.3 Height Objectives	Assessment
(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape.	<ul style="list-style-type: none"> - The heights of the Carlingford Precinct has been established based on design principles set out in The Hills DCP 2012 - Carlingford Precinct, to create tallest towers around the light rail station to create landmarks and those developments further away (including the subject site) are designed so heights are diminished when viewed in its topographic context. The proposed variation to height is not consistent with this core design principle. - The height variation of Building E at 43.4m (60.7% variation to 27m height) is not in keeping with the adjoining future development to the north east (B2 zoned land along Pennant Hills Road) maximum height of 28m. - The height variation of Building A at 42.75m (58.3% variation to 27m height) is not compatible with to adjacent sites to the south west at 27m. - The western streetscape of Pennant Hills Road has a maximum height of building of 27m or 28m (8-9 storeys) and the eastern side ranges from maximum heights of 9m to 17.5m to 21m (3, 5 and 6/7 storeys). Buildings proposed between 32.3m to 43.4m (between 9 and 13 storeys) are not compatible with the overall streetscape.
(b) to minimise the impact of overshadowing, visual impact, and	<ul style="list-style-type: none"> - The building separation (approx. 8m) between Building A and the adjoining site at 29 Lloyds Avenue does not meet

Clause 4.3 Height Objectives	Assessment
loss of privacy on adjoining properties and open space areas.	<p>ADG criteria for visual privacy for future development sites with high density residential zoning.</p> <ul style="list-style-type: none"> - The building separation between Building E and the adjoining site at 283 Pennant Hills Road (approx. 6.5m) does not meet ADG criteria for visual privacy for future development sites with high density business zoning. - Overshadowing resulting from the development on adjoining properties at 27 & 29 Lloyds Avenue and 2-6 Shirley Street does not comply with The Hills DCP controls requiring at least 4 hours of solar access between 9am and 3pm in midwinter. - Inadequate solar access provision on the outdoor child care centre outdoor play area. - No shadow diagrams have been provided which quantifies the overshadowing impacts of a compliant development as compared to the proposed development.

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

The applicant does not suggest that objective is not relevant to the development.

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

The applicant does not suggest that the objectives would be thwarted if compliance was required; rather that the objectives are achieved despite the breach of the height of buildings development standard.

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 standard has been abandoned.

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

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

Sufficient Environmental Planning Grounds

The decision in the Land and 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. Furthermore, the decision in the Land and Environment Court case of *(Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 established that the focus must be on the aspect of the development that contravenes the development standard, not the development as a whole.

It is considered that the written request does not demonstrate sufficient environment planning grounds for the Clause 4.6 variation to height of buildings as there are significant outstanding site planning matters and non-compliances with key planning controls that have not been addressed by the amended proposal. In addition, Council Officers disagrees with the written justification that the additional height results in the slimming of towers. In particular:

- The proposal has large building footprints and resultant inadequate communal open space, deep soil and landscaping.
- The proposed buildings do not meet the criteria under the SEPP 65 - Apartment Design Guide in relation to natural ventilation of apartments, solar access to apartments, length of corridors, adequate building separation; provision and quality of communal open space and deep soil zones; and poor interface with the central public park.
- The proposal does not meet the objectives and controls of The Hills DCP 2012 as its buildings do not adequately address public open space, encroach of basements into setbacks, insufficient landscape setback to Pennant Hills Road and the proposal does not address site isolation of neighbouring properties at 27 and 29 Lloyd Avenue.

The written requests argues that *"the extent of the additional height creates no adverse additional overshadowing impacts"*. Council Officers are unable to verify this statement as there is no comparison of overshadowing from a compliant scheme versus the proposal.

Further the written request contends that the height control for the subject site is *"anomalous in the fact that greater height (of two storeys) is allowed fronting Shirley Street whilst reduced height is expected to face Pennant Hills Road, a major aerial road"* and *"There is no urban design reason for this approach to height limits"*. Furthermore, the Report states in relation to Shirley Street and locating height variation along Pennant Hill Road that it is *"ultimately distributing height away from the most sensitive part of the site."*

In response, Council Officers consider the following:

- The buildings located along Shirley Street (Buildings D1 and D2) are at compliant height, therefore there is no redistribution of height to Pennant Hills Road; and
- There are clearly established urban design rationale for the height standards established for Carlingford. The Structure Plan and Illustrative Masterplan principles outlined in the Part D Section 12 Carlingford Precinct of the Hornsby DCP 2013, aim to locate the tallest buildings around the train station (now light rail) stop in order to create a landmark for the village centre and other heights within the Precinct consider the topography of the precinct (particularly those along Pennant Hills Road), as follows:
 - *"Building heights should increase the closer sites are to the train station." The concentration of density and landmark buildings should be closer to the train (planned light rail) station to provide an orientation landmark for the village centre.*
 - *"Response of Building Bulk and Scale to Topography" with high rise development are to be concentrated in the low ground close to the train station. This is an opportunity for the apparent height of high-rise buildings to be diminished when viewed in their topographic context."*
 - *"Built form should respond to street hierarchy", with a maximum of 9 storeys buildings along Pennant Hills Road to achieve a presence associated with deep setbacks for major planting, footpath upgrades and pedestrian amenity."*

Furthermore, the variation to height of buildings also relies the argument that the public benefits of the Voluntary Planning Agreement (VPA) relating to the former development consent would not be delivered if this development, and its associated non-compliance, does not proceed.

Council Officers consider that relying on the VPA are not sufficient environmental planning grounds for the Clause 4.6 variation for the following reasons:

- The public domain dedication and embellishment to be secured under the Planning Agreement has no relationship with the additional height that is sought to be justified under the amended clause 4.6 request. That is, the public benefit in the Planning Agreement fails to justify the contravention of the height of buildings standard. Rather, it focuses upon the perceived benefits of carrying out the development as a whole rather than that part of the development which is non-complaint.
- Council Officers contends that the planning agreement does not apply to the current development application therefore this is not a matter for consideration.
- Notwithstanding the above, s7.4 (9)(a) of the EP&A Act outlines the limitation of a planning authority's obligation in relation to a planning agreement as follows: "(9) A planning agreement cannot impose an obligation on a planning authority— (a) to grant development consent, or (b) to exercise any function under this Act in relation to a change to an environmental planning instrument.
- Section 2.1 of City of Parramatta Council's Planning Agreements Policy (2018) states that (b) Council will not allow planning agreements to improperly fetter the exercise of its functions under the Act, Regulation or any Act or law" and "(d) the consideration, negotiation and assessment of a proposed planning agreement will, to the extent reasonably practicable, be separate from the consideration of the planning merits of a development application or planning proposal."

In summary the Clause 4.6 request does not demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard in that a number of grounds focus upon the benefits of carrying out the development as a whole rather than the benefits of the additional height sought.

Public Interest

Clause 4.6(4)(a)(ii) requires that the consent authority be satisfied that the development is in the public interest because it is consistent with the relevant zone objectives. The objectives of the R4 High Density Residential zone and planners assessment is provided below:

Table 14: Assessment of written Clause 4.6 Request against R4 Zone Objectives

R4 Zone Objectives	Proposal
<ul style="list-style-type: none"> • To provide for the housing needs of the community within a high-density residential environment. 	<p>It is demonstrated through the written request that the height variation is directly tied to the addition of storeys to buildings, therefore density, along Pennant Hills Road.</p> <p>It is noted that a compliant scheme meets the strategic land use policies of the City of Parramatta. The City of Parramatta's key strategic land use policies in relation to the Carlingford Precinct, namely the Local Strategic Planning Statement 2020 (LSPS) Council's Local Housing Strategy 2020 (LHS) 2020) identify that housing growth in City of Parramatta LGA is forecast to exceed it's 20-year Central City District Plan dwellings target as the most of this growth is already accounted for in the growth precincts, including Carlingford. This means that the Carlingford Precinct is already zoned to support substantial housing growth and has capacity under the existing controls to accommodate new housing so dwelling targets can be achieved.</p>

R4 Zone Objectives	Proposal
<ul style="list-style-type: none"> To provide a variety of housing types within a high density residential environment. 	The proposal comprises of residential apartments and does not contribute any variety of housing type within the general residential zone.
<ul style="list-style-type: none"> To enable other land uses that provide facilities or services to meet the day to day needs of residents. 	The proposal provides neighbourhood shops and child care centre. The written request states that extent of the non-compliance has been “artificially increased” through the provision of non-residential uses at ground level which have resulted in greater floor to ceiling heights. However Council Officers note that the extent of variation due to a floor to ceiling height of non-residential uses is relatively minor.
<ul style="list-style-type: none"> To encourage high density residential development in locations that are close to population centres and public transport routes. 	The argument presented in the written request implies that Council should accept additional height (and resultant density) within the Carlingford Precinct, due to its proximity to centres and public transport. As outlined above, a compliant scheme would achieve the objectives of the zone as Council’s key strategic planning documents identify that that Carlingford has sufficient capacity for residential development.

Concurrence

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.

e) Conclusion

In summary, it is considered that the applicant’s request to vary the height standard should be not supported for the following reasons:

- The proposal is not consistent with the objectives of the height standard, as it is not compatible with streetscape character or heights of the existing and future surrounding development and creates visual privacy and solar access issues.
- There are not sufficient environmental planning grounds to justify the departure, in particular the departures from the design criteria of the SEPP 65 – Apartment Design Guidelines and objectives and controls of The Hills DCP 2012. Further Council Officers do not consider the former development consent and VPA relating to the land key considerations to justify the variation to the height standard.
- The proposal is not in the public interest and not consistent with the zone objectives, as a compliant scheme would meet the housing needs of the Carlingford Precinct and the City of Parramatta.

8. Draft Environmental Planning Instruments

The following draft environmental planning instrument is relevant to the subject application:

8.1 Draft Consolidated Parramatta LEP 20XX

The site is subject to the Draft Parramatta Local Environmental Plan (LEP), which is the consolidated of existing planning controls within the City of Parramatta. It is noted that the LEP was placed on public exhibition between Monday 31 August 2020 until Monday 12 October 2020, and therefore is a formal matter for consideration for the purposes of section 4.15 of the Act. 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 land use zoning; floor space ratio and height, and land reservation and acquisition maps for this site. The following proposed controls will result in changes to the current Parramatta (the Former Hills) 2012, which may be relevant to this application:

- Clause 5.4 controls relating to miscellaneous permissible uses, that is, to reduce the maximum size of neighbourhood shops in R4 zone to 80sqm (from 100sqm under the current LEP). This amendment is considered minor and in light of the current planning proposal (refer Section 8.2 below) may not be of consequence.
- The draft LEP proposes not to carry over Clause 4.1A of Parramatta (former The Hills) LEP which requires a minimum lot size of 4,000sqm to develop a residential flat building on R4 High Density Residential. This is discussed further in relation to site isolation in Section 9.1 of this Report (The Hills DCP 2012) as it relates to adjacent properties at 27 and 29 Lloyd Ave.

8.2 Planning Proposal relating to the subject site

The site is subject to a Planning Proposal which intends to amend the Parramatta (Former The Hills) LEP 2012 and proposes permit 'shops', 'food and drink premises', 'business premises' and 'recreational facility (indoor)' up to a gross floor area (GFA) of 2,000sqm in relation to the R4 High Density Residential area of the site.

The Planning Proposal was placed on public exhibition between 12 October 2022 and 9 November 2022, and therefore is a formal matter for consideration for the purposes of section 4.15 of the Act. The subject development application has not included the above uses and in the event the LEP Amendment is gazetted, will form part of a future development application.

9. The Hills Development Control Plan 2012

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within The Hills DCP 2012. **Table X** and detail below provides an evaluation against the relevant controls. Note where there is conflict between HDCCP 2013 and the SEPPs listed above, the SEPP controls prevail to the extent of the inconsistency and as such are not included in the evaluation.

Table 15: Part B Section 5, The Hills DCP 2012 Compliance Table

PART B SECTION 5 – RESIDENTIAL FLAT BUILDING		
Clause	Comment	Complies
3.1 Site Requirements Min. 30m road frontage and is not accessed via right of access way or access handle.	The site exceeds the road frontage minimums.	Yes
The proposal will not result in isolation of adjoining lots so they are incapable of multi dwelling housing development	The proposal has not adequately demonstrated that it does not result in the isolation of adjoining lots at 27 and 29 Lloyds Avenue, so that they are incapable of multi dwelling housing development. Further discussion on this matter below.	No (refer discussion below)
3.2 Site Analysis	The development is designed to respect site constraints including topography, drainage, and natural environment. The proposal will appear sympathetic with the character of the area with minimal impact on the amenities of the neighbouring properties. Siting of development takes into account solar passive design principles.	No

PART B SECTION 5 – RESIDENTIAL FLAT BUILDING														
Clause	Comment	Complies												
3.7 Building Length <i>The maximum linear length of any residential flat building is to be 50m</i>	<p>Buildings A, D, E, D1 and D2 are below 50m in length.</p> <p>Building B is in excess of 63m as measured along Pennant Hills Road frontage, and over 86m in length. Building C has a length of over 64m (width of approx. 21m).</p>	No – Buildings B and C												
3.11 Unit Layout and Design <i>(b) No more than 25% of the dwelling yield is to comprise either studio or one-bedroom apartments,</i> <i>(c) No less than 10% of the dwelling yield is to comprise apartments with three or more bedrooms.</i>	<p>The proposal seeks the following unit mix:</p> <table border="1"> <thead> <tr> <th>Bedrooms</th><th>Control</th><th>Proportion</th></tr> </thead> <tbody> <tr> <td>1 bedroom</td><td>max. 25%</td><td>20%</td></tr> <tr> <td>2 bedroom</td><td>-</td><td>52%</td></tr> <tr> <td>3+ bedroom</td><td>min. 10%</td><td>28%</td></tr> </tbody> </table>	Bedrooms	Control	Proportion	1 bedroom	max. 25%	20%	2 bedroom	-	52%	3+ bedroom	min. 10%	28%	Yes
Bedrooms	Control	Proportion												
1 bedroom	max. 25%	20%												
2 bedroom	-	52%												
3+ bedroom	min. 10%	28%												

Table 16: Part C Section 1 Car Parking - The Hills DCP 2012 Compliance Table

PART C SECTION 1 – CAR PARKING		
Clause	Comment	Complies
Residential Flat Buildings	Refer SEPP 65 assessment Table in relation to car parking for the residential component of the development.	Yes
Retail 2 spaces per 18.5m ² GLFA = $1 \times (1,735\text{m}^2 \text{ retail area} \div 18.5) = 93.8$ (94)	The proposal provides 94 retail spaces. This meets the DCP rates for retail and is considered acceptable.	Yes
Child Care Centre 1 space per employee = $1 \times 20 \text{ staff} = 20$ 1 space per 6 children enrolled for visitors and/or parent parking = $1 \times (110 \text{ children} \div 6) = 18.3$ (19) Total Child Care Spaces = 39	The proposed development provides 38 child care spaces, which is one (1) child care parking space shortfall. However, it is expected that some of the child care centre's places will be filled by residents of the proposed development and do not use a vehicle for dropping off and picking up the children. Therefore the one parking shortfall associated with the child care centre can be considered acceptable.	No, acceptable minor non-compliance
Bicycle Parking Retail/Shops: 2 spaces plus 5% of the total number of car spaces required where – New retail developments exceed GFLA of 5,000m ² or Additions to existing developments that increase the size of the total development to greater than 5,000m ² GFLA.	<p>281 bicycle spaces are provided, as shown on the submitted plans</p> <p>Based on the Hills DCP 2012, bicycle parking is not required for residential and child care centre developments.</p> <p>In addition, total retail floor area is 1,735m² which is lower than 5,000m². As a result, bicycle parking is not required.</p>	Yes

Motorcycle Parking <ul style="list-style-type: none"> Motorcycle parking is to be provided for all developments with on-site parking of more than 50 car parking spaces, at a rate of 1 motorcycle parking space for every 50 car parking spaces or part thereof. $1 \times (864 \text{ car parking spaces} \div 50) = 17.3$ (18) Total = 18 motorcycle spaces	17 motorcycle spaces are provided, as shown on the submitted plans. The proposed development has one (1) motorcycle parking shortfall. This requirement can be conditioned.	No, acceptable minor non-compliance, can be conditioned.
Loading requirements Mixed Small Shops: <ul style="list-style-type: none"> 2 spaces for the first 465m² 2 for the next 465m² 1 for each extra 530m² $= 1 \times (805\text{m}^2 \text{ retail area} \div 530) = 1.5$ (2) Total = 6 loading bays	Seven (7) loading bays are provided, as shown on the submitted plans.	Yes

Table 17 Part D Section 12, The Hills DCP 2012 Compliance Table

PART D SECTION 12 – CARLINGFORD PRECINCT	
Clause	Complies
3.3 Desired Future Character Statements <u>(text underlined to highlight proposal's inconsistency)</u> <i>Southern Precinct</i> The subject site is located within the Southern Precinct, and part of the site that is 18 Shirley Street, is nominated as a Key Site. <i>“The character of the southern end of the Precinct in the vicinity of the train station will be largely determined by the development of landmark buildings on the key sites and their role in creating street-oriented village built form and character, open spaces and a civic plaza linked to the station.</i> <i>In key sites affected by electricity easements, developments can contribute to publicly accessible open space with strong connections to the local open space network and civic area.</i> <u><i>Buildings on key sites and in the southern side of the Precinct generally have been placed to provide transition in building scale and to provide natural ventilation, solar access, outlook from apartments and year round sunlight to communal open spaces.</i></u> <u><i>Streetscapes are to be resident and visitor friendly in an urban landscaped setting associated with a street hierarchy that promotes a safe pedestrian and vehicular environment. The landscape works in the public realm help to define the character areas in the Precinct. These characters range from the more urban, civic and train station oriented village to the suburban character further from the train station.”</i></u>	No Refer to discussion above in the ADG, LEP & Clause 4.6.

<p>3.5 Structure Plan – Open Space Strategy <u>(text underlined to highlight proposal's inconsistency)</u></p> <p>Principle: Open space and built form relationships <i>Several key sites close to the train station have easements for the existing electricity pylons. Once the pylons are removed, the former overhead easement can contribute to publicly accessible open space surrounding new developments and linked to the open space adjacent to Council's existing library building.</i></p> <p><u>In areas further from the train station, use key sites and flood prone land to create communal open spaces and new parks addressed by buildings. These parks help to impart a garden suburb character to complement residential buildings set in generous private / communal open space.</u></p> <p><u>In areas further from the train station, site planning for buildings could aim to amalgamate private green spaces to optimise deep soil planting areas, communal open space, shared views and landscape and contribute to the garden suburb theme.</u></p> <p>Principle: Quality residential open space areas <i>Communal open space at ground or podium level for residents is to be provided. This open space should enhance the quality of the built environment by providing opportunities for landscaping in a parkland setting as well as providing a visual and activity focus for the new residential community created through this development.</i></p> <p><u>All communal open space areas are to accommodate appropriate facilities such as picnic and barbeque areas, children's play area and grassed areas for passive recreational use. Developments are to include designated communal open space areas with year round solar access.</u></p> <p><u>Water Sensitive Urban Design (WSUD) guidelines and On-site Stormwater Detention (OSD) principles are to be incorporated in both private and communal open space design.</u></p>	<p>No Refer to discussion above in the LEP & Clause 4.6.</p>
<p>3.6 Structure Plan – Public Domain <u>(text underlined to highlight proposal's inconsistency)</u></p> <p>Principle: Streetscape - <i>Street tree planting and landscaping is to be consistent with the Carlingford Precinct Public Domain Plan</i></p> <p>Principle: Public domain improvements. <u>Create new public parks using WSUD for floodways associated with the site amalgamations producing key sites in the Janell Crescent area</u></p> <p>Principle: Infrastructure upgrades - <u>It is proposed to underground both the street power lines and the high voltage power lines and pylons to remove the visual impact of the existing structure and provide public open space within the easement.</u></p> <p>Principle: Pedestrian connections - <u>Provide improved footpath connections and unified hardscape treatment of the public realm. - Provide cycle and pedestrian paths responding to desire lines</u></p> <p>Principle: Stormwater management. <u>On the southern side of Post Office Street a major opportunity arises from site amalgamation to provide a series of linked open spaces. These spaces could be combined with a stormwater capture system incorporating linked retention basins along the water course to form a "green spine" linking the upper Pennant Hills Road section of the Precinct to the lower section being the public open space adjacent to the railway line. - Install a variety of bio-retention</u></p>	<p>No</p>

<p><u>measures including grass depressions and swales on street edges and within open space</u></p> <p>Principle: Sustainability and WSUD - <u>Development in the Precinct will be required to undertake sustainability initiatives: stormwater capture, bio-retention basins, integration of watercourses with open space and landscaping.</u></p>		
<p>3.7 Structure Plan (Indicative Building Height and FSR) Principle: Building heights should increase the closer sites are to the train station Concentration of the residential density close to the station will maximise usage of the train service by the maximum number of people in the shortest, most convenient walking distance from the station. Concentration of high-rise buildings close to the station will provide an orienting landmark for the village centre.</p> <p>Principle: Built Form Should Address Open Space <u>In areas further from the train station, building placement should address adjacent open space to allow interaction of residents with that space and for passive surveillance.</u></p> <p>Principle: Built Form Should Respond To Street Hierarchy In general, the low-rise buildings are proposed together with lower FSR limits on the local roads within the northern part of Precinct. This approach responds to the lower scale suburban desired future character for areas further from the train station. Maximum of 9 storeys is proposed for development fronting Pennant Hills Road. This is to achieve a presence associated with deep setbacks for major planting, footpath upgrades and pedestrian amenities.</p>		<p>No Refer to discussion above in the LEP & Clause 4.6.</p>
<p>3.8 Illustrative Masterplan Principle: Response of Building Bulk and Scale to Topography Site specific development controls are to be provided for Key Sites in the vicinity of the train station to minimise overshadowing and create pedestrian scale podiums containing retail and commercial uses and associated public open spaces.</p> <p>High rise developments are to be concentrated in the low ground close to the train station. This is an opportunity for the apparent height of high-rise buildings to be diminished when viewed in their topographic context. The proposed building envelopes thus take up the opportunity for the prominence of tower buildings to be visually absorbed by the backdrop of the slopes leading up to the ridge lines along which runs Pennant Hills Road.</p> <p>Provide for home office and ancillary commercial and convenience retail uses on ground floor areas of developments on pedestrian routes to the train station.</p> <p><u>In areas further from the train station, the built form, site coverage, setbacks and composition of boundaries and building placement are to create a garden suburb character. This character should complement, in style and function, the public open space adjacent to the train station and community facilities to the east. This integrated approach is key to producing a synergy and coherence between private development and the public realm. This will be a unique place making force for a possible civic hub in the vicinity of the train station/scout hall.</u></p>		<p>No Refer to discussion above in the LEP & Clause 4.6.</p>
Clause	Comment	Complies
4.4 Site Requirements	The development site area meets the minimums site areas shown in Figure 8 (18 Shirley Street) and has successfully amalgamated with adjacent site in order to promote the efficient use of land.	Yes
4.10 Landscape Design	The proposal does not demonstrate that the public domain or landscape areas and buildings are designed in an integrated manner. The proposal's communal open space is	No

	currently fragmented and lacks function. There is poorly located deep soil zoned within the site, particularly in the south west. A development application of this scale should submit a wayfinding plan, lighting and urban elements plan. Greater landscape amenity should be achieved within the Pennant Hills Road setback to facilitate large long term tree canopy.	
4.11 Open Space <i>Min communal open space provision required is atleast 30% of site area, with larger sites have potential for more</i>	Proposed communal open space 4,843sqm at ground level and an additional 610sqm of indoor pool and gym areas in Buildings B and F – total 5,453sqm or 25.5% .	No (refer discussion ADG Section 7.2 of this report)
4.13 Solar Access <i>All adjoining residential buildings and the major part of their landscape receive atleast 4 hours of sunlit between 9am and 3pm on 21 June.</i>	The submitted shadow analysis indicates that additional overshadowing occurs to the residential buildings and their landscape areas at 2-6 Shirley Street and 27-29 Lloyds Avenue between 9am and 12pm and therefore does not met the control. The impact on these sites are discussed in detail below.	No
4.15 Vehicle Access	Council's Traffic Engineer has reviewed the submitted plans and supports the vehicle access design to the basement including access driveway widths, driveway gradients, car space widths and on-site manoeuvring. Amendments (which can be conditioned) relate to sight lines and column locations.	Yes
4.19 Stormwater Management	Council's Development Engineer considers the stormwater disposal system in relation to the development satisfactory, subject to minor issues being addressed. Council requires further information in relation to the drainage of the RE1 zoned lands, including the central park, community park and roadway to ensure adequate drainage; overland flow management and ownership of associated infrastructure. There is also opportunity to incorporate WSUD initiatives within the RE1 lands. Refer discussion below Section 9 – The Hills DCP.	No
4.23 Ground Floor Apartments	All apartments appear to be on podium and do not provide at ground courtyards.	
4.31 Adaptable Housing <i>Min. 5% or (3/48) units must be accessible or capable of being adapted.</i>	Proposed – 5% or (31) units are identified as adaptable.	Yes
4.32 Site facilities	The development accommodates appropriate waste holding area for collection, recycling bins and bulky waste. The laundry facilities are located within individual units. The location of the mailbox has not been provided, however conditions can be resolved.	Yes
4.33 Ecologically Sustainable Development	The submitted plans does not demonstrate the proposed development complies with the requirements of ESD.	No
4.35 Access, Safety and Security	An access report has been provided with the application by ABE consulting. Outstanding matters have been identified including: <ul style="list-style-type: none"> - The internal public domain pathways between Buildings B, C, F and E have stairs with no obvious alternatives (as required by BCA D3.2 Access to Buildings) - The drop off areas require further detail to ensure compliance with widths and kerbing 	No , matters could be addressed to ensure compliance with relevant standards.

	<ul style="list-style-type: none"> - Accessible areas to the retail areas from the units are convoluted - End of trip facilities should include accessible toilets and showers - Details relating to accessibility to pool areas have not been demonstrated. - The pre-adaption layout of the adaptable units require further review and may require further redesign. <p>A Crime Prevention Through Environmental Design report was submitted as part of the amended development and it is recommended that the recommendations be incorporated within the proposal.</p> <p>Further any consent should incorporate conditions:</p> <ul style="list-style-type: none"> - Relating to the location and security of mailboxes for each building - Implementation of a CCTV system of building and car park entry and exit points of the buildings containing the childcare centre and commercial tenancies - Security and access control systems to be provided to private residential areas or communal facilities not open to the public - Security and access and design of basement storage units. 	
4.37 Geotechnical	The application included a Geotechnical Report indicating the site is capable of supporting the development in line with recommendations presented in this report include specific issues to be addressed during the construction phase of the project.	Yes
5.4 Block 17 Janell Crescent (Note: applying only to 18 Shirley Street)		
Clause	Comment	Complies
Design principle <i>This is a key site by virtue of its large size which provides an opportunity to develop a substantial number of units in a single amalgamated site with strong connections to the local open space green spine of the precinct.</i>		No
Building Footprint and Deep Soil Cover <i>Maximum 40%</i>	The building footprint of the site is 9,690sqm, which is 45.4% of the site area.	No
Building Setback from Boundaries <ul style="list-style-type: none"> • 12m setback from the centre line of the high voltage power lines. • 6m side setbacks • 6m setback to Shirley Street. • 10m setback to Pennant Hills Road. 	The proposed setbacks: <ul style="list-style-type: none"> - More than 12m setback from the centre of the high voltage power lines - Buildings A to boundary– side setback 8m, however does not comply with building separation requirements - Building E to boundary – side setback 6m and does not comply with ADG building separation requirements. - Buildings D1 and D2 – 6m from Shirley Street - Buildings A, B, C, E & F – majority 10m from Pennant Hills Road, however less than 10m for approximately 30% of the length. Refer detailed discussion below. 	Yes No (refer ADG assessment) Yes No (refer discussion of Pennant Hills Road setback below)
Residential to be provided on all floors.	The Parramatta (Former the Hills) allows for neighbourhood shops of no larger than 100sqm within R4 zones. The proposal is compliant with the LEP control.	No, however satisfied via LEP control.

Deep soil planting Minimum 15% of total site area	The proposal provides 15.5% or 3,305sqm (of deep soil planting (unencumbered by basements) across the site. Refer ADG assessment in relation to deep soil in Section 7.2 of this report.	Yes (refer further discussion ADG compliance Section 7.2)
Vehicular access points (refer Figure 17)	<p>Vehicular access to the site is proposed via Shirley Street, consistent with Figure 17 of the DCP (Figure 15 below). It is noted that the DCP applies only to land at 18 Shirley Street and the proposal includes additional sites along Pennant Hills Road.</p> <div data-bbox="523 506 1233 1144" data-label="Image"> </div> <p>Figure 15: Figure 17 of Part DD Section 12 of the Hills DCP 2012</p>	Yes

9.1 Isolated Lots

Section 5 of Part B of The Hills DCP states that “(c) A residential flat building development shall not isolate adjoining lots so that they are incapable of multi dwelling housing development, meaning there will be insufficient area to meet the minimum site area requirement in Clause 4.1A Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings of the LEP 2012.”

As identified in Figure 16, 27 and 29 Lloyds Avenue are located directly to the south of the subject site and in the Parramatta (The Former Hills) LEP 2021 the sites are zoned R4 High Density Development, with a height of building 27m and FSR of 2.3:1. 27 Lloyds Avenue contains the Carlingford Uniting Church ~988sqm in area, and 29 Lloyds Avenue is a single dwelling house and is ~946sqm in area. The adjacent sites at 2-6 Shirley Street and 8 Shirley Street are strata developments.

It is noted that Clause 4.1A of Parramatta (former The Hills) LEP 2012 requires a minimum lot size of 4,000sqm to develop a residential flat building on R4 High Density Residential. It is noted that the combined area of 27 and 29 Lloyd Avenue is below 4,000sqm making it unsuitable for a high density redevelopment and therefore site isolation would result. However the draft Parramatta LEP 20XX proposes not to carry over Clause 4.1A and therefore a high density future redevelopment might be possible.

Notwithstanding, the proposal has not adequately demonstrated that it does not result in the isolation of adjoining lots at 27 and 29 Lloyds Avenue, so that they are capable of multi dwelling

housing development. It is noted that the submitted Design Report states a feasibility assessment of these sites has been undertaken, but not presented in the documentation. Furthermore, the proposal should demonstrate the potential built form on the site to satisfy the building separation distance (as identified in ADG assessment in Section 7.2) of Building A to 29 Lloyd Avenue

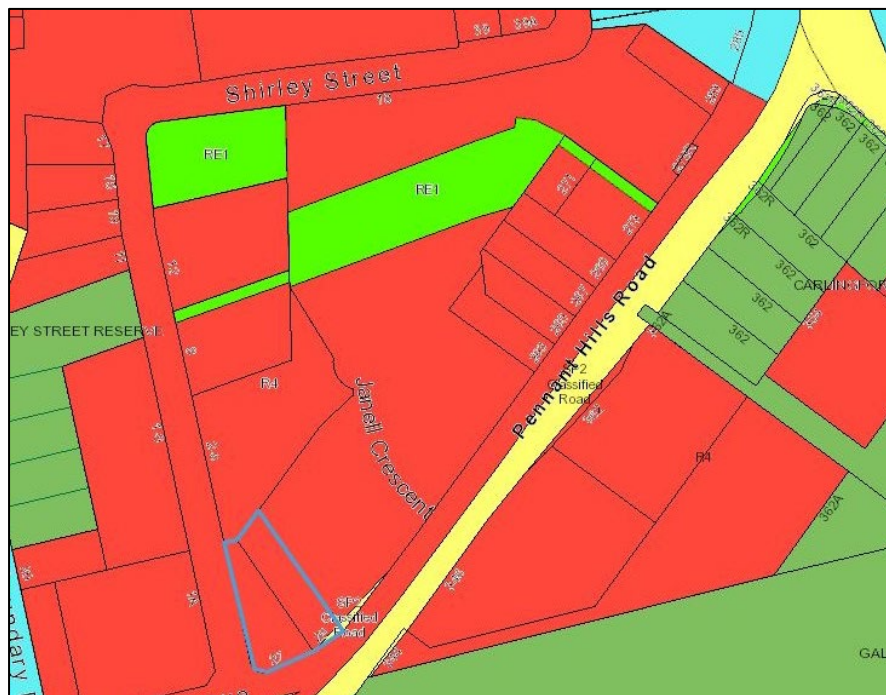


Figure 16: 27 & 29 Lloyds Avenue (outlined in blue) overall land use zoning map (Parramatta (Former The Hills) LEP 2012)

9.2 Solar Access to adjoining sites

The Hills DCP requires that “All adjoining residential buildings and the major part of their landscape receive at least 4 hours of sunlight between 9am and 3pm on 21 June.” The proposal is not compliant with the DCP control in relation to the following adjoining properties;

- The proposal will result in additional overshadowing on 2-6 Shirley Street’ an existing residential units complex and on its communal open space (including outdoor pool) between 9am and 12pm, noting additional overshadowing to the rear of the property at 12pm.
- The proposal will result in additional overshadowing on adjacent single dwelling at 29 Lloyds Avenue and 27 Lloyds Avenue (Church) between 9am and 12pm, with some overshadowing at 12pm. These sites are zoned R4 and have development potential (refer detail above).

It is noted that the shadow analysis submitted does not provide a comparison of the impact of the height variation on the overshadowing impact on adjoining properties.

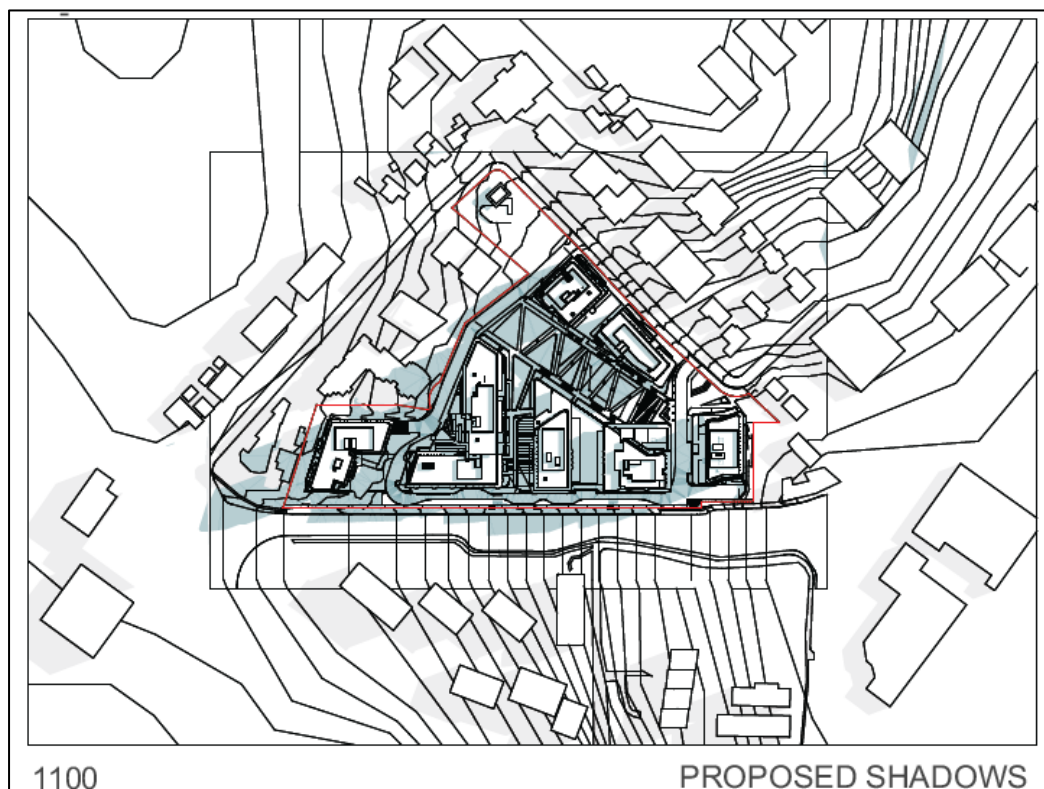


Figure 17: Proposed shadow at 11am on adjoining properties (source FK Shadow Diagrams DA-402)

Additional overshadowing due to the development will occur to residential properties opposite the site at 346 and 362 Pennant Hill Road between 1pm and 3pm. Additional overshadowing will be created by the development between 1pm and 3pm. In these instances, the DCP requirements are met as solar access is maintained for 4 hours to these properties.

9.3 Pennant Hills Road Setback

The DCP requires a minimum 10m landscape setback along Pennant Hills Road which should facilitate large canopy trees which provide amenity to both residents and pedestrians and potentially soften the scale of large buildings. The proposal includes a setback along Pennant Hills Road which contains approximately a landscape strip (of variable width less than 5m), an internal road and series of drop off areas and footpaths to the building edge.

Transport for NSW do not support the location of trees which may overhang onto Pennant Hills Road. Further Ausgrid do not support trees which impact on the existing overhead powerlines. Section 3.6 of Part D of The Hills DCP requires that street powerlines be undergrounded.

Council Officers require a minimum 6m (for the majority of the length) landscape area to facilitate large canopy trees to be planted at 8-10m intervals. In addition a continuous footpath along the building edge is required. The setback shall be free of basement encroachment. Due to the addition of the internal road, and any constraints of the roadway, buildings and powerlines (if not undergrounded), the total setback may be required to be widened to 12m-15m.

9.4 Open Space

Community Park

The corner location and landscape of the Community Park is desirable open space outcome for the community. It is understood from the submitted documentation that the proposal does not embellish the Community Park and is only to dedicate the land as per the existing Planning Agreement requirements (refer Section 10 below).

Central Park

Council Officers recognise that the configuration and topography of the RE1 lands in the centre of the site, known as 'Central Park' creates challenges in achieving a balance between useable open space and adequate accessibility for visitors with limited mobility as well as ongoing maintenance. The current design of the Central Park is not acceptable for Council Officer for the following reasons:

- The park is surrounded by private buildings (with entries to the back) and presents as a private space. This negatively affects perceived safety and sense of ownership and welcome to this public place.
- Adequate vehicular access for ongoing maintenance and operational purposes, future capital works activity and emergency access is not delivered in the design. The current design would require workers to traverse a complex length of pedestrian pathways to access different areas, which will require non-standard treatment and result in an unsustainable ongoing cost to Council.
- The functionality and size of park spaces is constrained by many pathway crossings proposed to achieve compliant AS1428 access. The zig zag paths overly dominate the proposed park spaces and provide circuitous site wide connections which are not supported.
- Site topography is likely to require significant retaining walls to achieve the design intent of flexible gathering lawns. An additional mid-park section is required to more clearly illustrate the height and extent of retaining walls, planter beds, pathway widths and other significant hard landscaping elements.

It is both Council officers and the DEAPs view that an internal road should extend on the southern side of the 'Central Park' RE1 lands to create a loop road (one way with parking bays and landscape area) with the western and eastern entries along Shirley Street and would address the key concerns listed above for the following reasons:

- The road and footpath would provide ease of access for pedestrians, cyclists and vehicles. Noting this is an important link between the light rail stop and shopping precinct.
- provide a public edge to the park thereby reducing the perceived privatisation of the space
- ensure that the park is well-connected with a public street edge as per the requirements of the ADG Objective 3D-4
- Provide well-spaced drop off points for people with mobility issues along the parks edge and reduce the need of accessible paths traversing the park and maximise the functionality of the spaces between.
- deliver the required vehicular access to service the park in the future
- ensure adequate access to the park and adjacent building for emergency vehicles.

Given the importance to Council that appropriate road access is provided Council is willing to allow the one-way road, with adjacent parking bays located wholly on RE1 land and dedicated as public road to Council. The verge and footpath are to be located on R4 lands as they form part of the edge to development.

9.4 Landscape

Revised information has been provided by the applicant on 31 August 2022, however the following information / detail in relation to landscaping is outstanding:

- Tree planting is occurring above basement, adjacent to OSD and in close proximity to structures. It is recommended that this be addressed through a revised street tree planting strategy plan. The revised plan shall be co-ordinated with the architectural and landscape plans, arboricultural report and stormwater drawings.

- The tree planting information is obscuring the shrub and groundcover planting. For legibility create a separate Tree Planting Plan.
- The majority of the proposed plant species are exotic and should be amended to comprise mainly of native plant species, to enhance biodiversity conservation within the Parramatta LGA.
- Existing tree numbers, as per the Arborist Report, are to be included on the plans for coordination.
- Detail in relation to roof terraces should be provided – at a minimum a roof terrace at ground level Building C, two at levels 1 of Buildings E and F, one at Level 5 Building D and one on level 9 Building F plans are to be provided.
- A section is to be provided through the stepped seating and accessible walkway including tree planting to clearly show there will be adequate soil volume m3 for the proposed tree species is coordinated and in line with the Apartment Design Guide 4P Planting on structures.

9.5 Drainage

Stormwater drainage

The stormwater drainage plans have been improved as part of the revised plans. It is proposed that the entire development site will be draining through six catchments to the one stormwater discharge outfall in Pennant Hills Road, into a proposed new stormwater pit.

The proposal cannot be supported in its current form. The following issues have been identified:

- The OSD tank B for Building B encroaches under the new road and should be located so as not to encroach;
- The OSD tank R1 (Road 1) encroaches under Building C and should be reconfigured;
- OSD tank A is located in the basement carpark entry ramp of Building A which should be designed in such a way any surcharge or emergency flow from the tank does not enter the basement area.
- It is noted the stormwater drainage plans for this proposal are only indicative and detailed individual drainage disposal systems for each building will be designed in the next stage of construction.
- The overall drainage disposal system indicated in the plans are Trunk Drainage Disposal details without any relevant levels.
- Basement drainage details (basement pumps etc) have not been included in the drainage plans.

Further, the Geotechnical Investigation Report and Groundwater Investigation Reports were reviewed by Council staff. Conditions of consent could be imposed to address some matters. However drainage of potential groundwater cannot be to Council stormwater infrastructure. In this respect the basement design is not finalised.

Furthermore, in accordance with The Hills DCP water sensitive design should be incorporated in both private and communal open space design.

Water management – RE1 lands

If the Community and Central Park are intended to be dedicated to the Council, Council should be responsible for all stormwater runoff from these areas. This is best achieved by separating this drainage system from that for drainage of private areas.

The average ground slope of the Central Park is approximately 9%. Unless appropriately managed, it is considered that there is high potential for stormwater runoff from this area to potentially adversely impact the proposed access road at the western end and adjacent private properties fronting Shirley Street.

Detailed design of the parks should be carried out at this stage to develop arrangements to manage stormwater runoff up to 1% AEP event. This should include details of overland flow paths to manage flows in excess of pipe system capacity and any potential blockages to pipe system up to full blockage.

Current drainage plans lack detail on overland flows and associated drainage requirements throughout the Central Park in the context of the steep topography and is required to adequately determine requirements.

There should be clear demarcation of responsibility for future maintenance of the stormwater drainage system otherwise the efficacy of this maintenance may be compromised by ambiguity/potential dispute over who should be doing it. Council should have control of overland flow paths and pipe system for all runoff from the parks to effectively maintain systems/measures.

Further, Council officer required clarification of ownership in relation to Lot 6 (zoned RE1), that is, the proposed internal road perpendicular from Pennant Hills Road (between Buildings E & F) in order to determine the most appropriate drainage system. It is noted that the Public Easement Plan submitted with the documentation indicate that the road be in private ownership, with a public access easement for vehicles and pedestrians.

In accordance with The Hills DCP for Carlingford Precinct new public parks should incorporate water sensitive urban design.

9.6 Roads and Vehicle Access

Council's Traffic Engineers have provided the following concerns in relation to the design of the roads:

- The landscape plans indicate that pavers may be used to treat the internal roads. Although the internal roads are privately owned, they must be designed like public roads. Accordingly, roads must asphalt or concrete to meet relevant standards and guidelines.
- Landscape plans indicate a contrasting pavement types / flush thresholds at various pedestrian crossing points. This is not in line with Australian Standards and Austroads Guidelines.
- Swept path plans for access to the basement car parks are not clear and should be resubmitted.
- The swept paths for a HRV in the Traffic Report shows significant encroachment beyond road or building boundary at the entrances into the buildings along the eastern side of the development ingress and egress which is not acceptable. The road is required to demonstrate how to accommodate HRV manoeuvring.
- A sign and line marking plan to be submitted to Council for review for the internal road network.

Furthermore, if roads are to be dedicated to Council or if existing roads will be affected, the applicant, subject to approval of the development application, would need to submit a Pavement Design Report and Project Quality Plan for Council's approval before any construction commences on the site.

9.7 Dedication of parks and roads to Council

Council Officers requested the applicant should submit a clear plan identifying the boundary of RE1 lands, and proposed dedication and / or easements in relation to open space, public domain and roads. In summary the following response was provided:

- a) A Concept Plan of Subdivision was submitted which indicates future public easements
- b) In relation to Lot 6 (RE1 lands over 271 and 273 Pennant Hills Road) the applicant proposes either dedicating this land to Council once embellishment or maintained in private ownership with public access easements. The applicant indicates that they 'accept either approach on this matter'.

- c) The land zoned RE1 – Community and Central Parks are to be dedicated to Council.
- d) That part of the road system that traverses the RE1 land (Central Park) will also be dedicated with easements to facilitate public access into and around the development. Also potential for positive covenants so that future owners are responsible for the care and maintenance of roads. This would also include reciprocal rights to drain water.

Council raises the following points in relation to the approach:

- The existing Planning Agreement is not applicable to this development application (refer Section 10) and no revised Letter of offer provided by the applicant, therefore the matter of dedication of the RE1 lands is therefore unresolved.
- It is problematic to propose a part publicly-owned, part privately-owned with public easement road network through the site in relation to maintenance and drainage assets. Council position is that an internal one way road loop should be established through the site and be dedicated to Council.
- The ownership of Lot 6 is required to be clarified.
- Furthermore a survey plan and site plan which clearly overlays the RE1 zoning should be provided to ensure it is clearly shown what works are undertaken within the RE1 land.

Therefore Council officers consider the issue of dedication and ownership unresolved.

9.8 Construction and Demolition Waste

The applicant has submitted Operational Waste Management Plan stating “the waste management of the construction and demolition phases of the development are not addressed in this report. A construction and demolition WMP will need to be provided separately”.

Revised waste management plans are required for the demolition and construction phases and to be reviewed by Council as part of the assessment of the development application.

10. Planning Agreements

Two planning agreement matters are relevant to the subject site:

- a) An existing planning agreement which applies to part of the subject site at 18 Shirley Street and was executed in connection with the former development application DA1103/2011/JP in 2015.
- b) A draft planning agreement which applies to the development site which is in association with a planning proposal (2022) seeking additional permitted non-residential uses up to 2,000sqm (refer Section 8.2 for detail).

a. Planning Agreement – 18 Shirley Street, Carlingford (2015)

A Planning Agreement operates in relation to (part) of the site, 18 Shirley Street Carlingford (previously 247-261 & 277-281 Pennant Hills Road and 14-30 Shirley Street) in connection with DA/1103/2011/JP and the Carlingford Precinct rezoning known as Amendment 20 of the Baulkham Hills LEP 2005.

The Planning Agreement was entered into in April 2015 between The Hills Shire Council and the then owners of the site (Golden Mile 1888 Pty Ltd, Pennant Hills Estate 88 Pty Ltd and Rainbowforce Pty Ltd). The Planning Agreement was transferred from Hills Shire Council to City of Parramatta on 12 May 2016, when the land moved into the City of Parramatta local government area as a result of the NSW local government amalgamations. In July 2020 Council was advised that the owners of the site went into administration. In December 2020, the former owners sold 18 Shirley Street to Karimbla Properties (No. 61) Pty Ltd. Subsequently a Deed of Novation was executed in respect of the Planning Agreement between Karimbla Properties and City of Parramatta Council.

In summary, this Planning Agreement provides for the following to be provided to Council:

- Dedication of land for public open space (land zoned RE1) of 5,828sqm - Central Park and Community Park;
- Monetary contribution (to be spent in Carlingford Precinct) of \$920,984 (subject to CPI increases) associated with the 'proposed development' of 453 dwellings in lieu of development contributions.
- Additional monetary contribution of a per bedroom rate for any additional dwellings above the 453 dwellings; and
- Works in kind including:
 - A roundabout at Post Office Road and Young Street;
 - Embellishment of Central Park; and
 - Cycleway/pedestrian path in transmission easement.

Council is of the view that the Planning Agreement relates to the former development consent DA/1103/2011/JP and is not valid in relation to this development application. The former development application is active, and this Planning Agreement is still valid in relation to that development application. Council Officer formally advised the applicant of this in its letters on 12 August 2022 and 27 September 2022 and recommended that a Letter of Offer be submitted as part of this development application to confirm that the development will be bound by the dedication, works in kind and monetary contributions set out in the existing Planning Agreement. The applicant did not provide such a letter of offer. It is noted that Council cannot compel the applicant to enter into a Planning Agreement.

Draft Planning Agreement in relation to the subject site (2022)

Furthermore, a draft Planning Agreement was placed on public exhibition between 12 October and 9 November 2022 in relation to the Planning Proposal (Draft LEP Amendment) for the subject site. The draft Planning Agreement proposes to deliver the following public benefits outside of the subject site, as follows:

- a raised pedestrian crossing with cycle lane over Shirley Street;
- rectification works to the footpath in Shirley Street; and
- a footpath, landscaping strip and cycle path within Shirley Street Reserve lighting and provision for utilities.

This draft Planning Agreement (2022) does not exclude the application of s7.11, s7.12 or s7.24 of the Act to the proposed future development of the Land.

11. Development Contributions

It is Council's view that the Planning Agreement relates to the former development consent DA/1103/2011/JP and is not valid in relation to this development application. Therefore, it is Council's opinion that the payment of development contributions in line with Council's Parramatta (Outside Parramatta CBD) Contributions Plan 2021 would be applicable for that part of the development. Any consent would therefore include a condition requiring payment of the required levy, with consideration in light of any new VPA entered into as part of this development application (as detailed above).

12. Response to SCCPP briefing minutes

The Panel has held briefings on this application on the following dates:

- 3 March 2022
- 28 July 2022
- 20 September 2022

- 6 October 2022

Those matters which relate to the assessment of the application are addressed below:

Table 18: Response to SCCPP issues

Issue	Comment
3 March 2022	
There appear to be opportunities to review the design of block wall and entrance features fronting Pennant Hills Road to satisfy CPTED principles and reduce large blank areas that may attract graffiti.	
28 July 2022	
<p>The panel is of the view that while public access is required through the site and to the RE1 open space areas, this access may be achieved in a number of ways, including for example pedestrian pathways and cycleways however a road designed and built to Council's standard for a public road, is not a necessity.</p> <p>The location of the RE1 land was suboptimal as it was largely distant from surrounding public roads. As a result the public open space appears enclosed by the applicant's proposed buildings. To counter this the applicant is encouraged to apply design techniques including landscaping and detailing of access ways in a way that makes it apparent to users that both the open space and routes through the site are public rather than private thoroughfares.</p>	<ul style="list-style-type: none"> - Notwithstanding this it is Council Officers view that from both an urban amenity and asset maintenance view point the internal road is required. - An internal road to extend on the southern side of the 'Central Park' RE1 lands to create a loop road with the western and eastern entries along Shirley Street. The southern road edge to RE1 should be 1 way and include parking bays and landscaped verge and 3 metre footpath. - Given the importance to Council that appropriate road access is provided Council is willing to concede that the one-way road, with adjacent parking bays could be located wholly on RE1 land and dedicated as public road to Council. The verge and footpath are to be located on R4 lands as they form part of the edge to development.
The Panel notes that the applicant was seeking additional height to compensate for loss of units should public roads be required. As this matter is addressed above and the Panel considers that a road designed and built to council's standard for a public road is not a necessity, further additional height of buildings would not be supported at this stage.	Noted. Council considers that proposal has not demonstrated (or quantified) that a variation to the height of building is a direct result of inclusion of roads.
The Panel notes that the applicant was seeking additional GFA to compensate for loss of units should public roads be required. As this matter is addressed above and the Panel considers that a road as suggested by council road is not a necessity, additional GFA would not be supported at this stage.	Noted. Noted. Council considers that proposal has not demonstrated (or quantified) that a variation to the floor space ratio is a direct result of inclusion of roads.
20 September 2022	
Approval of the DA is dependent on the Panel's acceptance of the CL4.6 application. This matter is accordingly a threshold issue.	A Clause 4.6 assessment is at Section 7.8.1 and 7.8.2 of this Report.
The preceding VPA for the site related to the "Dyldam DA". Its relevant and applicability to the current, wholly new DA, will need to be confirmed.	Planning Agreements matters are detailed at Section 10 of the Report.

13. The Regulations

This application satisfies relevant clauses of the Regulation as follows:

Table 19: Relevant EPA Regulations

Clause 29 Residential Apartment Development	The nominated documentation is provided being: <ul style="list-style-type: none">○ A design verification statement;○ An explanation of the design in terms of the principles in SEPP 65
Clause 61 Additional matters for consideration	All building work will be carried out in accordance with the provisions of the Building Code of Australia. This matter could be conditioned.

14. The Likely Impacts of the Development

As outlined in this report, the applicant has not demonstrated that the impacts of the proposal will be acceptable.

15 Site suitability

Due to the site's size, single ownership and location within the Carlingford Precinct it provides an opportunity to deliver a key development which provides an important connection between the shopping precinct and the light rail stop. Furthermore, there is the potential to realise a high density development within a landscape setting, that addresses its location along a main road and delivery of key public open spaces. The proposal does not adequately achieve these design principles.

Furthermore, the proposal's clause 4.6 variation request to vary the height and floor space ratio standards in clauses 4.3 and 4.4 of the *Parramatta (Former The Hills) Local Environmental Plan 2012* is not considered to be well founded because the proposal has not demonstrated that there are sufficient environmental planning grounds to vary the standards, and the proposal is not in the public interest as it does not adequately satisfy the zone objectives.

As such the applicant has not demonstrated that the proposal is suitable for the site.

16. Submissions

The application was notified and advertised in accordance with the City of Parramatta Consolidated Notification Procedure.

The advertisement ran for a 21-day period between 2 February 2022 and 23 February 2022. 10 submissions were received during this notification (noting six of these submissions are a proforma).

Revised plans were submitted on 31 August 2022, and a 21-day notification period between 16 September and 10 October 2022 the revised plans were notified. 1 submission was received during this notification, this was a new submission from a previous objector.

In total, 12 submissions were received, seven being unique. All raising objections to the proposal. Those matters are summarised in Table 20 below:

Table 20: Summary of public submissions to the proposal.

Issues (of the 12 submissions which raise issue)	Comment
Impact on Traffic and Parking (x11)	The applicant has not submitted adequate information which demonstrates that the proposal will have an acceptable traffic impact. This forms reason to refuse the application. The parking rates are considered acceptable as inline with its location within the Carlingford Precinct and adjacent to shopping and public transport.
Impact on view (x6)	The proposed variation to height standards along Pennant Hills Road is not supported and forms a reason for refusal of this application.
Impact on sunlight (x6)	The proposed variation to height standards and impact on solar access to adjoining properties is not supported and forms a reason for refusal of this application.
Inconsistency with character of surrounding area (x6)	The proposed variation to height and floor space ratio standards along Pennant Hills Road is not supported and forms a reason for refusal of this application.
Impact on property values (x6)	This is not a matter for consideration in assessment of this application.
Impact on local business (x6)	This is not a matter for consideration in assessment of this application.
Object to the assertion that the development will improve the area in terms of social disadvantage (x6)	The proposal has not adequately demonstrated how its design will adequately integrate into the surrounding streets and provide open space and connections that are of benefit to the community.
Water runoff from subject property	Council officers have concerns in relation to potential overland flow from the Central Park and require further information to address this issue.

Figure 18 – Aerial image showing locations of submissions in red markers



17. Public interest

As outlined in this report, there are several aspects of the proposal which are not considered to be acceptable and as such are not in the public interest.

18. Disclosure of Political Donations and Gifts

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

19. Summary and Conclusion

For the reasons outlined in this report, the proposal is not considered to satisfy the relevant considerations under s4.15 of the Environmental Planning and Assessment Act 1979. As such, refusal is recommended for the reasons outlined in the section below.

20. Recommendation

- A. **That** the Sydney Central City Planning Panel, as the consent authority, **Refuse Consent** to Development Application No. DA/53/2022 for construction of seven 10-13 storey buildings comprising 620 residential units, child care centre for 110 children, 17 neighbourhood retail shops and 864 basement car parking spaces; publicly accessible open spaces and through site links; roads; landscaping; and tree removal for the following reasons:
1. **Height** – The clause 4.6 variation request to vary the height standard in clause 4.3 of the Parramatta (Former The Hills) Local Environmental Plan 2012 is not considered to be well founded because the proposal has not demonstrated that there are sufficient environmental planning grounds to vary the standard and the proposal is not in the public interest as it does not adequately satisfy the zone objectives.
 2. **FSR** - The clause 4.6 variation request to vary the floor space ratio standard in clause 4.4 of the Parramatta (Former The Hills) Local Environmental Plan 2012 is not considered to be well-founded as the proposal has not demonstrated that there are sufficient environmental planning grounds to vary the standard and the proposal is not in the public interest as it does not adequately satisfy the zone objectives.
 3. **SP2 Infrastructure zoned land** –The application is not satisfactory for the purpose of section 4.15(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal does not demonstrate how the land zoned SP2 Infrastructure 'Classified Road' will be dedicated to the relevant acquisition authority; how the proposal has accommodated setback to Pennant Hills Road in light of the future dedication or confirmed that floor space ratio has not drawn off this land for the purposes of calculating FSR in accordance with the Parramatta (The Former Hills) Local Environmental Plan 2012.
 4. **SEPP (BASIX)** - The application is not satisfactory for the purposes of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that insufficient information has been provided to demonstrate compliance with the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
 5. **SEPP 65 (Design Quality of Residential Apartment Development)** - The application is not satisfactory for the purposes of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal does not meet the design principles as nominated in State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development)

6. **Apartment Design Guide** - The application is not satisfactory for the purposes of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal does not meet the criteria and guidance in relation to natural ventilation of apartments, solar access to apartments, length of corridors, adequate building separation, provision of quality communal open space and deep soil zones; overshadowing to adjoining properties and communal open space and poor interface with the central public park as nominated in State Environmental Planning Policy (Design Quality of Residential Apartment Development) via the Apartment Design Guide.
7. **Traffic Generating Development** - The application has not adequately demonstrated that the traffic modelling undertaken to inform the Traffic Impact Assessment has satisfactorily addressed the matters relating to the type/volume of traffic attending the site and road congestion of Clauses 2.112 and 2.119 of the State Environmental Planning Policy (Transport and Infrastructure)
8. **Child Care Centre** - The application is not satisfactory for the purposes of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal does not meet the matters for consideration in relation to visual privacy, and minimise potential noise and overlooking on neighbours and optimising solar access to internal and external play areas and outdoor play areas are adequately protected from wind and other climatic conditions as nominated in Section 3.23 of State Environmental Planning Policy (Transport and Infrastructure) via the Child Care Planning Guidelines.
9. **The Hills DCP 2012-** The application is not satisfactory for the purposes of section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposal does not demonstrate consistency with the principles, objectives and controls of Part B Section 5 and Part D Section 12 of The Hills Development Control Plan 2011 in relation to:
 - a) The application is not consistent with the urban design principles for the Carlingford precinct. The principles aim to concentrate the highest residential flat buildings around the low ground of Carlingford light rail station in order to create orientating landmark for the village centre and provide an opportunity for the apparent height of high-rise buildings to be diminished when viewed in their topographic context. That the areas furthest from the station (such as the subject site) the built form, site coverage, setbacks and composition of boundaries and building placement are to create a garden suburb character. A maximum of 9 storeys buildings along Pennant Hills Road in order to achieve a presence associated with deep setbacks for major planting, footpath upgrades and pedestrian amenities.
 - b) Provision of adequate and well-designed communal open space and deep soil cover;
 - c) Provision of an adequate 10 metre landscape setback from Pennant Hills Road which contains adequate deep soil for the planting of canopy trees.
 - d) Adequate consideration of the development potential of adjoining properties at 27 and 29 Lloyd Ave and address issues of site isolation.
 - e) Additional overshadowing caused to adjoining properties at 27 and 29 Lloyds Avenue and 2-6 Shirley Street so not to receive 4 hours of solar access between 9am and 3pm midwinter.
 - f) The proposal does not incorporate water sensitive design measures or satisfactorily satisfy stormwater management and groundwater issues.
10. The application is not satisfactory for the purposes of section 4.15(1)(b) of the Environmental Planning and Assessment Act 1979 as the following elements of the proposal are not satisfactory:
 - a) Design of the internal roads;
 - b) Outstanding information in relation to future dedication of open space and roads to Council.

- c) The provision of appropriate mitigation measures to manage wind impacts on the childcare centres outdoor play area;
- d) The reflectivity impact of the proposed buildings along Pennant Hills Road for vehicles; and
- e) Outstanding information in relation to stormwater management of the RE1 lands.
- f) Outstanding information in relation to landscaped areas and tree protection.
- g) Revised waste management plans are required for the demolition and construction phases
- h) Lack of clarity in the protections measures of the electricity easement as identified by Ausgrid.

B. That submitters be notified of the decision.