

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSCC-392
DA Number	DA/737/2022 PAN-248715
LGA	City of Parramatta Council
Proposed Development	Demolition of existing structures and construction of a mixed-use development over two levels of basement parking. The development comprises of retail premises, business/office premises; neighbourhood shops, a pub and a childcare centre with associated landscaping, drainage works and signage. The application is Nominated Integrated development pursuant to the Water Management Act 2000.
Street Address	32-48 Silverwater Road and 1-17 Grey Street, SILVERWATER Lot 1 DP 90071 Lot 1 and 2 DP 1110059 Lot 5, 6 and 7 DP 89550 Lot 8, 9, 10, 11, 14, 15, 16 and 17 DP 979426 Lot 13 DP 75209 Lot 12 DP 76894 Lot 7 DP 77341
Applicant Owner	CK Design Pty Ltd Sonsari Pty Ltd
Date of Lodgement	16 September 2022
Number of Submissions	2 unique submissions (1 submission in support of the application)
Recommendation	Refusal
Regional Development Criteria	General Development >\$30 million
List of All 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 (Transport and Infrastructure) 2007 • State Environmental Planning Policy (State Regional Development) 2011 • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • SEPP (Planning Systems) 2021 • State Environmental Planning Policy (Resilience and Hazards) (2021) • Auburn Local Environmental Plan 2010 • Auburn Development Control Plan 2010
List of Relevant Documents	<ul style="list-style-type: none"> • Attachment B – Clause 4.6 Variation Building Height • Attachment C – Design Excellence Advisory Panel Recommendations 27 October 2022
Report Prepared By	Denise Fernandez - Senior Development Assessment Officer
Report Date	24 April 2023

Summary of S4.15 matters

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

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report?
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP **Yes**

Clause 4.6 Exceptions to development standards

Yes

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report?	
Special Infrastructure Contributions	
Does the DA require Special Infrastructure Contributions conditions (S7.24)?	Not
<i>Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions</i>	Applicable
Conditions	
Have draft conditions been provided to the applicant for comment?	N/A
<i>Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report</i>	(Refusal)

EXECUTIVE SUMMARY

1. 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 subject site is an amalgamation of 17 sites with an area of 7,550.08m². The proposal seeks approval for a development containing several land uses including a childcare centre, a pub, business premises and specialty retail spaces. The site is zoned B6 Enterprise Zone Corridor under the Auburn Local Environmental Plan 2010 and is within the Silverwater Road precinct.

Upon review of the proposal, the development does not appear to comply with the maximum FSR for the site as areas for circulation and corridor areas have been excluded from its calculation. Council disagrees that the current design of the development allows these areas to be excluded. A Clause 4.6 variation has not been submitted with the application to justify the departure to the maximum FSR for the site.

The development seeks to vary the maximum height for the site. It is noted that a variation to this standard would be inconsistent with the scale envisaged for the site pursuant to Auburn DCP 2010 which limits development on this site to 3 storeys to ensure it is compatible with the existing character and development of nearby areas.

As the proposal requires extensive excavation works below natural ground level, the application was referred to Water NSW as nominated integrated development pursuant to Section 90(2) of the Water Management Act 2000. At the time of writing this report, Council has not received concurrence from Water NSW and therefore Council cannot recommend the application for approval. Similarly, the application was referred to Transport for NSW in accordance with Clause 2.119 and Clause 2.122 of State Environmental Planning Policy (Transport and Infrastructure) 2021 – Chapter 2 Infrastructure. Upon review, Transport for NSW required additional information to complete its assessment. To date, this information has not been received to allow Transport for NSW to complete assessment of the application.

The proposal is inconsistent with the urban design objectives for development on sites located within the B6 Enterprise Corridor zone on Silverwater Road. The development is not of a built form that maintains the streetscape and urban character of the locality, with regards to the lack of on-site landscaping, access and car parking, provision of a satisfactory stormwater drainage system, development sustainability and operational conditions pursuant to Auburn DCP 2010.

The proposal also seeks approval for the use for part of the development for the purposes of a childcare centre for 102 places. The application in this instance has not satisfactorily demonstrated that it is a suitable location having regard to site selection, streetscape, building design, landscaping, visual and acoustic privacy, noise and air pollution, traffic and parking, and pedestrian circulation.

In summary, whilst the subject site has the potential to accommodate a form of high-density, mixed-use development, the proposal subject of this application has not demonstrated that it is a built form designed with acceptable amenity impacts on nearby developments. The current layout does not respond to its surrounds, nor provide appropriate design solutions.

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 12.

2. Key Issues

Water Management Act

- The proposal does not have concurrence from WaterNSW in accordance with Section 90 (2) of the Water Management Act – Water Management Work Approval.

SEPP (Transport & Infrastructure) 2021

- **Frontage to Classified Road** – The site has a boundary to Silverwater Road. Transport for NSW has not been able to complete its assessment as it requires additional information from the application which has not been submitted.
- **Traffic Generating Development** – The proposed scale of the development and the amount of additional traffic on the local road network remains a concern for TfNSW. In particular, the justification for the low car parking rates applied to the development, safety issues with the proposed right turn movement restrictions, the proposal to extend the right turn lane on Silverwater Road by 30m and alternate options for intersection improvements to mitigate impacts of the development.
- **Child Care** – site selection and location, local character, public domain interface, building design, landscaping, visual and acoustic privacy, noise and air pollution, hours of operation, traffic, storage areas, ventilation and natural light, supervision and the provision of a soil assessment.

SEPP (Resilience and Hazards) 2021

- **Remediation of Land** – lack of information regarding the submission of a Phase 2 that concludes the suitability of the site for the proposed development.

SEPP (Biodiversity and Conservation) 2021

- **Tree Removal** – the proposed tree removal in particular the street trees are not supported by Council's Landscape Officer and Urban Designer.

SEPP (Industry and Employment) 2021

- **Advertising and Signage** – the application seeks approval for signage zones. However, as concerns remain with regards to the built form, in particular its bulk and scale, it is not considered that the proposed signage zones are appropriate.

Auburn Local Environmental Plan 2010

- **B6 Enterprise and Corridor Zone** – inconsistent with the zoning objectives.
- **4.3 Height of Buildings** - Acceptability of Clause 4.6 variation.
- **4.4 Floor Space Ratio** – Development exceeds the maximum FSR for the site and no Clause 4.6 variation has been submitted.
- **4.6 Exception to Development Standards** – Acceptability of Clause 4.6 variation.

Auburn Development Control Plan 2010

- **Desired Future Character** – Inconsistency with the controls relating to development within the B6 Enterprise Corridor zone on Silverwater Road
- **Transition zones** – The childcare centre does not appear to indicate any areas nominated for transition zones.

3. Background and Site Context

3.1 Site location and description

The subject site is commonly known as 1-17 Grey Street & 32-48 Silverwater Rd, Silverwater. The site is an amalgamation of 17 sites which is bounded by Silverwater to the east, Carnarvon Street to the north, Grey Street to the west and Bligh Street to the south. The site has a collective site area of 7,550.08m². The site has the following dimensions:

- 70.1m to Carnarvon Street.
- 107.45m to the Grey Street.
- 70.195m to Bligh Street.
- 108.085m to Silverwater Road

The site has been predominately used for low-density residential purposes since it was first developed before the 1930s until as recently as 2014 when the majority of residential buildings were demolished.

A corner shop currently exists at 15 Grey Street and anecdotally has operated for many years from that location. The southern corner of the site at 32-36 Silverwater Road has been used for commercial/industrial purposes since the early 1960s. Most recently this area was used as a dry-cleaning business.

Existing surrounding development is historically residential, industrial, warehouse and commercial uses to the north and east.



Figure 1. Subject Site (Nearmaps)

3.2 Related Applications

It is noted that the site was formerly within Auburn Council, prior to 12 May 2016 Council amalgamations.

PL/159/2020	Pre- Lodgement meeting with Council Officers to discuss a preliminary concept for the subject site was undertaken on 15 December 2020. The following concerns were raised with the concept development for the site.
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	<ul style="list-style-type: none"> • Site Isolation of 48 Silverwater Road, Silverwater. • Height – Non-compliance in terms of the lift overrun and roof level- Council unlikely to support any variation • FSR - Corridors/ Lobbies/ Breezeways/ garbage room/ car parking in excess of the required numbers and covered outdoor space for the childcare centre are to be included in the FSR • Front Setback to Silverwater of 5m is to be as per Urban Design Advice. • The Interface with exiting dwellings located at Bligh Street - The proposed development locates a pub in the Bligh Street corner close to the existing residential uses (in a B6 zone). This is better located at the Carnarvon Street corner which is at an intersection and therefore more visible.
PL/30/2021	<p>A Pre-DA review by the Design Excellence Advisory Panel (DEAP) was undertaken on 27 May 2021. With regards to the concept proposal, DEAP makes the following commentary:</p> <ul style="list-style-type: none"> • A detailed urban design study should be undertaken by an urban designer prior to the preparation of any further plans to examine the surrounding context. The study should include pedestrian and open space networks, and should identify important features in the vicinity such as bus stops, pedestrian crossings, other shops and community facilities • The Panel acknowledges that the proposal is all about destination retail. As such the scheme is essentially a car-based scheme and not convenience based. The specialised retail standard LEP definition cited by the proponent suggests the focus is on bulky goods • The proposed south facing pub terrace was queried by the panel. The opportunity to provide north facing outdoor space should be considered. The Panel felt the pub is not necessarily in the most appropriate location. An analysis of options relative to the potential role and impacts of the pub relative to both the new development and to the surrounding context is warranted • With regard to the current proposal, the Panel makes the following observations: <ul style="list-style-type: none"> • The scheme lacks clarity. The circulation within the development is convoluted making it appear difficult to move through the development. Many of the common areas are odd-shapes and resulting in odd shaped retail spaces for rent. • The common areas are lacking in good amenity in a number of areas such as small lift lobbies and narrow staircases in high traffic areas. • A development of this scale and potential needs to be about placemaking as well. The landscape setting should enhance the overall visitor experience and not just a device to fill up the ' leftover' spaces.

4. The Proposal

Details of the proposal are as follows:

- Consolidation of 17 lots;
- Site works including the reinstatement of redundant kerb and gutter to facilitate the proposal;
- Removal of services from the existing allotments;
- Tree removal;
- Excavation works to accommodate 2 basement levels;
- New civil engineering and utility services;
- Construction of a 3 / 4 storey mixed use development comprising:
 - specialist retail (24 premises);
 - neighbourhood shops (x2);
 - food and drink premises (x7);
 - business premises (x 21);
 - office premises (x 18);
 - a 2 storey pub and
 - a centre-base child care for 102 children.

- Onsite parking for 423 vehicles and 36 bicycles
- Upgraded utility services;
- New stormwater works;
- Landscaping (private and public domain plantings); and
- Signage zones.

Capital Investment Value = \$46,760,129.00



Figure 2. Photomontage – View from corner of Carnarvon Street and Silverwater Road

5. Permissibility

Auburn Local Environmental Plan 2010

The site is zoned B6 Enterprise Corridor. See Zoning Map below.

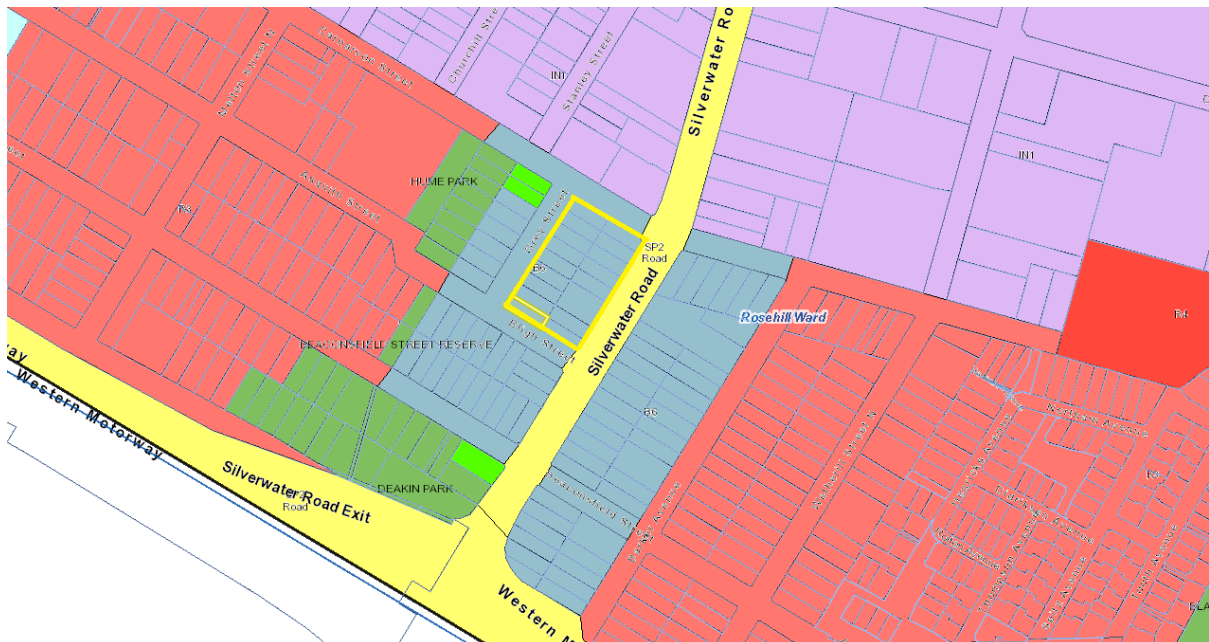


Figure 3. Zoning Map - Subject site marked in yellow outline

The proposed development is defined as the following under Auburn LEP 2010:

business identification sign means a sign:
(a) that indicates:

- (i) *the name of the person or business, and*
- (ii) *the nature of the business carried on by the person at the premises or place at which the sign is displayed, and*

(b) that may include the address of the premises or place and a logo or other symbol that identifies the business,

but that does not include any advertising relating to a person who does not carry on business at the premises or place.

business premises means a building or place at or on which:

- (a) *an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or*
- (b) *a service is provided directly to members of the public on a regular basis, and may include, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, medical centres, betting agencies and the like, but does not include sex services premises.*

childcare centre means a building or place used for the supervision and care of children that:

- (a) *provides long day care, pre-school care, occasional child care or out-of-school-hours care, and*
- (b) *does not provide overnight accommodation for children other than those related to the owner or operator of the centre,*

but does not include:

- (c) *a building or place used for home-based child care, or*
- (d) *an out-of-home care service provided by an agency or organisation accredited by the Children's Guardian, or*
- (e) *a baby-sitting, playgroup or child-minding service that is organised informally by the parents of the children concerned, or*
- (f) *a service provided for fewer than 5 children (disregarding any children who are related to the person providing the service) at the premises at which at least one of the children resides, being a service that is not advertised, or*
- (g) *a regular child-minding service that is provided in connection with a recreational or commercial facility (such as a gymnasium), by or on behalf of the person conducting the facility, to care for children while the children's parents are using the facility, or*
- (h) *a service that is concerned primarily with the provision of:*
 - (i) *lessons or coaching in, or providing for participation in, a cultural, recreational, religious or sporting activity, or*
 - (ii) *private tutoring, or*
- (i) *a school, or*
- (j) *a service provided at exempt premises (within the meaning of Chapter 12 of the Children and Young Persons (Care and Protection) Act 1998), such as hospitals, but only if the service is established, registered or licensed as part of the institution operating on those premises*

food and drink premises means retail premises used for the preparation and retail sale of food or drink for immediate consumption on or off the premises, and includes restaurants, cafes, take away food and drink premises, milk bars and pubs.

neighbourhood shop means retail premises used for the purposes of selling small daily convenience goods such as foodstuffs, personal care products, newspapers and the like to provide for the day-to-day needs of people who live or work in the local area, and may include ancillary services such as a post office, bank or dry cleaning, but does not include restricted premises

office premises means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

pub means licensed premises under the Liquor Act 2007 the principal purpose of which is the sale of liquor for consumption on the premises, whether or not the premises include hotel or motel accommodation and whether or not food is sold or entertainment is provided on the premises.

specialised retail premises means a building or place the principal purpose of which is the sale, hire or display of goods that are of a size, weight or quantity, that requires—

- (a) a large area for handling, display or storage, or
- (b) direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire.

All the above uses are permissible with consent within the B6 Enterprise Corridor zoning applying to the land.

6. Public Notification

Notification Period:	28 September to 28 October 2022
Submissions received:	2 unique submissions
Issues raised in submissions:	Miscalculation of FSR, insufficient car parking, insufficient assessment of traffic impacts, insufficient information (ie provision of the Economic Impact Assessment), inappropriate height and insufficient Clause 4.6

These submissions are discussed in further detail in **Attachment A**.

Note: The applicant submitted amended plans in response to some of Council's requests. However, upon review the information that has been received does not satisfactorily address Council's concerns. Accordingly, the amended plans are not accepted.

The original plans lodged with the application will be used for the purposes of assessment.

It is noted that some information requested by Council's external and internal referrals have also not been submitted.

7. Referrals

Any matters arising from internal/external referrals not dealt with by conditions	Yes
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8. Environmental Planning and Assessment Act 1979

Does Section 1.7 (Significant effect on threatened species) apply?	No
Does Section 4.10 (Designated Development) apply?	No
Does Section 4.46 (Integrated Development) apply?	Yes
Are submission requirements within the Regulations satisfied?	Yes

9. Consideration of SEPPs

Key issues arising from evaluation against SEPPs	No - A detailed assessment is provided at Attachment A .
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10. Auburn Local Environmental Plan 2010

LEP Section	Comment or Non-Compliances
Part 1 – Preliminary	• Not Consistent
Part 2 – Permitted or Prohibited Development	• Permissible in the zone • Not consistent with zone objectives
Part 3 – Exempt & Complying Development	• Not Applicable
Part 4 – Principal Development Standards	• Not Compliant
Part 5 – Miscellaneous Provisions	• Not compliant
Part 6 – Additional Local Provisions	• Not compliant

11. Auburn Development Control Plan 2010

The following table is a summary assessment against this DCP. A detailed evaluation is provided at **Attachment A**.

DCP Section	Comment or Non-Compliances
Industrial Development Controls	• Inconsistent
Other Development Controls (Childcare Centres)	• Inconsistent
Other Development Controls (Advertising and Signage)	• Inconsistent

12. Response to Panel Briefing Minutes

The application was considered at a SCCPP “Kick Off Briefing” Meeting held on 6 October 2022.

The Panel Chair provided the following with regards to the proposal:

- *The applicant introduced the proposal for demolition of existing structures and construction of a mixed-use development over two levels of basement parking. The development comprises of retail premises, business/office premises; neighbourhood shops, a pub and a childcare centre with associated landscaping, drainage works and signage.*
- *Council is still undertaking the assessment; referrals are being processed with no submissions received as of yet with the assessment still ongoing.*

- *The Chair noted that should less than 10 submissions be received an electronic determination would be possible, pending issues emerging during the assessment process.*

Council conducted a detailed assessment of the proposal and following this assessment provided the application with correspondence dated 14 November 2022. Following the receipt of this Council correspondence, the applicant requested a meeting with Council to discuss the issues raised, mainly the calculation of the FSR for the proposed development.

A formal briefing with the SCCP Panel was undertaken on 8 December 2022. Upon an update from Council, in particular the issue surrounding the calculation of the FSR for the development pursuant to the provisions of Auburn LEP 2010, the Panel Chair provided the following comments:

- *The Applicant is relying on certain provision/s in the Auburn LEP (2010) to enable them to adopt varying floor space ratios (FSR) across the development site according to the varying proposed uses (e.g., speciality retail, office, childcare centre and pub).*
- *Given the relatively untested nature of the above provision/s of the Auburn LEP (2010), Council is seeking advice on the interpretation and application of these provisions in relation to the development application.*
- *Council was asked whether it had considered the development application against Part 3.1 (Site selection and location) of the NSW Childcare Planning Guideline (2017). Council has taken this question on notice.*
- *There is potential for the development application to be delayed due to outstanding information requests and external agency referrals.*

The issue with the calculation of the FSR for the development was discussed internally. The discussion concluded that the various FSR for the permissible land uses on the site cannot be 'stacked'. That is, the base FSR of 1:1 can be exceeded for the first set of uses to 1.5:1 (if specialty retail is proposed) and then to a maximum of 2:1 if office uses are included. The development cannot apply the 1.5:1 of those uses plus an additional 2:1 of office uses.

The outcome of the abovementioned discussions was provided to the applicant in Council's correspondence dated 22 December 2022.

Council requested an update from the applicant on 16 March 2023. In response, the applicant noted that a submission to Council could not be provided until 5 May 2023. Given the time required to refer the additional information and then review the amended information by internal and external agencies, it was considered that this submission time was not appropriate to ensure that applications are determined within the required timeframes.

It is noted that the applicant provided some information in response to Council's concerns and was submitted to Council on 31 March 2023. However, upon review of the information submitted, it was not considered to be to Council's satisfaction as most of Council's concerns and that of concerns raised by external referrals have not been addressed. Accordingly, the proposal cannot be supported, and it is recommended for refusal.

13. Conclusion

On balance the proposal has not demonstrated a satisfactory response to the objectives and controls of the applicable planning framework.

The application is recommended for refusal for the reasons contained within **Attachment A**.

14. Recommendation

That the Sydney Central City Planning Panel refuse the application DA/737/2022 for reasons contained within the Assessment Report.

ATTACHMENT A - PLANNING ASSESSMENT

SCCPP Reference:	PPSSCC-392
DA No:	DA/737/2022 PAN-248715
Address:	32- 48 Silverwater Road and 1-17 Grey Street, SILVERWATER

1. Overview

This Attachment assesses the relevant matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act, as noted in the table below:

1.1 Matters for consideration

Provision	Comment
Section 4.15 (1)(a)(i) - Environmental planning instruments	Refer to Section 3 below
Section 4.15 (1)(a)(ii) - Draft planning instruments	Not applicable
Section 4.15 (1)(a)(iii) - Development control plans	Refer to Section 4 below
Section 4.15 (1)(a)(iia) - Planning agreements	Not applicable
Section 4.15 (1)(a)(iv) - The regulations	Refer to Section 5 below
Section 4.15 (1)(a)(v) - <i>Repealed</i>	Not applicable
Section 4.15 (1)(b) - Likely impacts	Refer to Sections 3, 4 and 6 below
Section 4.15 (1)(c) - Site suitability	Refer to Section 7 below
Section 4.15 (1)(d) - Submissions	Refer to Section 8 below
Section 4.15 (1)(e) - The public interest	Refer to Section 8 below

1.2 Referrals

The following external and internal referrals were undertaken:

External Referrals	
TfNSW	<p>Pursuant to Clause 2.118 (Development on a Classified Road) and Clause 2.122 (Traffic Generating Development) of the SEPP (Transport and Infrastructure) 2021, the application was referred to Transport for NSW (TfNSW). Upon review of the proposal, TfNSW requested additional information regarding the:</p> <ul style="list-style-type: none"> - Justification for the applied parking and traffic generation rates for the specialised retail and office premise use. - Further clarification for the 'Future Performance' scenario as stated within the submitted Traffic and Parking Study - Mitigation measures on the performance of traffic signals at Silverwater Road/Carnarvon Street. - Further assessment of impacts to the surrounding road network given the proposal to prohibit right turn movements from Silverwater Road to Carnarvon Street during peak times. It is noted that TfNSW does not support the prohibition on the right turn movement as right turn lanes have been provided on Silverwater Road. - Investigation into the feasibility of proposed upgrades (ie a 30m extension of the ancillary right turn lane).

	<p>- Investigation to alternate options for intersection movements to mitigate impacts associated with the development.</p> <p>To date, Council has not received information addressing the above concerns and requests by TfNSW.</p>
WaterNSW	<p>The proposal requires concurrence from WaterNSW pursuant to Section 90(2) of the Water Management Act 2000 for water supply works. WaterNSW has requested additional information regarding waterproofing the development structures as well as a dewatering management program, details of volume of water to be extracted annually, duration of water intake the method of measuring the water table and recording methods.</p> <p>WaterNSW noted that if a tanked basement design is not possible, additional modelling data is required to support a hydro-geological review and assessment of the alternate drained basement design.</p> <p>To date, Council has not received information addressing the above concerns and requests by WaterNSW.</p>
Sydney Water	<p>Sydney Water were notified of the proposed development and correspondence received does not raise any objections to the proposed development subject to the imposition of appropriate conditions.</p>
Liquor Licensing Officer	<p>As the proposal seeks approval for a pub premises within the development, the application was referred to NSW Police (Auburn Police Station) for comment. It is noted that to date, Council has not received comments from the Licensing Officer.</p>
Internal Referrals	
DEAP	<p>The application was referred to the Design Excellence Advisory Panel (DEAP). A copy of the DEAP recommendations is located at the end of this table.</p> <p>Council raises concern with the areas excluded from the calculation of Gross Floor Area (GFA) such as the circulation galleries. Additionally, DEAP notes that if these circulation galleries are not designed as high quality physical open space that is well integrated into the public domain, then these areas should be counted as internal area.</p> <p>As amended plans have not been received that satisfies the abovementioned concern, the proposal cannot be considered as having achieved the best design outcome for the subject site and therefore Council cannot recommend approval of the application.</p>
Urban Design (Public Domain)	<p>Council's Urban Designer (Public Domain) have reviewed the proposal and raised several concerns with regards to the proposal. These concerns relate to:</p> <ul style="list-style-type: none"> - Non-compliance with the variation to the front setback which is not supported. Further, the protrusion at the corners of the development into the setbacks as floor space and not just articulation. - Planting along the verge on Silverwater Road is not acceptable. - The proposed plant species along Grey Street is not acceptable.

	<ul style="list-style-type: none"> - The proposed palm trees are not in character with the scale of the building. - The lack of a maintenance schedule. - The provision of outdoor dining on Grey Street is not supported. - The basement entrance driveway and loading dock is positioned within close proximity and is not a good pedestrian outcome. - The lack of a 2m – 2.5m wide footpath along all street frontages. - All street frontages are to be rebuilt to include, public footpath, kerb and gutter, verge with trees and driveways as required. - Confirmation that all electrical and telecommunication connections to the development from the street are to be undergrounded. - Proposed removal of street trees is not supported. - No paving details have been provided. <p>As amended plans have not been received that satisfies the abovementioned concern, Council's Urban Designer cannot complete their assessment. Therefore, Council cannot recommend approval of the application.</p>
Accessibility Officer	<p>Council's Accessibility Officer has reviewed the proposal and raised the following concerns:</p> <ul style="list-style-type: none"> - One accessible adult change facility must be provided in an accessible part of a Class 6 building that is a shopping centre having a design occupancy of not less than 3500 people, calculated based on the floor area and containing a minimum of 2 sole occupancy units. <p>An Adult Change facility would improve the amenity of the centre for the patrons</p> <ul style="list-style-type: none"> - Low level thresholds should be provided at all doors accessing outdoor areas. - The Abutment of differing surfaces shall have a smooth transition. Design transition shall be 0 mm. Construction tolerances shall be as follows: <ul style="list-style-type: none"> (a) 0 ±3 mm vertical. (b) 0 ±5 mm, provided the edges have a bevelled or rounded edge to reduce the likelihood of tripping. AS1428.1.7.2. - Equipment and furniture within the common areas will require accessible and inclusive features suitable for a person with a mobility and other impairments. <p>As amended plans have not been received that satisfies Council's concerns regarding FSR and overall design of the development, Council's Accessibility Officer cannot complete their assessment. Therefore, Council cannot recommend approval of the application.</p>

Development Engineer	<p>Council's Development Engineer has reviewed the proposed development and has requested additional information that relates to the submission of the proposed suspended pipe system, access details to the OSD tank for maintenance, details of the operation of the large silt arrester pit within the building, particularly when the kerb inlet pit (located within proximity on the corner of Grey Street and Carnarvon Street) is at full capacity.</p> <p>Further, the applicant was advised that Council does not permit the discharge of groundwater into Council's stormwater infrastructure. The applicant was requested to consider a tanked system that adequately waterproofs the basement while maintaining the natural groundwater network.</p> <p>To date, Council has not received information addressing the above concerns and requests from Council's Development Engineer.</p>
Traffic	<p>Upon review of the proposal, Council's Traffic Engineer raised concerns regarding the non-compliance with car parking spaces required for the development, the inappropriate location of the driveway and safety concerns because of additional traffic generated by the development.</p> <p>To date, Council has not received information addressing the above concerns from Council's Traffic Engineer.</p>
Landscape	<p>Council's Landscape Officer reviewed the proposal and upon review raised concerns regarding the removal of street trees along Grey Street, the provision of detailed planting plans and demonstration that all planting on slab is provided with sufficient soil dept and volume to accommodate the planting proposed.</p> <p>Concern was also raised that the landscaping details with relation to the childcare centre does provide adequate soil and volume details, that the reconsideration of the location for the seating benches and structures adjacent to the building edge, provision of additional details on how the sandpits will be realised in the locations proposed and that any acoustic treatments be incorporated in the landscape plan.</p> <p>To date, Council has not received information addressing the above concerns from Council's Landscape Officer.</p>
Environmental Health (Contamination and Air Quality)	<p>Council's Environmental Health Officer (Contamination) requested that a Site Audit Statement reviewing the Phase 2 Detailed Investigation be prepared by an independent NSW EPA accredited auditor for contaminated land. The Phase 2 report is to also be amended to ensure it refers to the correct use as proposed.</p> <p>Further, as the subject site is located within proximity to Silverwater Road and to industrial uses, and that a childcare centre is proposed within the development, an Air Quality Report is to be submitted.</p> <p>To date, Council has not received the abovementioned additional information and therefore a complete assessment by Council's Environmental Health Officer cannot be undertaken.</p>

Environmental Health (Waste)	<p>Council's Environmental Health (Waste) Officer has reviewed the proposal and requested that details of waste generated during demolition and construction stages be provided.</p> <p>To date, Council has not received the abovementioned additional information and therefore a complete assessment by Council's Environmental Health Officer cannot be undertaken.</p>
Environmental Health (Acoustic)	Council's Environmental Health Officer (Acoustic) has reviewed the submitted acoustic report and supports the application subject to the imposition of appropriate conditions.
Environmental Health (Food)	Council's Environmental Health Officer (Food) has reviewed the proposal and supports the application subject to the imposition of appropriate conditions.
Crime	Council's Citysafe Operations Manager has reviewed the proposal and supports the application subject to the imposition of appropriate conditions.

1.2.1 Parramatta Design Excellence Advisory Panel (DEAP)

The application was considered by the DEAP on 27 October 2022. The following comment were provided by DEAP in response to the review of the application.

1. The Panel notes that the proposed layout is much better than the previous layout presented at the last DEAP meeting. In particular, the Panel commends the quality of the site and context analysis provided in the Urban Design Report, which provides a clear description of context, its opportunities and constraints, key design strategies and resultant design diagrams – all of which greatly assist the Panel in understanding how the design has been achieved.
2. The design diagrams emphasize the importance of clear spines in anchoring the proposal to its context and providing a legible structure to distribute its various uses and programmed spaces. However, in the translation of these diagrams into an architectural proposal, many of its most compelling design qualities have been lost.
3. Compared to the key diagrams, the lack of “openness” provided to the two spines is of great concern. Rather than rely on small openings at roof level, could the proposed circulation not be more open to the sky?
4. While the proposal's east west visual links are blocked by a centrally located circulation block, its north south visual links are interrupted by a specialised retail block, resulting in passageways that are only 3m wide. Would it not be better to replace the specialised retail block with north south aligned escalators, build elevators into the walls of adjacent retail and remove the centrally located circulation block altogether?
5. While the diagrams describe clear set out lines for the proposed spatial structure, including continuous retail edges and circulation balustrades (which would read as consistent galleries from below), the proposal deviates from these guidelines at Level 2 to increase childcare space, but this results in adverse impacts on the proposal's overall spatial quality. Section 3 for example, illustrates that the clarity of the circulation – evident at ground and level one – is simply discarded at level 2.
6. The Panel is concerned that some of the entries feel cramped, insufficiently open and blocked by services, lift cores and other elements. Lifts should be relocated to adjacent walls and stairs widened to ensure that the openness of the circulation referred to above is achieved.
7. While the Panel supports the retail streetscape provided at lower ground floor, the provision of additional gathering spaces is questioned. Rather than the provision of a few tables at lower ground and at level two, would it not be better to have some prominent gathering space at ground level, perhaps at the eastern end of the east west link?
8. The long corridors serving commercial spaces on level two appear very narrow and lacking in generosity.
9. As noted above, the level two childcare space removes the clarity of the proposed circulation diagram, which will impact on the proposal's overall spatial clarity, legibility and architectural

integrity. Despite being designed for over 100 children, the childcare entry lobby is very small, which suggests it will be highly congested and inadequate in size to cater for the many parents arriving at peak hour periods.

10. In view of these shortcomings, it is recommended that the layout of the childcare be redesigned so as to allow for the circulation galleries to continue as a circuit (including at its southern end) and that the childcare internal space take over some of the commercial space to its east so as to more comfortably house its entry lobby, waiting and “bump” space and other internal spaces.
11. While the Panel can support marking corners as a principle, it cannot justify all four corners breaching setback requirements to do so. It may be better to allow the pub and the childcare to find an appropriate expression that identifies these two prominent functions, thereby marking their specific corner locations only. Consider opening up the corner with the pub to activate the street rather than a blank wall and elevated ground level.
12. Council advises that circulation galleries are not included in GFA calculations, and that the proposal is therefore exceeding the site’s allowable density. The proposed retail, commercial and circulation areas proposed should be clarified with Council, so as to determine what is being proposed, and what is allowable GFA.
13. If circulation is not designed as high quality, visually and physically open space and well-integrated into the public domain, the Panel would agree that circulation should be counted as internal area. This would lead to substantial area reductions in area being required to align with the site’s density requirements.
14. Council also advises that the proposal breaches the height plane, which is also of great concern. A reduction in GFA may allow for the section of the scheme to be modified so as to avoid any breach in height.
15. While the Panel supports the proposal in principle, it is concerned that its architectural resolution has prioritised GFA over design quality, which has impacted on the design quality and open space amenity of the circulation galleries, the entries, the limited amount of gathering spaces provided and even some internal uses, such as childcare.
16. More alignment between the principles of high-quality public domain (as explained in the DCP as well as the urban design diagrams provided) and the architectural proposal is required to justify the GFA currently proposed and any non-compliances with setback and/ or height controls.
17. Having both parking and loading dock entry points side by side poses potential pedestrian safety issues particularly if Grey Street is to become a more pedestrian friendly zone with outdoor seating etc. Could one of these entrances be located in Carnarvon Street instead?
18. The Panel supports the enhancement of the footpaths surrounding the site and the buffer planting treatment along Silverwater Road. However, the selection of the footpath paving treatment and street tree planting could be setting a precedent for the whole precinct and should therefore be consistent with the overall vision for the area in general, and Silverwater Road in particular. To this end, the Panel recommends the following:
 - i) further discussion with Council to finalise the footpath treatment and principal street tree species, consistent with the vision for Silverwater Road and surrounding streetscapes.
 - ii) In relation to Silverwater Road, the Panel is of the opinion that a large Eucalypt with a tall open canopy may be more appropriate than *Tristania laurina*, which has a lower, dense crown.
 - iii) the replacement of the existing turf nature strip along Silverwater Road with a robust range of flowering native groundcovers and grasses, in addition to the *Lomandra* species proposed
 - iv) Consider bundling or undergrounding power lines along Bligh Street to allow for the establishment of more substantial sized street trees than the currently proposed *Callistemon* Kings Park Special

The outdoor childcare play area is west facing and would benefit from more shade protection in the form of additional trees in the west and south west corner.

19. Along with the re-configuration of the child care entry and circulation layout on L2, the central space between the business and childcare zones could be redesigned as a 'garden room' gathering space with skylight. (Refer also to Items 9 and 10)
20. The internal paving pattern features a strong, striped geometry, emphasising the east west and north south axes. Whilst strong patterns can be a positive response to wayfinding, the developed design should be such that it does not overwhelm the rest of the retail experience. The paving on L2 could likewise be amended to respond more to unifying the central spaces with the different tenancy types on the floor.
21. There appears to be no details provided with regard to sustainability. Given the scale of the development, a comprehensive strategy combining positive environmental, social and economic outcomes should be provided by incorporating efficient thermal design strategies, Solar PV's, water storage and re-use for landscape elements, recycling and re-use of materials and waste as well as use of sustainable materials. The simplicity of the diagram with the spines running through the middle of the site not only works well in terms of circulation, it also has the potential to provide highly efficient internal and external spaces with regard to natural light and ventilation. Combined with other sustainability strategies the scheme has the potential to be a leading-edge development.

DEAP Summary:

*The Parramatta Design Excellence Advisory Panel (The Panel) generally supports the proposal. However, **substantial** amendments to the proposed podium and towers are required to meet the standards expected of a proposal at the scale proposed.*

Planning Comment: Given the above comments from DEAP and that insufficient information has been received addressing these recommendations, Council cannot consider the application for approval.

2. Environmental Planning & Assessment Act 1979 (EPA Act)

2.1 Integrated Development

The application has been lodged as Integrated Development under the provisions of the EPA Act as follows:

- A water supply work approval under the Water Management Act 2000 is required to be obtained. **Water NSW** have requested additional information to allow detailed assessment of the proposal. To date, the requested additional information has not been received. As such, Water NSW have not been able to complete its assessment nor issue their General Terms of Approval. It is noted that Water NSW has issued a notice of intention to refuse General Terms of Approval dated 18 April 2023.

3. Environmental Planning Instruments

3.1 SEPP (PLANNING SYSTEMS) 2021

Clause 2.19 Declaration of regionally significant development

The development has a capital investment value greater than \$30 million. This application is captured by Part 2.4 of this policy which provides that the Sydney Central City Planning Panel is the determining authority for this application.

3.2 SEPP (BIODIVERSITY AND CONSERVATION) 2021

SEPP Section	Comment
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Chapter 2 Vegetation in non-rural areas	The subject application seeks approval for vegetation removal consisting of 18 trees. It is noted however that 12 trees proposed to be removed are street trees. Council's Landscape Officer and Urban design (Public Domain) does not support the removal of street trees. In this regard, the proposal cannot be supported.
Chapter 6 Bushland in urban areas	The site does not contain any bushland to be protected and no vegetation removal is required as part of this application.
Chapter 10 Sydney Harbour Catchment	<p>This chapter of the policy applies to all of the City of Parramatta local government area. It aims to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways by establishing principles and controls for the whole catchment.</p> <p>The nature of this project and the location of the site are such that there are no specific controls which directly apply, with the exception of the objective of improved water quality. That outcome will be achieved through the imposition of suitable conditions to address the collection and discharge of water.</p> <p>However, the site is not located within a Foreshores and Waterways Area identified under Part 10.3 of the policy.</p>

3.3 SEPP (INDUSTRY AND EMPLOYMENT) 2021

SEPP Section	Comment
Chapter 3 Advertising and signage	<p>The application seeks only to provide and identify signage zones within the development site. Signage details would be included as part of any future application for the individual uses once tenancy has been confirmed.</p> <p>Notwithstanding, the following assessment is provided where signage information has been submitted as part of the application.</p> <p>The application proposes 15 signage zones which range in size and dimensions and are located on all four elevations of the development.</p> <p>See the below table for an assessment of the proposed signage zones against the criteria of the SEPP (Industry and Employment) 2021.</p>

3.3.1 SCHEDULE 5 – ASSESSMENT CRITERIA

Considerations and Requirements	Compliance/Discussion
1 Character of the Area	
Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The overall design scheme of the development is not considered to be appropriate for the site with regards to the FSR and height of the development. As the development cannot be supported, the proposed signage zones cannot be considered

	as being compatible with the existing or desired future character of the area or locality.
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	As the development on the site cannot be supported, the signage zones cannot be considered as being consistent with any current or existing themes for outdoor advertising in the area.
2 Special Areas	
Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The proposal cannot be supported due to the proposed density and other issues raised throughout this report. As the proposed development cannot be considered appropriate for its location, the proposed signage zones do not contribute positively to the amenity or visual quality of nearby residential areas.
3 Views and Vistas	
Does the proposal obscure or compromise important views?	The site is not identified as containing important views.
Does the proposal dominate the skyline and reduce the quality of vistas?	It is noted that the proposed height exceeds the maximum height for the site. Some signage zones are located within the areas which exceed the height limit. In this regard, these signage zones dominate the skyline and reduce the quality of vistas.
Does the proposal respect the viewing rights of other advertisers?	As noted, the proposal exceeds the maximum height limit for the site and in this regard, any signage zones located beyond the height limit has the potential to result in conflict with viewing rights of other advertisers.
4 Streetscape, setting or landscape	
Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The overall design of the development is not considered to be appropriate for the subject site particularly with regards to its scale (i.e., FSR and height). Accordingly, the proposed signage is not considered to be of a scale, proportion or form appropriate for the streetscape, setting or landscape.
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	Concerns remain with regards to the overall design scheme of the proposal, mainly due to the scale of the development. As such, the proposed signage zones are not considered to contribute to the visual interest of the streetscape, setting or landscape.
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	As concerns remain with regards to the overall design of the development, it cannot be concluded that the proposed signage zones reduce clutter by rationalising and simplifying existing advertising.
Does the proposal screen unsightliness?	The proposed signage zones do not screen unsightliness.
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	As stated, the development exceeds the maximum height for the site. It is also noted that the proposal is the first development of this scale in the immediate locality. As such, the proposed signage zones in its current form will result in the protrusion above buildings, structures and tree canopies in the area and locality.
Does the proposal require ongoing vegetation management?	The current signage zones do not require ongoing vegetation management.
5 Site and building	
Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?	Whilst the current signage zones are in proportion with the proposal, as stated throughout this report, the scale of the development in its current form is not considered appropriate for the subject site. As such, the proposed signage zones are not compatible with the characteristics of the site.
Does the proposal respect important features of the site or building, or both?	The proposal is not considered to be of a built form that is envisaged for the site and therefore any signage zones related and designed for the current proposal is not considered to respect the important features of the site.
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signage zones are located on a development that is not envisaged on the site due to its proposed scale. As such, the application has not demonstrated innovation and imagination in its relationship to the site.
6 Associated devices and logos with advertisement and advertising structures	

Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	N/A – the proposal is only for signage zones. Details of any safety devices, platforms, lighting devices and/or logos have not been provided.
8 Safety	
Would the proposal reduce the safety for any public road?	The development is located on a classified road. The application was referred to TfNSW. As TfNSW has requested additional information with relation to the overall development. This information has not been submitted. As insufficient information has been received, the impacts of the proposal on the public road cannot be determined.
Would the proposal reduce the safety for pedestrians or bicyclists?	The proposed signage zones in its current form will not reduce safety for pedestrians or bicyclists.
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The proposed signage zones will not reduce safety for pedestrians, particularly children by obscuring sightlines from public areas.

3.4 SEPP (RESILIENCE AND HAZARDS) 2021

SEPP Section	Comment
Chapter 2 Coastal Management	Not applicable. The site is not located in a coastal area.
Chapter 3 Hazardous and Offensive Development	Not applicable. The application does not involve any hazardous or offensive industries.
Chapter 4 Remediation of Land	<p>Clause 4.6 of this policy requires the consent authority to consider if land is contaminated and, if so, whether it is suitable, or can be made suitable, for a proposed use.</p> <p>The site is not identified in Council's records as being contaminated. A site inspection reveals the site appears to have been previously use as residential as well as retail/commercial and industrial uses. Most recently, the shop currently on 15 Grey Street is used as a dry-cleaning business.</p> <p>Given the history of uses on the site as well as the proposal to provide a Childcare Centre within the development, the application was accompanied by a Phase 1 (Preliminary Site Investigation) report. However, it did not determine that the site is suitable for the proposed uses (in particular, the childcare centre). As such, a Phase 2 Detailed Site Investigation was requested from the application. At the time of writing, this information has not been submitted.</p> <p>Accordingly, the suitability of the site for the purposes of a mixed-use development containing a childcare centre cannot be determined. Therefore, Council cannot recommend the proposal for approval.</p>

3.5 SEPP (TRANSPORT AND INFRASTRUCTURE) 2021

SEPP Section	Comment
Chapter 2 Infrastructure	
Development likely to affect electricity transmission or distribution networks	The site is located within proximity to electricity transmission lines as well as providing two new substations to service the development. Council has not referred the current

Development Adjacent to Rail Corridors	application the relevant energy provider as its built form is not supported and is not appropriate for the site.
Frontage to a Classified Road	Not applicable. The site does not adjoin or is adjacent to a rail corridor.
Traffic Generating Development	The site has a frontage to Silverwater Road. The application was referred to Transport for NSW. TfNSW has requested additional information which has not been submitted. Accordingly, concurrence from TfNSW has not been received.
Chapter 3 Educational Establishments and Childcare Facilities	
Centre based childcare facility – concurrence of Regulatory Authority required for certain development	Not applicable. The application does not seek approval for a departure to regulation 107 (indoor unencumbered space requirements) or Regulation 108 (outdoor unencumbered space requirements) of the Childcare Planning Guidelines.
Centre based childcare facility in Zone IN1 or IN2	Not applicable. The subject site is zoned B6 Enterprise Corridor.
Floor Space Ratio	Not applicable. The subject site is not zoned R2 Low Density Residential where a maximum 0.5:1 FSR would be applicable.
Non-discretionary development standards	<p><u>Location</u> – The site is not within proximity to another childcare centre.</p> <p><u>Indoor Space</u> – The proposal complies with the requirements under Regulation 107 of the Childcare Planning Guidelines and proposes indoor unencumbered space of 349m².</p> <p><u>Outdoor Space</u> – The proposal requires a minimum 336m² of outdoor unencumbered space for 102 children under Regulation 108 of the Guidelines. The proposal provides sufficient outdoor play areas.</p> <p><u>Site Area and Dimensions</u> – The site is of a satisfactory size and shape.</p> <p><u>Colour of building and materials</u> – The proposed building materials and colours are satisfactory.</p>

3.5.1 CHILDCARE PLANNING GUIDELINES 2021

Considerations and Requirements	Compliance/Discussion
Part 3 – Matters for consideration	
3.1 Site selection and location	

<p>C1 For proposed developments in or adjacent to a residential zone, consider:</p> <ul style="list-style-type: none"> • the acoustic and privacy impacts of the proposed development on the residential properties • the setbacks and siting of buildings within the residential context • traffic and parking impacts of the proposal on residential amenity. 	<p>No</p> <p>The development site benefits from an ample site area with generous building separation from sensitive land uses such as the residential properties opposite the site at Bligh Street and Grey Street. Notwithstanding, the overall built form is of scale and design that is out of character for the site and its immediate locality. The proposal provides non-compliant street setbacks that result in an exacerbated development scale, especially given the proximity to the predominantly 1 storey residential uses opposite the site on Grey Street and Bligh Street. This also demonstrates disregard for the quality of the public domain and streetscape presentation.</p> <p>DEAP has additionally noted that the design of the childcare centre lacks spatial clarity, legibility, and architectural integrity. Further, that the childcare centre layout be redesigned to ensure that entry and gathering areas can accommodate peak hour drop off/pick up within the lobby area.</p> <p>Council's Traffic Engineer has reviewed the proposal and overall does not support the application as it does not provide the required number of parking spaces, the inappropriate location of the driveway and the amount of additional traffic generated by the development is of a safety concern.</p> <p>Accordingly, the proposal cannot be considered for approval.</p>
<p>C2 When selecting a site, ensure that:</p> <ul style="list-style-type: none"> • the location and surrounding uses are compatible with the proposed development or use • the site is environmentally safe including risks such as flooding, land slip, bushfires, coastal hazards • there are no potential environmental contaminants on the land, in the building or the general proximity, and whether hazardous materials remediation is needed • the characteristics of the site are suitable for the scale and type of development proposed having regard to: <ul style="list-style-type: none"> - size of street frontage, lot configuration, dimensions and overall size - number of shared boundaries with residential properties - the development will not have adverse environmental impacts on the surrounding area, particularly in sensitive environmental or cultural areas • where the proposal is to occupy or retrofit an existing premises, the interior and exterior spaces are suitable for the proposed use • there are suitable drop off and pick up areas, and off and on street parking • the type of adjoining road (for example classified, arterial, local road, cul-de-sac) is appropriate and safe for the proposed use • it is not located closely to incompatible social activities and uses such as restricted premises, injecting rooms, drug clinics and the like, premises licensed for alcohol or gambling such as hotels, clubs, cellar door premises and sex services premises. 	<p>No</p> <p>The sites to the north-east are zoned IN1 General Industrial, north-west, south-west and south-east are similarly zoned B6 Enterprise Corridor. The site is also within proximity to sites zoned RE1 Public Recreation, R3 Medium Density Residential and SP2 Infrastructure.</p> <p>The site is not known to be flood or bushfire prone or a landslip risk. The site is not located in a coastal zone.</p> <p>The application has not submitted a Phase 2 Report that determines if the site is suitable for the purposes of a childcare facility.</p> <p>Whilst the characteristics of the site allows a childcare facility in some form, the current built form has been designed with excessive density and scale that it results in various amenity impacts within and external to the site. The repercussions of such a design scheme on the childcare facility relate to its lack of spatial clarity and an inappropriate floor layout that is unlikely to accommodate peak time drop off/pick up within the lobby area.</p> <p>Drop off and pick up are located within the Level 2 Basement. Council's Traffic Engineer notes that the overall development, which includes the operations of the childcare centre will generate additional traffic that cannot be safely supported by the current design of the proposal. In this regard, the proposed childcare centre cannot be supported.</p>
<p>C3 A child care facility should be located:</p>	<p>Yes</p>

<ul style="list-style-type: none"> • near compatible social uses such as schools and other educational establishments, parks and other public open space, community facilities, places of public worship • near or within employment areas, town centres, business centres, shops • with access to public transport including rail, buses, ferries • in areas with pedestrian connectivity to the local community, businesses, shops, services and the like. 	<p>The site is located within proximity to the following:</p> <ul style="list-style-type: none"> - Employment areas - Arterial road (Silverwater Road) - Reserves and Parks for recreation (ie Hume Park and Deakin Park) - Place of worship (Sydney Korean Catholic Church) <p>It is also noted that the facility is part of a mixed-use development that (had it been recommended for approval) would have contained specialty retail and office premises.</p>
<p>C4 A child care facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from:</p> <ul style="list-style-type: none"> • proximity to: <ul style="list-style-type: none"> - heavy or hazardous industry, waste transfer depots or landfill sites - LPG tanks or service stations - water cooling and water warming systems - odour (and other air pollutant) generating uses and sources or sites which, due to prevailing land use zoning, may in future accommodate noise or odour generating uses - extractive industries, intensive agriculture, agricultural spraying activities • any other identified environmental hazard or risk relevant to the site and/ or existing buildings within the site. 	<p>No</p> <p>The site is located within proximity to industrial uses on Carnarvon Street. An Air Quality Report and a Phase 2 Detailed Site Investigation was requested. However, this information has not been submitted and therefore the suitability of the site for the purposes of a childcare facility cannot be supported.</p> <p>It is noted that the childcare centre is contained within the same development as a pub. The pub is located the ground floor on the corner of Carnarvon Street and Silverwater Road. The childcare centre is located on Level 2 which addresses the corner of Bligh Street and Grey Street. It is not considered that these uses are in conflict as they are provided with separate entries and circulation areas.</p>
3.2 Local character, streetscape and the public domain interface	
<p>C5 The proposed development should:</p> <ul style="list-style-type: none"> • contribute to the local area by being designed in character with the locality and existing streetscape • reflect the predominant form of surrounding land uses, particularly in low density residential areas • recognise predominant streetscape qualities, such as building form, scale, materials and colours • include design and architectural treatments that respond to and integrate with the existing streetscape • use landscaping to positively contribute to the streetscape and neighbouring amenity • integrate car parking into the building and site landscaping design in residential areas. 	<p>No</p> <p>The development where the childcare facility is located is of a bulk and scale that is unsuitable for its location. The proposal is the first development of this scale in the immediate locality. It also exceeds the maximum FSR and height for the site which is not justified given the ample site area. This also does not provide an appropriate transition to the R3 zones within proximity to the site. In this regard, such a development will result in an undesirable development precedent in this locality.</p> <p>The development seeks to remove existing street trees and replacement vegetation that is not supported. This adversely impacts on the public domain and streetscape presentation.</p> <p>As stated elsewhere, the proposed vehicle access and parking is not adequately co-ordinated nor considered in its current form.</p> <p>For these reasons, Council cannot support the application.</p>
<p>C6 Create a threshold with a clear transition between public and private realms, including:</p> <ul style="list-style-type: none"> • fencing to ensure safety for children entering and leaving the facility • windows facing from the facility towards the public domain to provide passive surveillance to the street as a safety measure and connection between the facility and the community 	<p>Yes</p> <p>The childcare centre is located on Level 2 with no direct pedestrian access from the street. The facility addresses the corner of Bligh Street and Grey Street to ensure clear separation from the other uses within the development. Windows address the 2 frontages for the purposes of surveillance to the outdoor play areas.</p>

<ul style="list-style-type: none"> integrating existing and proposed landscaping with fencing. 	
<p>C7 On sites with multiple buildings and/or entries, pedestrian entries and spaces associated with the childcare facility should be differentiated to improve legibility for visitors and children by changes in materials, plant species and colours.</p>	<p>Yes</p> <p>A separate entry is available from the Level 2 basement for the childcare centre. Circulation spaces and galleries provide a demarcation of the other uses from the childcare centre within the development.</p>
<p>C8 Where development adjoins public parks, open space or bushland, the facility should provide an appealing streetscape frontage by adopting some of the following design solutions:</p> <ul style="list-style-type: none"> clearly defined street access, pedestrian paths and building entries low fences and planting which delineate communal/ private open space from adjoining public open space minimal use of blank walls and high fences. 	<p>N/A</p> <p>The site does not adjoin a public park, open spaces or bushland.</p>
<p>C9 Front fences and walls within the front setback should be constructed of visually permeable materials and treatments.</p> <p>C10 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.</p>	<p>N/A</p> <p>The proposal does not seek approval for a front fence.</p>
<p>3.3 Building orientation, envelope and design</p>	
<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 • ensure that where a child care facility is located above ground level, outdoor play areas are protected from wind and other climatic conditions. 	<p>No</p> <p>As discussed throughout this report, the scale of the development given the breaches in height and FSR is not supported. Further, street setback encroachments are not considered to be satisfactory, resulting in a building envelope and footprint that is not envisaged on the site.</p> <p>The design of the childcare centre in particular lacks spatial and circulation quality which impacts on the overall legibility and architectural integrity of the facility. This is particularly evident in the design of the small lobby area and adjoining internal spaces which can become congested during peak drop off/pick up times.</p> <p>The location of the outdoor play areas which address Grey Street adequately buffers the residential premises from visual, and overshadowing impacts particularly given the ample separation between the two uses.</p> <p>The plans indicate that a full height glass screen is provided as a noise attenuating measure on the Grey Street corner as well as the Bligh Street frontage of the facility. However, full details of this measure have not been provided.</p> <p>The submitted Wind Report states that a windbreak feature is required for the full perimeter of the outdoor play area. This appears to be conflict with the plans which proposes planter boxes along the Grey Street building edge in addition to a 1.6m balustrade.</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 • setbacks to the street should be consistent with the existing character. 	<p>No</p> <p>The built form which the childcare centre is a part of exceeds the maximum height and FSR for the site. In this regard, the proposal has not contemplated an appropriate development that responds to the scale and character of the street.</p> <p>It is noted that the street setbacks of the development are inconsistent with the requirements under Auburn DCP which adversely impacts the public domain as well as the streetscape presentation.</p> <p>Accordingly, the application cannot be supported.</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>C14 On land in a residential zone, side and rear boundary setbacks should observe the prevailing setbacks required for a dwelling house.</p>	<p>No</p> <p>Auburn DCP 2010 requires that development within this site be provided with a 3m setback along Bligh Street which this development does not comply with.</p> <p>N/A</p> <p>The site is not zoned residential.</p>
<p>C15 The built form of the development should contribute to the character of the local area, including how it:</p> <ul style="list-style-type: none"> • respects and responds to its physical context such as adjacent built form, neighbourhood character, streetscape quality and heritage • contributes to the identity of the place • retains and reinforces existing built form and vegetation where significant • considers heritage within the local neighbourhood including identified heritage items and conservation areas • responds to its natural environment including local landscape setting and climate • contributes to the identity of place. 	<p>No. See comments from C12.</p>
<p>C16 Entry to the facility should be limited to one secure point which is:</p> <ol style="list-style-type: none"> 1 Located to allow ease of access, particularly for pedestrians; 2 Directly accessible from the street where possible; 3 Directly visible from the street frontage; 4 Easily monitored through natural or camera surveillance; 5 Not accessed through an outdoor play area; and 6 In a mixed-use development, clearly defined and separate from entrances to other uses in the building. 	<p>Yes</p> <p>Whilst a separate access is provided to the childcare centre from the other uses of the development, there is no street access given its location on Level 2. Access to the childcare centre is located from the Lower Ground level which has direct access from the street.</p>
<p>C17 Accessible design can be achieved by:</p>	<p>No</p>

<ol style="list-style-type: none"> 1 Providing accessibility to and within the building in accordance with all relevant legislation; 2 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; 3 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 4 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>	<p>Council's Universal Access and Design Officer has reviewed the proposal and upon review, does not support the development in its current form. Accordingly, the proposal cannot be supported.</p>
3.4 Landscaping	
<p>C18 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 • incorporating natural features of the site, such as trees, rocky outcrops and vegetation communities into landscaping. <p>C19 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 • using low level landscaping to soften and screen parking areas. 	<p>No</p> <p>Council's Landscape Officer has raised concerns with regards to the landscaping provided for the childcare centre. These concerns include</p> <ul style="list-style-type: none"> - a lack of information to assess additional planting and soil volume details, - inappropriate location of seating benches and structures adjacent the building edge, - lack of detail on how the sandpits will be realised in the locations proposed, - the incorporation of any acoustic measures with the landscaping treatment for the childcare centre and - a lack of accessible garden beds and natural elements have not been integrated in the layout of the proposal to encourage 'natural play'.
3.5 Visual and acoustic privacy	
<p>C20 Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.</p>	<p>N/A</p> <p>The childcare centre whilst located within a mixed-use development, does not contain a residential component.</p>
<p>C21 Minimise direct overlooking of indoor rooms and outdoor play spaces from public areas through:</p> <ol style="list-style-type: none"> 1 Appropriate site and building layout; 2 Suitably locating pathways, windows and doors; and 3 Permanent screening and landscape design. 	<p>Yes</p> <p>By virtue of its location on Level 2 and that no other development is located within proximity of the site, any direct overlooking of the indoor and outdoor spaces of the childcare facility is minimal.</p> <p>The current location of the childcare centre within the development is concentrated in the north-western corner and therefore does not address or conflict with the other uses in the development.</p>

<p>C22 Minimise direct overlooking of main internal living areas and private open spaces in adjoining developments through:</p> <ol style="list-style-type: none"> 1 Appropriate site and building layout; 2 Suitable location of pathways, windows and doors; and 3 Landscape design and screening. 	<p>Yes</p> <p>The childcare centre is located of ample distance from residential premises located on Bligh Street and Grey Street. In this regard, direct overlooking of main internal living areas and private open spaces are minimised.</p>
<p>C23 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> <ol style="list-style-type: none"> 1 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 2 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>No</p> <p>The plans indicate that a full height glass screen is provided as a noise attenuating measure on the Grey Street corner as well as the Bligh Street frontage of the facility. However, full details of this measure have not been provided.</p>
<p>C24 A suitably qualified acoustic professional should prepare an acoustic report which will cover the following matters:</p> <ol style="list-style-type: none"> 1 Identify an appropriate noise level for a child care facility located in residential and other zones; 2 Determine an appropriate background noise level for outdoor play areas during times they are proposed to be in use; and 3 Determine the appropriate height of any acoustic fence to enable the noise criteria to be met. 	<p>Yes</p> <p>Council's Health (Acoustic) Officer has reviewed the proposal and the Acoustic Report submitted with the application and raised no objections based on the requirements of C24.</p>
<p>3.6 Noise and air pollution</p>	
<p>C25 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 • locating cot rooms, sleeping areas and play areas away from external noise sources. <p>C26 An acoustic report should identify appropriate noise levels for sleeping areas and other non play areas and examine impacts and noise attenuation measures</p>	<p>Yes</p> <p>The proposal has located the cot rooms away from openings and has oriented the layout of the childcare facility to address away from noise sources such as the industrial uses on Carnarvon Street and Silverwater Road.</p> <p>Yes</p> <p>The development as a whole has an address to Silverwater Road and is located opposite industrial uses on Carnarvon Street. However, the childcare facility on Level 2 has been oriented</p>

<p>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 State Environmental Planning Policy (Infrastructure) 2007 • on a major or busy road • other land that is impacted by substantial external noise. 	<p>towards Bligh Street and Grey Street away from noise sources. An Acoustic Report was prepared and submitted with the application and reviewed by Council's Environmental Health Officer who raised no objection subject to conditions of consent.</p>
<p>C27 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>C28 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 • 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 • incorporating ventilation design into the design of the facility. 	<p>No</p> <p>The overall development has a frontage to Silverwater Road and is located opposite industrial uses on Carnarvon Street. However, the application was not submitted with an Air Quality Report. To date, an Air Quality Report has not been submitted.</p>
<p>3.7 Hours of operation</p>	
<p>C29 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.</p>	<p>No</p> <p>The development proposes operating hours of Monday to Friday 6:45am to 7pm. The development is also opposite residential premises on Bligh Street.</p>
<p>C30 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.</p>	<p>No</p> <p>The childcare facility is to be located within a mixed-use development where it is also within proximity to residential and industrial uses. The proposed operating hours is varied by 15mins in the morning coincides and result in contribution to peak traffic within the locality. Council's Traffic Engineer as well as TfNSW has raised concerns with regards to the traffic generated by the development and does not currently support the proposal. As this concern has not been satisfactorily addressed, the proposal cannot be supported.</p>
<p>3.8 Traffic, parking and pedestrian circulation</p>	
<p>C31 Off street car parking should be provided at the rates for child care facilities specified in</p>	<p>No</p>

a Development Control Plan that applies to the land.	As previously discussed, the overall development does not meet the minimum car parking requirements. Further, the current proposal generates traffic that has not been satisfactorily addressed and considered within the current development. As such, both Council's Traffic Engineer and TfNSW have not been able to support the application in its current form.
C32 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.	N/A On-street parking has not been nominated for consideration for the proposed childcare centre.
C33 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: 1 The amenity of the surrounding area will not be affected; and 2 There will be no impacts on the safe operation of the surrounding road network.	No Council's Traffic Engineer and TfNSW has requested amended information from the applicant which has not been submitted. Accordingly, a final assessment of the traffic impacts of the development could not be completed. As such, the proposal cannot be considered for approval.
C37 Mixed use developments should include: 1 Driveway access, manoeuvring areas and parking areas for the facility that are separate to parking and manoeuvring areas used by trucks; 2 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 3 Parking that is separate from other uses, located and grouped together and conveniently located near the entrance or access point to the facility.	No The driveway access to the basement of the development is located within proximity of the corner of Carnarvon Street and Grey Street. Concern is raised that the additional traffic generated by the development will result in queuing on Grey Street to access the site. Further, that the proposed left in/left out restriction at the intersection of Grey Street and Carnarvon Street will encourage risky behaviour by undertaking a U-Turn at the intersection of Carnarvon Street and Churchill Street instead of using the roundabout on the intersection of Carnarvon Street and Stubbs Street. To date, this concern has not been addressed by the applicant. A review of the basement Level 2 plan indicate that drop off and pick up zones are provided for the exclusive use of the facility and is clearly marked and located close to the entrance. The parking allocated for the childcare centre is located and grouped together near the access point to the facility in Basement Level 2.
Part 4 – Applying the National Regulations to development proposals	
4.1 Indoor space requirements	
Regulation 107 Education and Care Services National Regulations Every child being educated and cared for within a facility must have a minimum of 3.25m ² of unencumbered indoor space.	Yes Required – 331.5 m ² Proposed – 349m ²
Verandahs as indoor space 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 (refer to Figure 1). Storage Storage areas including joinery units are not to be included in the calculation of indoor space. To achieve a functional unencumbered area	N/A A verandah is proposed however it is allocated as an outdoor play area. Yes Required External storage – 30.6m ³

<p>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> <ol style="list-style-type: none"> 1 A minimum of 0.3m³ per child of external storage space; and 2 A minimum of 0.2m³ per child of internal storage space. <p>Storage of items such as prams, bikes and scooters should be located adjacent to the building entrance.</p>	<p>Internal storage – 20.4m³</p> <p>Provided</p> <p>External storage – 66m³</p> <p>Internal storage – 35m³</p> <p>No.</p> <p>Whilst a pram storage area has been provided, as DEAP noted, the circulation area around the lobby and the adjacent rooms are cramped and a redesign of the layout should be reconsidered. Amended plans have not been submitted that demonstrates compliance with this recommendation.</p>
4.2 Laundry and hygiene facilities	
<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>Yes</p> <p>A laundry facility is provided.</p>
4.3 Toilet and hygiene facilities	
<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>No</p> <p>Detailed Elevation/section plans of the toilet and hygiene facilities have not been provided for assessment.</p>
4.4 Ventilation and natural light	
<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>No</p> <p>It has not been demonstrated that the childcare facility will receive sufficient solar access and ventilation, particularly as the overall development is of a bulk and scale that is not envisaged in this location.</p>
4.5 Administrative space	
<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>Yes</p> <p>A meeting room is provided within the facility for the purposes of conducting the administrative functions of the service and consultations.</p>
4.6 Nappy change facilities	
<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</p>	<p>Yes</p> <p>A nappy change facility has been provided.</p>

<p>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 the requirements for nappy changing and bathing facilities that are contained in the <i>National Construction Code</i>.</p>	
4.7 Premises designed to facilitate supervision	
<p>Regulation 115 Education and Care Services National Regulations</p> <p>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>.</p>	<p>No</p> <p>Details demonstrating compliance to the design guidance of Section 4.6 of the guidelines has not been provided. Accordingly, the proposal cannot be considered for support.</p>
4.8 Emergency and evacuation procedures	
<p>Regulations 97 and 168 Education and Care Services National Regulations</p> <p>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:</p> <ol style="list-style-type: none"> 1 Instructions for what must be done in the event of an emergency; 2 An emergency and evacuation floor plan, a copy of which is displayed in a prominent position near each exit; and 3 A risk assessment to identify potential emergencies that are relevant to the service. 	<p>Yes</p> <p>An emergency evacuation plan has been submitted with the application.</p>
4.9 Outdoor space requirements	
<p>Regulation 108 Education and Care Services National Regulations</p> <p>An education and care service premises must provide for every child being educated and cared for within the facility to have a minimum of 7.0m² of unencumbered outdoor space.</p> <p>Unencumbered outdoor space excludes any of the following:</p> <ol style="list-style-type: none"> 1 Pathway or thoroughfare, except where used by children as part of the education and care program; 2 Car parking area; 3 Storage shed or other storage area; 4 Laundry; and 5 Other space that is not suitable for children. <p>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).</p>	<p>Yes</p> <p>Required – 714m² Proposed – 728m²</p>
4.10 Natural environment	
<p>Regulation 113 Education and Care Services National Regulations</p> <p>The approved provider of a centre-based service must ensure that the outdoor spaces</p>	<p>No</p> <p>See comment under C18.</p>

allow children to explore and experience the natural environment.	
4.11 Shade	
Regulation 114 Education and Care Services National Regulations 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.	Yes The roof is extended over the outdoor play area.
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. 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> .	Yes A full glass height screen is located along the building edge and behind that a 1.2m high planters.
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: 1 A soil assessment for the site of the proposed education and care service premises; 2 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.	No See discussion under C2 of the Guidelines.

3.6 PARRAMATTA LOCAL ENVIRONMENTAL PLAN 2023

Parramatta LEP 2023 was gazetted on 2 March 2023. Clause 1.8 of the LEP now repeals the following planning instrument which applies to the land:

- Auburn Local Environmental Plan 2010
- Holroyd Local Environmental Plan 2013
- Parramatta (former The Hills) Local Environmental Plan 2012
- Parramatta Local Environmental Plan 2011

Clause 1.8A Savings provision relating to development applications states:

If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as it this Plan had not commenced.

The current DA was lodged on 16 September 2022 and therefore shall be assessed under Auburn Local Environmental Plan 2010.

It is noted that under PLEP 2023 the site is zoned E3 Productivity Support. Further, that there are no provisions that permit additional FSR on the sites zoned E3 Productivity Support when certain uses are proposed. As such, any development on the subject site is restricted to a maximum FSR of 1:1 under PLEP 2023.

3.6 AUBURN LOCAL ENVIRONMENTAL PLAN 2010

The relevant requirements and objectives of this LEP have been considered in the following assessment table.

Requirement	Comment		
Part 1 Preliminary	Noted.		
Part 2 Permitted or Prohibited Development	The proposed development is permissible with consent. See Section 5 of the Executive Summary for further detail.		
Part 3 Exempt and Complying Development	Not applicable. The development requires consent.		
Part 4 Principal Development Standards	Requirement	Proposed	Compliance
	Lot Size Not applicable		N/A
	Height 14m (max)	15.68m to roof and 16.88m to lift overrun	No Clause 4.6 variation submitted
	Floor Space Ratio The site has a FSR of 1:1 (maximum) = 7550.08m ² However, Clause 2C also states that development on land in Zone B6 within the Silverwater Road precinct proposes specialised retail premises, function centres and a registered club, the FSR is 1.5:1. Further, that if an office premises, hotel or motel is proposed, the FSR is 2:1.	= 22,962m ² or 3:1	No
	Exceptions	See discussion below.	
Part 5 Miscellaneous Provisions	Clause 5.6 Architectural roof features No architectural roof features are proposed.		
	Clause 5.10 Heritage Conservation The site is not heritage listed. The site is not located within proximity to a heritage listed item. The site is not located within a conservation area.		

Requirement	Comment
	The site is also not identified as being of European or Aboriginal archaeological significance.
	Clause 5.21 Flood Planning The site is not identified is being flood prone.
Part 6 Additional Local Provisions	Clause 6.1 Acid sulfate soils The site is not identified as containing acid sulphate soils and therefore does not require the preparation of an Acid Sulphate Management Plan.
	Clause 6.2 Earthworks Due to insufficient information, Council's Development Engineer is unable to complete the assessment of the earthworks proposed. Accordingly, the proposal is not considered to comply with this clause and cannot be considered for approval.
	Clause 6.4 Foreshore building line The site is not affected by a foreshore building line.
	Clause 6.5 Essential services Essential services can be provided to the site (water, electricity, sewage, drainage and road access).

3.6.1 Non-Compliance with Clause 4.4 – FSR of Auburn LEP 2010

The site is subject to maximum FSR of 1:1. However, additional provisions contained within the LEP allows additional floor area for sites zoned B6 Enterprise Corridor Zone within the Silverwater Road precinct. This clause states:

- (2C) *Despite subclause (2), the maximum floor space ratio for the following development on land in Zone B6 Enterprise Corridor within the Silverwater Road Precinct, as shown edged light purple on the [Floor Space Ratio Map](#), is as follows—*
- (a) *1.5:1 for specialised retail premises, entertainment facilities, function centres and registered clubs, and*
 - (b) *2:1 for office premises and hotel or motel accommodation.*

Council's interpretation of the above clause is that the FSR's cannot be 'stacked'. That is, the base FSR of 1:1 can be exceeded for the first set of uses to 1.5:1 (speciality retail) and then to a maximum of 2:1 as office premises is also proposed. Accordingly, the maximum FSR for the development is 2:1 or 15,00.16m². This includes all corridors and galleries.

Upon review of the proposal, it appears that the exceedance in gross floor area (GFA) relates to the exclusion of the internal corridors / circulation area. The applicant argues that by virtue of the cut-out/openings in the roof, that these corridors are 'open'.

The issue of corridors and GFA was considered in the judgement of *Danks St v City of Sydney (2015)*. Whilst this judgement excluded the corridors from FSR, these corridors were mostly open into the internal forecourt area which was unroofed. The current proposal and the design of the corridor / circulation areas and token roof openings are unlike the corridors that were subject of the judgement and therefore does not meet the intent of being open corridors. See images below:



Figure 4. Example of upper floor level (Level 2) of development subject of judgement in *Danks St v City of Sydney* (2015)



Figure 5. Example Section Plan of development subject of judgement in *Danks St v City of Sydney* (2015)

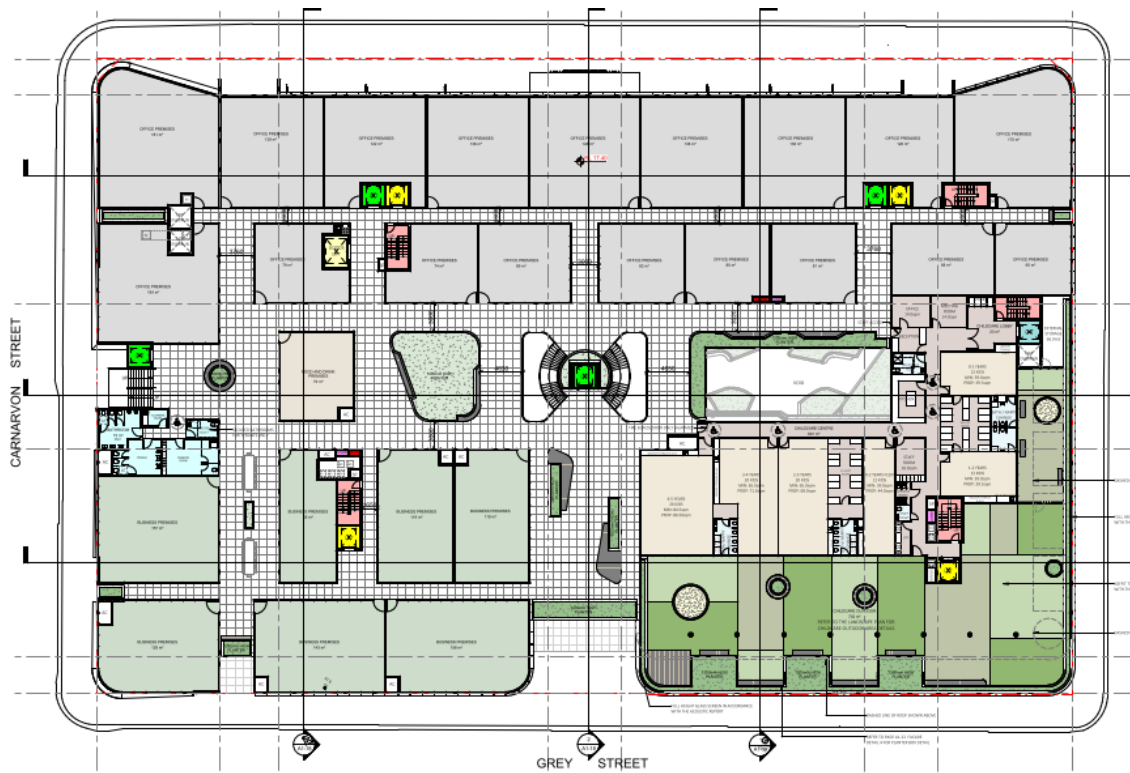


Figure 5. Level 2 of the proposed development

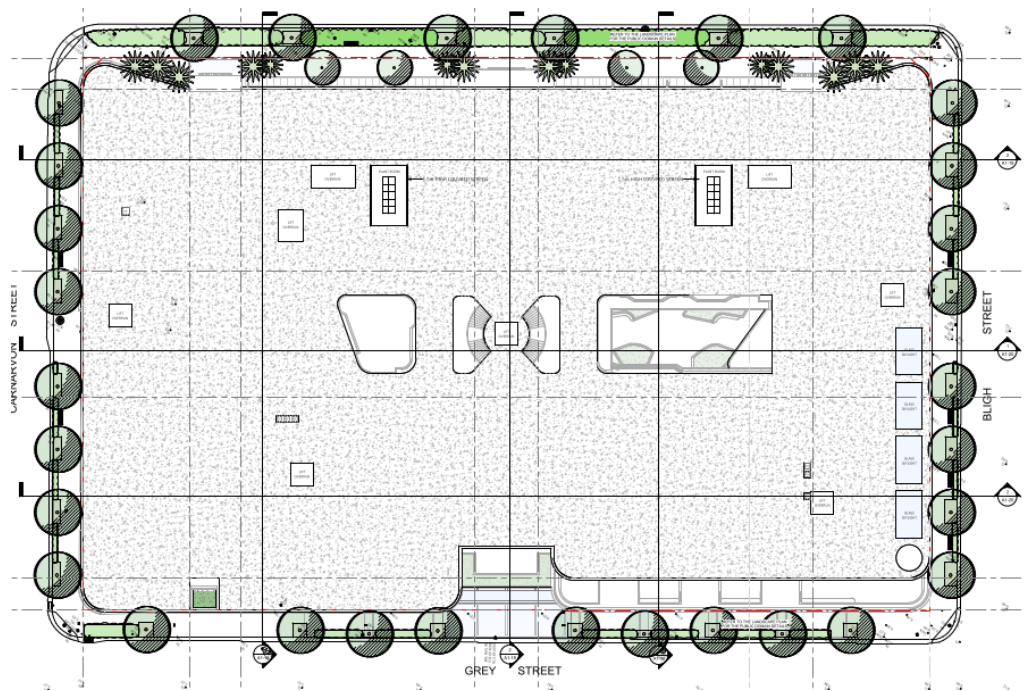


Figure 6. Roof design and roof cut out / openings of the proposed development

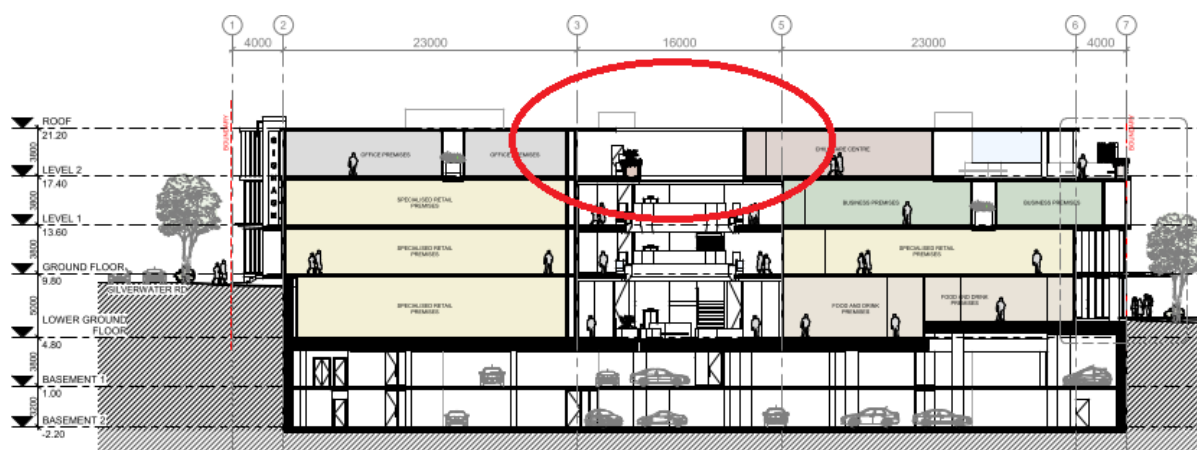


Figure 7. Section Plan of the proposed development.

Note: The 'opening' on the roof is not open, but is enclosed by a glass enclosure for weather protection and is unlike the fully opened roof of the development in *Danks St v City of Sydney (2015)*

Council's request to amend the plans to comply with the maximum FSR of 2:1 have not been addressed. The application also did not submit a Clause 4.6 variation to Clause 4.4 – FSR. Accordingly, an assessment of the departure to Clause 4.4 – FSR under the provisions of Clause 4.6 cannot be undertaken. Given this, the variation to the FSR and the proposal is not supported.

3.6.2 Clause 4.6 Variation Assessment of Clause 4.3 – Height

The proposal seeks approval to vary Clause 4.3 – Height of Auburn LEP 2010. The site is subject to a maximum height of 14m. The proposal has an overall height of 16.88m to the lift overrun which is a 2.88m (20.5%) variation to the development standard.

Clause 4.6 of PLEP 2012 allows Council to provide an appropriate degree of flexibility in applying certain development standards, where flexibility would achieve better outcomes.

Clause 4.6(1) – Objectives of Clause 4.6

The objectives of clause 4.6 of the PLEP 2012 are considered as follows:

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

Clause 4.6(2) – Operation of Clause 4.6

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

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

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

- “(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

(b) there are sufficient environmental planning grounds to justify contravening the development standard.”

The applicant has submitted a written request justifying the variation to the height development standard. The applicant has provided justification for the variation in summary below. The full request is included at **Attachment B**.

The proposal whilst exceeding the height development standard provides an appropriate planning outcome based on the provision of:

- *Bulk and scale that is generally reflective of the anticipated planning controls*
- *Built form at 3 – 4 storeys that creates an active edge but one that also is able to stand alongside what is a vehicle dominated throughfare*
- *Provides suitable visual separation with the immediate adjoining sites which are zoned either B6 enterprise corridor or IN1 Industrial.*
- *Ability to minimise adverse impacts on the surrounding properties with regard to view loss, overshadowing and privacy.*
- *A well designed building façade that offers a range of entry points for pedestrians.*
- *Floor space that generates employment but also services the existing industrial floor area within the adjoining industrial zone.*
- *Open and accessible large format floor plates which improves distribution of specialty retail goods within the centre (height compliance would lead to stepping of the floor plates and the overall built form).*
- *Suitable bulk and scale at each corner that serves to frame the building and create bookends to define the block*

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.

Height

Clause 4.3 Height Objectives	Council Officer Assessment
(a) to establish a maximum height of buildings to enable appropriate development density to be achieved	<ul style="list-style-type: none"> - It is noted that in addition to the exceedance in height of the proposed development, the proposal also exceeds FSR as it excluded large areas of corridors and circulation areas within the development. In combination, these departures do not result in an appropriate development density for the site. - The proposal also encroaches on street setbacks and articulation zones which create larger building envelopes (in addition to height and FSR) that has not been contemplated on the site nor achieve appropriate development density. - The proposal is the first development in the B6 zone and as such, it is important to comply with the maximum height for the site to enable an appropriate development density as envisaged by the controls.
(b) to ensure that the height of buildings is compatible with the character of the locality.	<ul style="list-style-type: none"> - As noted above, the proposal is the first development in the B6 zone on this portion of Silverwater Road. As such, the existing development surrounding the subject site are of various heights that include 1 and 2 storey dwellings and large two storey industrial buildings. It is therefore imperative that the maximum height limit be complied with to ensure that the development does not consume and further isolate itself from the character of the locality. - The development proposes 3 / 4 storeys in parts of the building. The exceedance contains the roof form, lift overrun and parts of the upper level. - The exceedance to the development height in this instance appears exaggerated given the proposed scale of the development which results in the incompatibility with the character of the locality.

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 the objectives are not relevant to the development.

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

The written request for the variation to the standard do not suggest that the objectives of these standards would be thwarted if compliance was required, but rather the objectives are achieved despite the breach to these development standards.

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 height standard has been abandoned.

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

The written requests do 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.

With regards to the written request for the Clause 4.6 variation to the **Height**, it is considered that the written request does not demonstrate sufficient environmental planning ground for the following reasons:

- The proposal is the first development located in the B6 zone within the Silverwater Road Precinct. A variation to the height in this instance would result in a less sympathetic development that is out of character for the local area. This is further exacerbated by the departure to the maximum FSR for the site.
- Additionally, given the ample site area and the potential scale of the proposal, a compliant development reduces perception of a 'bulky' built form.
- The proposal with its non-compliant height does not have the support of Council's DEAP as the overall design of the development has not been satisfactorily resolved to be appropriate for the subject site.
- The non-compliant height contributes to the overall scale of the development which in its current form generates an increase in traffic for the local area. These traffic impacts have not been considered or ameliorated within the current development.

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 B6 Enterprise Corridor zone and planners' assessment is provided below:

B6 Zone Objectives	Proposal
<ul style="list-style-type: none">• <i>To promote businesses along main roads and to encourage a mix of compatible uses.</i>	The scale of the development which the non-compliant height is a contributor of will result in additional traffic generation. This has not been satisfactorily coordinated within the design of the development and its impacts on the local road network have not been ameliorated. Despite the provision of a range of uses within the development, the traffic impacts due to the

	proposal does not promote businesses along a main road such as Silverwater Road.
<ul style="list-style-type: none"> <i>To provide a range of employment uses (including business, office, retail and light industrial uses).</i> 	The development has not demonstrated that it is the best design outcome for the site. Substantial amendments are required to ensure compliance with the development standards. As such, uncertainty remains as to whether the proposed uses are feasible within the proposed development.
<ul style="list-style-type: none"> <i>maintain the economic strength of centres by limiting retailing activity.</i> 	The development contains two neighbourhood shops which is inconsistent with this particular objective of the zone.

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.

a) Conclusion

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

- The proposal is not consistent with the objectives of the height development standard, as it is not compatible with the bulk, scale and character of the existing and future surrounding development, nor does it enable appropriate development density.
- There are not sufficient environmental planning grounds to justify the departure, in particular the objectives and controls of Auburn DCP 2010.

The proposal is not in the public interest and not consistent with the zone objectives, as a compliant development would promote businesses along Silverwater Road whilst providing a range of employment opportunities.

4. Development Control Plans

4.1 Auburn Development Control Plan 2010

The proposed development has been assessed having regard to the relevant desired outcomes and prescriptive requirements within Auburn DCP 2010. The tables below provide an evaluation against the relevant controls. Note, where there is conflict between ADCP 2010 and the SEPPs listed above, the SEPP controls prevail to the extent of the inconsistency and as such are not included in the evaluation.

INDUSTRIAL AREAS		
Clause	Comment	Complies
2.0 Built Form D1 Buildings shall be designed to: <ul style="list-style-type: none"> • introduce variations in unit design within building groups. • introduce solid surfaces, preferably masonry, incorporate horizontal and vertical modulation including windows in appropriate proportions and configurations. • include an appropriate variety of materials and façade treatments so as to create visual interest on a high-quality design outcome. D2 On corner sites, the building reinforces the corner by massing and facade orientation. D3 Development for hotel and motel accommodation and office premises on land zoned B6 Enterprise Corridor on Silverwater Road shall be a maximum of three (3) storeys.	<p>The application was reviewed by DEAP. Upon review, DEAP raised concerns with regards to its design outcomes, in particular the internal planning and management of internal circulation. As amended plans have not been received that addresses these concerns to the satisfaction of Council, the proposal is not supported.</p>	No
	<p>Notwithstanding the design of the corners of the development, these elements encroach on the street setback. These areas also contain floor area which exacerbate the scale of the development in these locations.</p>	No
	<p>The proposed development contains office premises and is located on land zoned B6. It is noted that design of the development incorporates 3 storeys along Silverwater Road which then rises to 4 storeys along Grey Street. Opposite the site on Grey Street are predominantly 1 storey residential dwellings. As such, the proposal is not considered to be consistent with the existing character of the locality.</p>	No
3.0 Streetscape and Urban Character D1 Fencing along street boundaries with a height greater than 1m shall be located at a minimum setback applicable to buildings (refer to setback controls overleaf) and with landscaping in the area available between the fence and the property boundary. <u>Front setbacks</u> D1 New buildings within industrial areas shall have a minimum front setback of: <ul style="list-style-type: none"> • 4.5m from other roads, and • 0m from laneways. 	<p>No fencing is proposed.</p>	N/A
	<p>Silverwater Rd – 4m Grey Street – 4m Bligh Street – Nil Carnarvon Street - Nil</p>	No
4.0 Landscaping D6 A minimum of 15% of the site shall be provided and maintained as soft landscaping, with lawns, trees, shrubs, for aesthetic purposes and the enjoyment of workers of the site. D10 Paving and other hard surfaces shall be consistent with architectural elements.	<p>Min 15% of the site = 1132.51m2 Provided = 447m2</p>	No
	<p>Council's Urban Designer do not support the proposal in its current form as insufficient information has been submitted with regards to the provision of public domain alignment drawings. As such, it cannot be determined if the proposal is satisfactory with this control.</p>	No

INDUSTRIAL AREAS		
Clause	Comment	Complies
5.0 Access and Car Parking Pub 1 space per 3.5m ² of licensed floor area = $1 \times (1,262\text{m}^2 \text{ pub area} \div 3.5) = 360.6$ (361) Business and Office Premises 1 space per 40m ² GFA = $1 \times (4,901\text{m}^2 \text{ business and office area} \div 40) = 122.5$ (123) Retail Premises 1 space per 40m ² GFA = $1 \times (7,185\text{m}^2 \text{ specialised retail and neighbourhood shop area} \div 40) = 179.6$ (180) Restaurant 1 space per 40m ² GFA = $1 \times (1,274\text{m}^2 \text{ food and drink premises area} \div 40) = 31.8$ (32) Child Care Centre <i>1 space per 35m² or 1 space per four (4) children whichever is the greater</i> 1 space per four (4) children = $1 \times (102 \text{ children} \div 4) = 25.5$ (26) Total = 722 spaces <u>Service Areas</u> D1 In the design of industrial developments, consideration shall be given to the design of garbage storage areas, and other waste provisions held in the Waste Part of this DCP.	234 parking spaces are provided, including 43 staff parking and 27 child care parking. The proposed development has 488 parking shortfall. Council's Environmental Health Officer has reviewed the proposal and upon review raise concerns with regards to the Waste Management Plan and a lack of detail during the demolition and construction phase of the development. To date, this has not been addressed.	No No
6.0 Stormwater Drainage Applicants shall consult the Stormwater Drainage Part of this DCP for stormwater drainage requirements.	Council's Development Engineer has requested information regarding details of the suspended pipe systems and the method of access to the OSD tank which have not been clearly indicated. Additionally, the location of the silt arrester pit was also raised as being of a concern. It is noted that to date, these issues have not been addressed and remains outstanding.	No
7.0 Energy Efficiency and Water Conservation	DEAP has noted that the development has not provided sufficient details with regards to sustainability which given the scale of the development, is imperative. It is noted that to date, Council has not received a satisfactory submission that addresses the concerns raised by DEAP.	No
8.0 Operational Conditions <u>Hours of Operation</u> D1 Where an industrial site is located adjacent to or within 200m of a residential zoned area or where in the opinion of Council truck movements associated with the industry will intrude on residential streets, hours of operation shall generally be restricted to 7:00am to 6:00pm Monday to Saturday	The development is not for an industrial use. Notwithstanding, the traffic impacts of a result of the scale of the development remains a challenge for the proposal as vehicle access, vehicle queuing and insufficient amelioration measures on the local traffic network from the additional traffic generation has not been satisfactorily addressed.	No

INDUSTRIAL AREAS		
Clause	Comment	Complies
<u>Noise</u> D1 All development applications for potential noise generating industries adjacent to residential zoned land shall be accompanied by relevant documentation from a qualified acoustic engineer. The documentation shall also comply with the relevant Acts, Regulations, Australian Standards and guidelines by the NSW Department of Environment, Climate Change and Water (DECCW) below, as applicable for noise, vibration and quality assurance. <ul style="list-style-type: none"> • NSW Industrial Noise Policy • Interim Construction Noise Guideline • Noise from Rail Infrastructure Projects • Environmental Criteria for Road Traffic Noise. 	An Acoustic Report was submitted with the application. Council's Environmental Health Officer has reviewed the submitted documentation and the proposal and raised no objections to the proposal on the grounds of acoustic subject to conditions of consent.	Yes
9.0 Subdivision <u>Lot sizes and access</u> D1 The minimum average width shall be 30m. Direct access onto state roads shall not be granted unless presently provided or if an alternative vehicular access point is unavailable	The application seeks approval only for amalgamation of multiple sites. The development site meets the minimum site width of 30m. There is no vehicle access from Silverwater Road.	Yes N/A
CHILDCARE CENTRES		
Clause	Comment	Complies
2.0 Design <u>Site layout and design</u> D2 New buildings shall be orientated so that the maximum length of the building is facing out onto the playground to ensure staff and children can move easily between the building and the playground. D4 New developments shall be designed so that all people entering or leaving the premises can be seen from the building.	The facility has been designed to allow freedom of movement between the building and the playground. As discussed elsewhere in this report, the lobby area of the facility is to be redesigned to avoid overcrowding within this location. However, this has not been addressed and therefore it cannot be determined that the facility has been designed to ensure that people entering and leaving can be viewed from the building.	Yes No
3.0 Indoor Areas and facilities <u>Babies and toddlers transition area</u> D1 A transition area shall: <ul style="list-style-type: none"> • Have a minimum of 2m² per child; • Have a fixed low divided fence with a gate with child proof 	Transition areas have not been indicated on the plans.	No

INDUSTRIAL AREAS		
Clause	Comment	Complies
<p>catches; and Child Care Centres 8 Auburn Development Control Plan 2010</p> <ul style="list-style-type: none"> Adjoin a play room with direct flow through to the playroom. Note: Transition area - An indoor or outdoor area which performs an important role in helping extend children's play into the outside areas e.g. covered verandah or terrace. 		
<p>5.0 Access and Parking</p> <p><u>Pick up and set down</u> D1 The pick up and set down of children shall occur within the site.</p> <p><u>Parking</u> D3 Council may reduce the number of spaces required for staff where the following conditions are met:</p> <ul style="list-style-type: none"> The childcare centre allocates a minimum of 25% of its places to 0-2 year olds. The proposed variation shall be supported by a traffic and parking analysis prepared by a suitably qualified Traffic Consultant. <p><u>Loading areas</u> D1 A service vehicle area shall have direct access to the building to ensure safe delivery of items, e.g. food and nappy service. Consideration shall be given to permit the car park to be used for this purpose. A courier vehicle space with minimum dimensions of 2.6m x 5.4m shall be acceptable in this instance.</p>	<p>Pick up and set down of children is located within the development site.</p> <p>The application has not indicated that it proposes to apply this control to the development.</p> <p>A loading area is provided within the development.</p>	<p>Yes</p> <p>N/A</p> <p>Yes</p>
ADVERTISING AND SIGNAGE		
Clause	Comment	Complies
<p>2.0 Advertising and Signage Controls</p> <p>D1 Advertising and signs shall be consistent with State Environmental Planning Policy No. 64 – Advertising and Signage.</p>	<p>See assessment under Section 3.3 of this report.</p>	<p>No</p>
<p>3.0 Language of Advertising and Signage</p> <p>D1 Advertising and signage shall be displayed in English but may include a translation in another language.</p>	<p>The application only seeks approval for signage zones. Detailed signage content is subject to a future application.</p>	<p>N/A</p>

5. Environmental Planning and Assessment Regulation 2000

Applicable Regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia, compliance with the Home Building Act, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection would have been addressed by appropriate consent conditions if

the application had been recommended for approval.

6. Likely Impacts

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

7. Site Suitability

As stated throughout this report, the proposed design of the development is unsuitable for the site. The development is of a bulk and scale that is incompatible with the streetscape.

Investigations and documentations have been provided which have not adequately demonstrated that the site can be made suitable for the proposed development and is therefore inconsistent with the land use planning framework for the locality.

The ability of the site to drain stormwater, the overall design scheme, its ability to provide adequate landscaping and maintain an appropriate public domain and its traffic impacts on the local road network have not been adequately addressed to ensure that it does result in adverse impact on the locality.

For the above reasons and those stated throughout this report, the site is not considered to be suitable for the proposed development.

8. Public Interest

8.1 Public Submissions

The application was notified and advertised in accordance with Appendix 1 (Consolidated Notification Requirements) of Council's Community Engagement Strategy as follows:

- 28 September 2022 to 28 October 2022 - Notification of the application when submitted

In response to the exhibition period, 2 unique submissions were received. It is noted that one of these submissions were in support of the development.

The issues raised within the submission that objected to the proposal are discussed in the table below.

Issue Raised	Planning Comment
Submission of the Economist Employment Estimates referenced in the SoEE	It is acknowledged that this information was not submitted as part of the application. Given this, a satisfactory assessment of the economic impacts cannot be determined.
Miscalculation of FSR	Council has raised with the applicant that the corridors and circulation areas is to be included in the calculation of FSR and that this has resulted in the departure to the GFA. To date, Council has not received amended plans addressing this issues.
The development / uses does not satisfactorily comply with Council's car parking requirements.	Council's Traffic Engineer does not support the proposal in its current form as it does not provide the required parking spaces for the development.

Insufficient traffic analysis	Both Council's Traffic Engineer and TfNSW has raised a concern with regards to the amount of traffic generated by the development and that the submitted Traffic Report has not adequately addressed this issue. As insufficient information has been received, Council cannot support the proposal.
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AMENDED PLANS

Yes

The applicant has attempted to submit information in response to some of Council's concerns. However, the information submitted has not satisfactorily addressed these concerns. Accordingly, the amended plans are not accepted.

It is also noted that information requested by Council's external and internal referrals have also not been submitted.

Amended Plans re-advertised or re notified

No

As the information submitted is not to Council's satisfaction, this information was not re-advertised.

9. Disclosure of Political Donations and Gifts

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

10. Development Contributions and Bonds

As this Development Application was lodged on 16 September 2022, the City of Parramatta (Outside of Parramatta) CBD Contributions Plan 2021 applies to the land. If the application had been recommended for approval, a standard condition of consent would have been imposed requiring the contribution to be paid prior to the issue of a Construction Certificate.

11. 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.

Reasons for Determination

Having regard to the assessment within this report, the proposal is unsuitable and is to be refused for the following reasons:

- The proposal does not facilitate the orderly implementation of the objects of the *Environmental Planning and Assessment Act 1979* and the aims and objectives of Auburn Local Environmental Plan 2010.
- The proposal whilst permissible within B6 Enterprise Corridor zone does not comply with the provisions against Section 4.15 of the *Environmental Planning and Assessment Act 1979*;
- The development has not demonstrated its compatibility with the existing development within the locality; and
- Sufficient information has not been provided to demonstrate that the application is in the public interest.

12. Recommendation

- A. **That** the Sydney Central City Planning Panel, as the consent authority, **Refuse Consent** to Development Application No. DA/737/2022 for demolition of existing structures and construction of a mixed-use development over two levels of basement parking with the development comprising of specialty retail premises, business/office premises; neighbourhood shops, a pub and a childcare centre with associated landscaping, drainage works and signage for the following reasons:
1. **WaterNSW** - The proposal does not have concurrence from WaterNSW in accordance with Section 90 (2) of the Water Management Act – Water Management Work Approval.
 2. **Transport for NSW** - The proposal does not exhibit a satisfactory proposal in that it fails to provide information required to assess Clause 2.119 – Frontage to a Classified Road and Clause 2.122 – Traffic Generating Development of State Environmental Planning Policy (Transport and Infrastructure) – Chapter 2 Infrastructure and as required by Transport for NSW.
 3. **Height** – The clause 4.6 variation request to vary the height standard in clause 4.3 of the Auburn Local Environmental Plan 2010 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.
 4. **FSR** – The development does not comply with the maximum FSR for the site pursuant to clause 4.4 of the Auburn Local Environmental Plan 2010. The application also did not submit a Clause 4.6 variation to justify the departure to the standard.
 5. **SEPP (TRANSPORT AND INFRASTRUCTURE) 2021** - 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 (Transport and Infrastructure) 2021.
 6. **SEPP (RESILIENCE AND HAZARDS) 2021** - 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 (Resilience and Hazards) 2021.
 7. **SEPP (INDUSTRY AND EMPLOYMENT) 2021** - 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 (Industry and Employment) 2021.
 8. **SEPP (BIODIVERSITY AND CONSERVATION) 2021** - 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 (Biodiversity and Conservation) 2021.

9. **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 site selection and location, local character, streetscape, public domain interface, building envelope and design, landscaping, visual and acoustic privacy, noise and air pollution, traffic and car parking, pedestrian circulation, toilet and hygiene facilities, ventilation and natural light, design to facilitate supervision, natural environment, fencing and soil assessment as nominated in Section 3.23 of State Environmental Planning Policy (Transport and Infrastructure) via the Child Care Planning Guidelines.
 10. **Auburn DCP 2010-** 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 Industrial Development Controls, Childcare Centre Controls and Advertising and Signage Controls of The Auburn DCP 2010 in relation to:
 - a) The application is not consistent with the urban design principles for development within the B6 Enterprise Corridor zone on Silverwater Road.
 - b) The provision of transition areas and the lack of indication that this area and purpose has been provided.
 - c) The proposed signage zones are inconsistent with the requirements of State Environmental Planning Policy (Industry and Employment) 2021.
- B. That submitters be notified of the decision.

ATTACHMENT B - Clause 4.6 Variation Building Height

**CLAUSE 4.6 VARIATION TO
CLAUSE 4.3(2A)(B) (HEIGHTS OF BUILDING)
UNDER
AUBURN LOCAL ENVIRONMENTAL PLAN 2010
(ALEP 2010)**

***1 - 17 Grey Street & 32 - 48
Silverwater Road
SILVERWATER***

JULY 2022

1.0 Introduction

- The subject application, to which this Clause 4.6 written variation relates, is a Development Application for a Mixed Use development comprising *specialised retail premises, office premises, food and drink premises, neighbourhood shops, pub* and a *centre-based childcare facility* at 1 - 17 Grey Street and 32 – 48 Silverwater Road Silverwater. All required parking for the development is provided within two basement levels.
- This is a request to vary a *development standard* pursuant to the provisions of Clause 4.6 of Auburn Local Environmental Plan 2010 (ALEP 2010) the relevant clause being Clause 4.3(2A)(b) (Height of Buildings).
- The relevant maximum height of building control is **14.0m** (specified in cl4.3(2A)(b) and shown in the light purple area of the Height of Buildings map).
- The relevant Height of Buildings control is a *development standard* for the purposes of the *EP&A Act 1979* (see Justice Mc Clellans decision in *Georgakis v North Sydney Council [2004] NSWLEC 123*).
- This request to vary the height development standard considers the judgment in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* ("Initial Action") and *SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112* (SJD DB2).
- Height is a *development standard* for the purposes of the *EP & A Act 1979* as it prescribes a numerical value to an aspect of the permitted development.
- This written clause 4.6 variation supports the Statement of Environmental Effects (SEE) dated July 2022 prepared by this office.
- The development comprises the whole block bounded by Silverwater Road, Carnarvon Street, Grey Street and Bligh Street. The relevant lots which comprise the development site are listed in Section 2 of this written variation request.
- The proposal is generally compliant with the **14.0m** height control except for the western roof edge of the uppermost level (see Figure B). When viewed from Silverwater Road the development reads as three (3) storeys. When viewed from Grey Street it is four storeys with the top level marginally above the maximum height limit.
- The objective of Clause 4.6 1(a) is to provide an appropriate degree of flexibility in applying certain development standards to particular development. The intent is to achieve better outcomes for and from development by allowing flexibility in particular circumstances in accordance with Clause 4.6(1)(b).
- The relevant plans relied upon are those prepared and submitted by CK Design.
- The site is not a State or locally listed heritage item under Schedule 5 of ALEP 2010. It is not located in a Heritage Conservation Area and is not within proximity to any locally listed heritage items.
- The site is zoned B6 Enterprise Corridor under the Auburn Local Environmental Plan 2010 (ALEP 2010) where the proposed mixed use development is permissible with consent.
- The relevant *development standard* subject of the variation request is the **14m** maximum height control under clause 4.3(2A) of ALEP 2010.
- Clause 4.6(2) confirms that environmental planning instruments (EPIs) are subject to the provisions of Clause 4.6.
- Clause 4.6(8) does not exclude a variation to the provisions of the **14.0m** maximum height *development standard*.
- This written variation forms part of the written material to be considered by the Consent authority in determining the subject development application.

2.0 The Site

- The Development Site comprises seventeen (17) allotments, being:

1 Grey Street:	Lot 18 DP 77341
3 Grey Street:	Lot 17, Sec 5, DP 979426
5 Grey Street:	Lot 16, Sec 5, DP 979426
7 Grey Street:	Lot 15, Sec 5, DP 979426
9 Grey Street:	Lot 14, Sec 5, DP 979426
11 Grey Street:	Lot 13, Sec 5, DP 75209
13 Grey Street:	Lot 12, DP 76894
15 Grey Street:	Lot 11, Sec 5, DP 979426
17 Grey Street:	Lot 10, Sec 5 DP 979426
32-34 Silverwater Road:	Lot 1 & 2 DP 1110059
36-38 Silverwater Road:	Lot 1 DP 90071
40 Silverwater Road:	Lot 5 DP 89550
42 Silverwater Road:	Lot 6 DP 89550
44 Silverwater Road:	Lot 7 DP 89550
46 Silverwater Road:	Lot 8, Sec 5, DP 979426
48 Silverwater Road:	Lot 9, Sec 5, DP 979426

The development site has a total site area of 7550.08sqm. The site is bounded to its east (Silverwater Road) with boundary 107.635m; its northern boundary to Carnarvon Street (70.1m); western boundary to Grey Street (107.63m) and southern boundary to Bligh Street (70.195m).

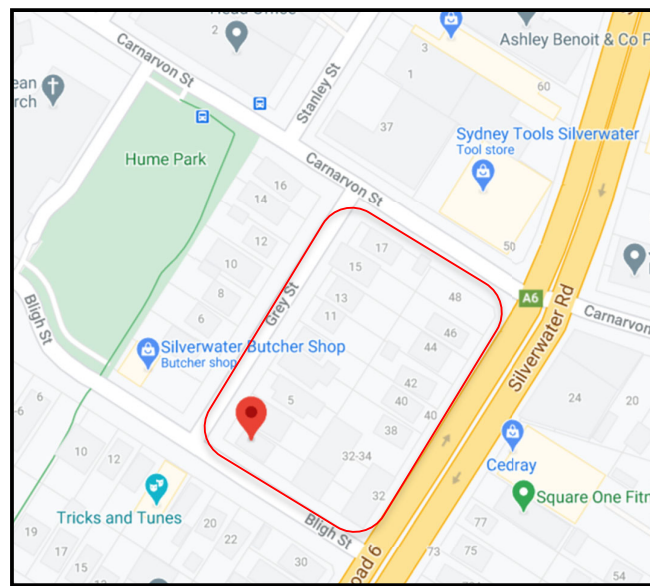


Fig 1: Location of the site

3.0 Development Standard to be Varied

The relevant *development standard* to be varied is the **14.0m** maximum height control under Clause 4.3(2A)(b) of ALEP 2010. Clause 4.3 of the ALEP 2010 relevantly provides:

4.3 Height of buildings

- (1) *The objectives of this clause are as follows—*
 - (a) *to establish a maximum height of buildings to enable appropriate development density to be achieved, and*
 - (b) *to ensure that the height of buildings is compatible with the character of the locality.*
- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

(2A) Despite subclause (2), the maximum height of office premises and hotel or motel accommodation is—

- (a) *if it is within the Parramatta Road Precinct, as shown edged orange on the Height of Buildings Map—27 metres,*
- (b) ***if it is on land within Zone B6 Enterprise Corridor within the Silverwater Road Precinct, as shown edged light purple on the Height of Buildings Map—14 metres. <bold is our emphasis>***

The relevant height of buildings map (HOB_006) identified below:

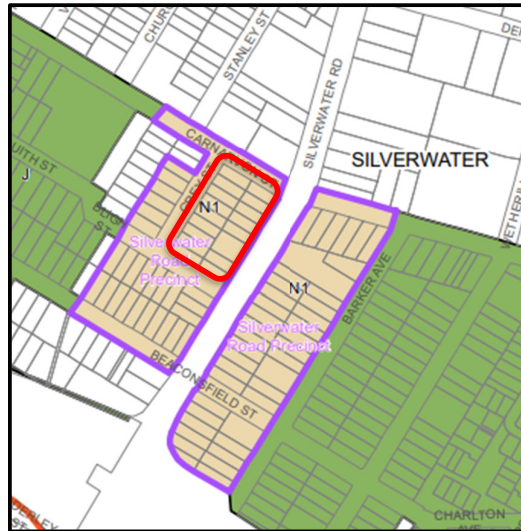


Fig A: Height map extract from ALEP 2010 (Map Series_006)

The subject site is mapped “N1” – 14.0m (max) and subject to clause 4.3(2A)(b) of the ALEP 2010 which applies to the Silverwater Road Precinct (edged in purple), setting a maximum building height of **14.0m**.

4.0 Nature of Height Variation Sought

The requested variation ranges from a **920mm** (south west) to **1680mm** (north west) variation above the **14.0m** height limit for the roof level and up to **2880mm** to the top of the lift overruns.

In percentage terms, this equates to a maximum variation for the lift overruns of **20.5%**. The roof level exceedance is a maximum of **12%**.

The elevation plans showing the extent of the height variation is shown in Figure B below.

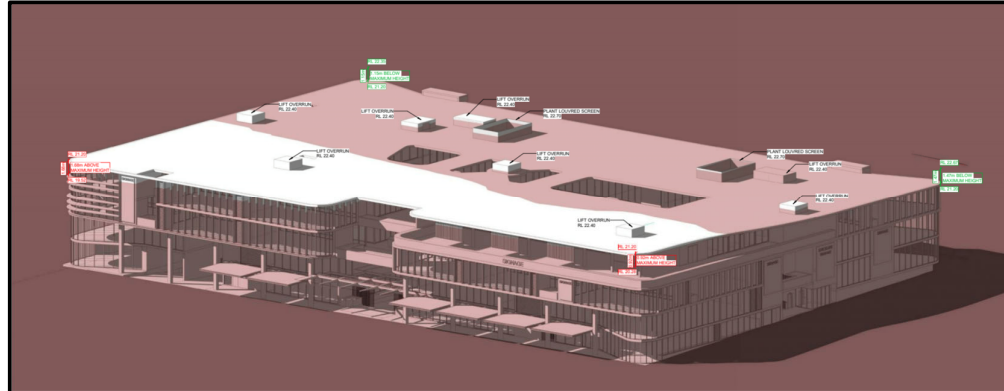


Figure B: Height Plane – pink shaded area is height compliant
(Source: CK Designs, Feb 2022)

The proposal is under the height control by **1.47m** in the south east corner and **1.15m** in the north east corner.

This represents a height **10.5%** under the control in the south east corner and **8.21%** under the control.

Overall there is a general balancing out of the height variation over the site. The consolidated site is quite large and therefore quite challenging in terms of providing single level floor plates over the proposed mixed use floor plate.

The adopted design minimises level change across the floor plates to improve accessibility, legibility of tenancies and overall connectivity through the centre.

5.0 Clause 4.3 Height - Development Standard

A development standard is defined in S 1.4 of the *Environmental Planning and Assessment Act 1979* ("EPA Act") to mean:

"provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*
- (n) the emission of pollution and means for its prevention or control or mitigation, and*
- (o) such other matters as may be prescribed."*

The **14.0m** maximum height standard is a *development standard* as defined under the *EP&A Act 1979*.

6.0 Clause 4.6 of Auburn Local Environmental Plan 2010 (ALEP 2010)

Clause 4.6 of the **ALEP 2010** provides a legal pathway by which an applicant can vary a *development standard*. Clause 4.6 of **ALEP 2010** relevantly provides as follows:

"4.6 Exceptions to development standards

(1) The objectives of this clause are as follows--

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

(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

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

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

(4) 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 Planning Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Planning Secretary must consider--
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if--
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note :** When this Plan was made it did not include all of these zones.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following--
- (a) a development standard for complying development,
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
 - (c) clause 5.4,
 - (caa) clause 5.5,
 - (ca) clause 6.8."

Response to Clause 4.6 of ALEP 2010

The following provides a response to the Clause 4.6 provisions:

1. We deal with **Clause 4.6 (1)(a) and (b)** below:

1) *The objectives of this clause are as follows—*

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

The purpose of Clause 4.6 of ALEP 2010 is to provide flexibility in the application of development standards (see SJD DB2).

Justification within this written request (see **Sections 7 – 9**) demonstrates that an appropriate degree of flexibility should be applied to this particular application notwithstanding the **height variation** articulated in **Section 4** of this written request.

The justification also demonstrates that appropriate planning outcomes can be achieved by applications that stand outside controls as in this particular case.

A full list of the environmental planning grounds justifying the variation is provided in **Section 8** of this written request.

The proposal whilst exceeding the height development standard provides an appropriate planning outcome based on the provision of:

- Bulk and scale that is generally reflective of the anticipated planning controls
- Built form at 3 – 4 storeys that creates an active edge but one that also is able to stand alongside what is a vehicle dominated thoroughfare
- Provides suitable visual separation with the immediate adjoining sites which are zoned either B6 enterprise corridor or IN1 Industrial.
- Ability to minimise adverse impacts on the surrounding properties with regard to view loss, overshadowing and privacy (see annexure A)
- A well designed building façade that offers a range of entry points for pedestrians.
- Floor space that generates employment but also services the existing industrial floor area within the adjoining industrial zone.
- Open and accessible large format floor plates which improves distribution of specialty retail goods within the centre (height compliance would lead to stepping of the floor plates and the overall built form).
- Suitable bulk and scale at each corner that serves to frame the building and create bookends to define the block.

2. In summary **clause 4.6(2)** is addressed and satisfied because:

- a. Clause 4.6(2) requires the control to be a *development standard*.
- b. The 14.0m height control is a *development standard* as it relates to the height of a building and therefore is capable of being varied by a written request.
- c. The provisions of Clause 4.3 of ALEP 2010 are not expressly excluded under Clause 4.6(8) of the ALEP 2010.

3. **Clause 4.6 (3)** requires the making of a written request to justify the contravention of a *development standard* and states as follows:

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

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

The proposed development does not comply with the **14.0 metre** maximum height control under **Clause 4.3(2A)(b)** of the ALEP 2010.

Strict compliance with the **14m** height *development standard* is considered to be unreasonable and unnecessary in the circumstances of this case as justified in this written request.

The relevant justification dealing with **Clause 4.6(3)(a)** criteria is contained in **Section 8** of this written variation request.

This written variation request demonstrates that strict compliance is unreasonable and unnecessary in the circumstances of this case and sufficient environmental planning grounds exist to justify contravening the development standard as detailed in **Section 8** of this written request.

Clause 4.6(4) provides that consent must not be granted for development that contravenes a *development standard* unless the consent authority is satisfied as to **Clause 4.6(4)(a)(i)(ii)(b)**. **Clause 4.6(4)(a)(i)(ii)(b)** relevantly provides:

“(4) 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 Planning Secretary has been obtained.”

Sections below of this written variation request address the matters required under **cl4.6(4)(a)** and **cl4.6(4)(b)** of the **ALEP 2010**. **Section 9** addresses **4.6(4)(a)** and **(b)** criteria.

4. **Clause 4.6(5)** provides that:

(2) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Section 10 below addresses the matters required under **Clause 4.6(5)** of the **ALEP 2010**.

5. **Clause 4.6(a)(b)** is not relevant to this application.

6. **Clause 4.6(7)** is a matter for the consent authority.

7. **Clauses 4.6(8)** confirms that the **14.0m** maximum height control is not a matter excluded from clause 4.6.

7.0 Relevant Decisions

The following Land and Environment Court decisions are relevant to the assessment of the Clause 4.6 height variation request. The decisions confirm that there is no longer a burden for a proposal to perform better than a compliant proposal but rather that sufficient environmental planning ground exist to warrant the variation. Further the decisions confirm that the extent to which the consent authority may vary the standard is unfettered. The relevant extracts of the Court decisions are provided below to provide context for the justification within this variation request.

Initial Action

In the Judgment of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 ('Initial Action'), Preston CJ indicated that cl 4.6 does not directly or indirectly establish a test that a non-compliant development should have a neutral or beneficial effect relative to a compliant development. For example, a building that exceeds a development standard that has adverse amenity impacts should not be assessed on the basis of whether a complying development will have no adverse impacts. Rather, the non-compliance should be assessed with regard to whether the impacts are reasonable in the context of achieving consistency with the objectives of the zone and the objectives of the development standard. The relevant test is whether the environmental planning grounds relied upon and identified in the written request are "sufficient" to justify the non-compliance sought.

In addition, Preston CJ ruled that cl4.6 does not directly or indirectly establish a "test" that a development which contravenes a development standard results in a "better environmental planning outcome" relative to a development that complies with the development standard.

Furthermore, Preston CJ ruled that it is incorrect to hold that the lack of adverse amenity impacts on adjoining properties is not a sufficient ground justifying the development contravening the development standard, when one way of demonstrating consistency with the objectives of a development standard is to show a lack of adverse amenity impacts.

Rebel MH Neutral Bay Pty Ltd v North Sydney Council [2018] NSWLEC 191 Moore J (herein referred to as Rebel MH")

In *Rebel MH Neutral Bay Pty Ltd v North Sydney Council* [2018] NSWLEC 191 Moore J identifies the steps provided in *Initial Action* confirming what the consent authority must do in order to satisfy itself as follows:

"For me to grant development consent for this development as it contravenes the permitted maximum building height development standard, cl 4.6(4)(a) requires me to be satisfied that:

(1) The written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposed development (cl 4.6(3)(a) and cl 4.6(4)(a)(i)); and

(2) The written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)); and

(3) The proposed development will be in the public interest because it is consistent with the objectives of the standard in question - set out in cl 4.3 of the LEP (cl 4.6(4)(a)(ii)); and

(4) The proposed development will be in the public interest because it is consistent with the objectives of the R4 High Density Residential Zone (cl 4.6(4)(a)(ii)),

For the first of the above matters, Preston CJ made it clear, in Initial Action at [25], that the Court need not be directly satisfied that compliance is unreasonable or unnecessary and sufficient environmental planning grounds exist, but rather that it "only indirectly form the

opinion of satisfaction that the applicant's written request has adequately addressed those matters."

SJD DB2 Pty Ltd v Woollahra Council [2020] NSWLEC 1112 (SJD DB2).

This appeal sought consent for the construction of a six-storey shop top housing development at 28-34 Cross Street Double Bay (the DA). The Court approved the proposed development, having a height of 21.21m where the control was 14.7m – representing a maximum variation of approximately 44% (or 6.51m) – and a floor space ratio (FSR) of 3.54:1 where the control was 2.5:1 – representing a variation of approximately 41%.

The Court drew from the decisions in *Initial Action* and *RebelMH* in the *SJD DB2* judgment, and noted that although there are a number of ways to demonstrate that compliance with a development standard is unreasonable or unnecessary, it may be sufficient to establish only one way (at [35].) In considering the clause 4.6 variation requests submitted by the Applicant, the Court considered that they could be treated together, as the breaches they related to were fundamentally related, as where there is greater building form with additional height, so too is there greater floor area (at [63].)

Acting Commissioner Clay makes it clear in his judgment, 'cl 4.6 is as much a part of [an LEP] as the clauses with development standards. Planning is not other than orderly simply because there is reliance on cl 4.6 for an appropriate planning outcome' (at [73]).

The Council Appealed the decision however it was unsuccessful which only served to confirm the power of clause 4.6 and that the extent to which standards can be varied is not limited by a numerical percentage.

8.0 Compliance is Unreasonable or Unnecessary - Clause 4.6(3)(a)

In dealing with the "unreasonable and unnecessary" Preston CJ identifies and validates the 5 arguments available to an applicant in *Wehbe v Pittwater Council* which can be adopted in dealing with the *unreasonable and unnecessary* test under Cl. 4.6(3)(a).

Preston CJ concluded as follows:

"As to the first matter required by cl 4.6(3)(a), I summarised the common ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary in Wehbe v Pittwater Council at [42]-[51]. Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

'An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard' (our emphasis)

The first way identified in *Wehbe* to justify this written variation (as set out at 42 of the judgment):

"42 An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard"

This written **14.0m** height variation request relies upon the first way demonstrating that compliance is unreasonable and unnecessary as the objectives of the development standard are achieved notwithstanding a variation with the development standard.

Clause 4.3 of the **ALEP 2010** provides express objectives of the development standard.

Clause 4.3 relevantly provides:

'4.3 Height of buildings

(1) The objectives of this clause are as follows—

(a) to establish a maximum height of buildings to enable appropriate development density to be achieved, and

(b) to ensure that the height of buildings is compatible with the character of the locality.

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

(2A) Despite subclause (2), the maximum height of office premises and hotel or motel accommodation is—

(a) if it is within the Parramatta Road Precinct, as shown edged orange on the Height of Buildings Map—27 metres,

(b) if it is on land within Zone B6 Enterprise Corridor within the Silverwater Road Precinct, as shown edged light purple on the Height of Buildings Map—14 metres.
(our emphasis)

The relevant objectives are discussed below:

(a) to establish a maximum height of buildings to enable appropriate development density to be achieved

The ALEP 2010 provides for a blanket height limit for the development site. However, the ALEP also provides for a range of GFA and associated FSR for various landuses. These range from 1:1 to 2:1.

The proposal comprises a number of landuses and therefore varying FSR for the development site. The proposal has a total GFA of 14 980.95sqm. The building height varies due to the crossfall of the block - which falls away from Silverwater Road. The resultant development is fully height compliant facing the primary road frontage of Silverwater Road (in fact well below the height control) and increases to 11.68m (four storeys) at the corner of Grey Street and Carnarvon Street – facing west.

We also note that the proposal provides an internal forecourt that significantly improves intra site amenity. This forecourt has caused the western pavilion to be set further to the west and hence a variation to the height control. The benefit of the internal courtyard outweighs any perceived negative impact to the neighbouring properties. The proposal maintains a reasonable setback to Grey Street. The architect has demonstrated that the additional height does not significantly impact the neighbouring properties.

The DA Plans demonstrate that the site is capable and suitable for the proposed Mixed Use development. The infrastructure in the area has the capacity to cater for the additional density and Council has planned for significant redevelopment within the Silverwater Road Precinct. The use of the site for a mixed used development is anticipated by the B6 Enterprise Corridor zoning. The proposal also supports the surrounding industrial area. The height in this case does not facilitate additional floor space over the floor space ratio control rather the achievement of the desired floor plates to provide a range of urban uses and generate employment.

The under achievement of GFA is not in the public interest given the strategic planning role of the corridor. The height variation enables the achievement of suitable GFA that is compatible with the environmental capacity of the site. The height facilitates a 4 storey form which is, on balance, an expected form in an area with a **14m** height control.

Objective (a) is concerned with density and in our opinion the overall density of development is compatible with the likely future development within the B6 Enterprise Corridor. The SEE supporting the application sets out the strategic role of the site in achieving employment generating uses as well as urban uses supporting the established industrial workforce.

The density is appropriate for the site and on this basis the height that supports the GFA across the site is also considered to be acceptable and within the sites environmental limits. On this basis the objective which is to '*enable appropriate development density*' has been duly satisfied by the proposal.

The development has due regard to the site constraints and urban design outcomes.

Overall, the proposal achieves the stated objective.

(b) to ensure that the height of buildings is compatible with the character of the locality.

As a result of this proposal The Silverwater Road Precinct will undergo further gentrification due to the strategic planning intervention. Whilst slow to progress initially the proposal will signify a change in the willingness to invest, work and play in Silverwater. The proposal does not necessarily need to be the same in order to be compatible and will be, by virtue of its scale, compatible with land to the north. In the short to medium term some disparity will exist between the 3 - 4 storey proposal and the single storey dwellings remaining within the B6 Enterprise Corridor zoned lands. We also note that the industrial lands to the north has no height limit and therefore the site could actually serve as a transition site.

Importantly the subject development site includes all allotments within the block. The perimeter road network acts as a buffer to the dwellings to the west and south of the site. The physical separation afforded by the road and verge reduces the perceived scale differences that occur due to strategic planning intervention (i.e. height, zoning and FSR). It is not appropriate for new development to be the same as the existing character of the area and change will occur in line with the new strategic planning provisions. Single dwelling houses are no longer the desired strategic vision for the precinct.

In considering the character of the area, it is more appropriate to consider the desired future character of the area and whether the proposed mixed-use development is compatible with that character.

If neighbourhood character refers to the 'look and feel of an area', including the activities that occur there, then the proposal is compatible, as:

- The development includes a mix of landuses anticipated by the B6 Enterprise Corridor zone;
- The mix of development encourages employment and supports existing residential and industrial uses
- The scale is reflective of the 14m height control

On this basis, the proposal is compatible with the desired future character of the area within which it will be situated and in the interim period it will enhance the streetscape quality with architectural forms and landscaped road verge.

9.0 Sufficient Environmental Planning Grounds – Clause 4.6(3)(b)

Clause 4.6 (3)(b) prescribes the following:

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

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.”

The variation (as set out in Section 4) relates to part of the upper level of the Grey Street elevation which exceeds the height limit due to the cross fall across the northern boundary towards the corner of Carnarvon and Grey Streets.

The cross fall of the site is in the order of 3.0m and therefore compliance with the height control is challenging when designing a level and accessible building. In order to create permeable and user friendly spaces multiple entries from the public domain are provided. We note that specialty retail floor area also requires generous floor to ceiling heights when compared to say office space and hence the height variation is justified. As previously stated the internal central forecourt contributes to the height variation and is justified due to the substantial benefit to shopper and tenant amenity within The HUB. The site slope causes the height variation as height is measured from the existing site levels. The level change across the building footprint is 3.0m which is significantly greater than the 1.68m roof height variation proposed at the corner of Carnarvon and Grey Streets. The shadow diagrams at annexure A show that there are no significant additional impacts associated with the height variation when compared to a compliant height development.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The variation relates to height and as such calls upon those matters considered to be environmental planning grounds relevant to the subject matter. Justification provided for the variation applies to this particular application and not environmental planning grounds that could apply to all land of the same zoning.

The environmental planning grounds justification for the variation is provided as follows:

- Single level lower ground floor plate providing direct and efficient access from street frontages;
- Improved solar access to nearby residences in the morning along Bligh Street. The southern elevation provides a 3 storey presentation and height compliance (well under height control) at the eastern end of Bligh Street and four storeys with only minor height variation at the western end (corner of Grey Street);
- The height variation facing Grey Street (to the west) does not result in any adverse shadow impacts in June (winter) and September (Spring) to those residences on the western side of Grey Street;
- Single point of pedestrian access from each street frontage, notwithstanding the site has a cross fall over the building footprint of some 3.0m;
- The proposal provides a uniform height across the site's frontage providing a better urban design outcome and fit within each of the streetscapes when compared to a stepped façade;
- Overall improved accessibility and functionality by maintaining a level floor plate for the specialty retail areas at the ground floor and functional internal forecourt for food shops
- Appropriate overall density given that the height variation allows the site to accommodate the anticipated GFA;

- The extent of privacy afforded to neighbours across Grey and Bligh Streets is not increased beyond that of a compliant height building;
- Ability to frame the corner and create a distinctive bookend to the block with sculptured element to the street edge as opposed to a stepped wedding cake design that would not be as effective in creating an active urban edge (active edge required for land use types within the HUB).
- 4 storey confirmed as being appropriate as part of the urban design study for the locality;
- The orientation of the site (north-south) means that travel path of the sun in winter provides ample sun penetration and solar access to the eastern, northern and western facades of the development – the additional HOB along the upper western façade and north-western corner does not adversely impact on the attainment of minimum solar access requirements to the nearby residents the western side of Grey Street and southern side of Bligh Street;
- The maximum HOB variation is a function of the lift overruns across the development. In each case the lift overrun is set well back from the edge of the building and does not add to the shadows cast by the building footprint;
- Lift provides accessible and compliant access to the building in accordance with the BCA;
- Proposed height establishes transitional role of this site between the adjoining residential areas to the west and south and the Silverwater Industrial area to the north of Carnarvon Road which has not height limit;
- The mix of proposed landuses and the development's-built form provides ground level specialised retail premises with business and office uses above. The proposed development sits comfortably between the large lot industrial developments to the north, the Parramatta Road Precinct to the south which permits buildings up to 27.0 metres in height;
- The development achieves and does not seek to exceed the scale and form anticipated for this site, once the adjoining sites take up the FSR and height controls
- The proposal reasonably preserves the residential amenity of the locality.
- The urban design of the long street frontages and the fine grain detail of the colours, materials and finishes are sufficiently varied to provide a break in the presentation of the building. The lift overruns are not readily visible from the public domain;
- The proposal has been assessed against the provisions of ALEP 2010 and Auburn DCP 2010 and satisfies the objectives and provisions of both policies.

In dealing with the sufficient environmental planning grounds Preston CJ in Initial Action considers that it is available to the applicant to also deal with the Objectives of the Act under S1.3 in order to demonstrate that grounds exist to warrant a variation to height. Clause 1.3 of the *EP&A Act 1979* relevantly provides:

“1.3 Objects of Act

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,***
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,***
- (c) to promote the orderly and economic use and development of land,***
- (d) to promote the delivery and maintenance of affordable housing,***
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,***
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),***
- (g) to promote good design and amenity of the built environment,***

(h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
(i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
(j) to provide increased opportunity for community participation in environmental planning and assessment. (emphasis added)

The proposal, accepting the height variation described in Section 3, reasonably satisfies the objectives of under S1.3 *EP&A Act 1979*. The plans by CK Designs satisfies the objectives in bold given that:

- The proposal, via the amalgamation of the whole block, promotes the orderly and economic use of the land;
- The development achieves the zone objectives which increases the supply of business and employment, making the best use of land currently serviced by the existing infrastructure.
- Optimal use of existing serviced business based lands reduces environmental impact and use of resources;
- The proposal achieves good design outcome and provides acceptable intra-site amenity whilst at the same time preserving the amenity of adjoining property (refer to solar diagrams that demonstrates the additional height does not result in any additional significant impact and some shading is reduced due to those parts of the building under the height control);
- The proposal represents an economically viable development of the site, that is both capable and suitable for the site, when assessed on a merit-based assessment under the s4.15 heads of the consideration of the *EP&A 1979*.
- The development achieves the zone objectives which increases the mix of compatible landuses, provides a range of employment and creates a strong economic centre due to the diversity of uses all of which provide urban support.
- The development also seeks to provide local produce and services that will serve the business/industrial community, employees and nearby residents, providing food and drink outlets and a child care centre within the Centre.
- The pub and child care centre are well separated from each other, being located at opposite ends of the development and accessed separately internally and externally;
- Increased density and use of land specifically targeted for specialty retail, office and business uses makes best use of land currently serviced by existing infrastructure and transport.
- The development of the site at a fully compliant height would require the removal of part of the top floor facing west. This is not an efficient and appropriate use of the States resources when part of the top floor is well under the height control. The extent of the variation for the roof element facing Grey Street is not equal to the actual level change of 3m across the site. The additional height does not impact on the residential use of land to the west. The under utilisation of B6 Enterprise Corridor zoned land places more pressure for additional land to be sourced to meet the employment and business supply needs of Parramatta and Silverwater and therefore the State;
- The development offers better and proper management of the States land resources by providing a more efficient use of private land on consolidated land holdings in proximity to the Silverwater Industrial area to the north and Sydney Olympic Park and surrounds to the east.
- Proposal generates much needed employment and services will be generated by this development and a reduction to the GFA below the permissible limits to comply with height would thwart the achievement of the zone objectives;
- The urban design outcomes of the development, incorporating the 4th level, provides an appropriate urban design outcome and “fit” in the locality. The proposal removes all single storey built from the consolidated block and therefore the built form will be compatible with the character of development anticipated by Council’s deliberate strategic planning of the Silverwater Road Precinct;

- The additional height enables the architect to optimise the layout and design of the building so that it can better relate to its visual context and reduce the intervention of access pathways, steps and entrance ramps into the development.
- The single level format enables the forecourt to function as a useable forecourt where food shop users are able to casually interact with specialised retail users. A stepped floor plate would cause adverse impacts to the functionality of the centre.

Based on the above there are sufficient environmental planning grounds to warrant the variation.

Notwithstanding the above Preston CJ clarified in *Micaul* and *Initial Action*, that sufficient environmental planning grounds may also include demonstrating a lack of adverse amenity impacts. In this case, these include:

- Adequate solar access to residential properties;
- Separated sensitive landuses, being the hotel and the child care centre;
- Sufficient off-street parking and separate internal parking areas for the two sensitive landuses;
- High level of security to be integrated into the design and function of the development;
- The level of privacy loss to properties in Grey and Bligh Streets is no more significant as a result of the additional building height than delivered by a height compliant development.
- The external terraces have landscaped planters to reduce ability to view nearby residences directly.

In summary, the HOB variation is considered to be in the public interest given its ability to limit impacts but also because of its ability to provide the site-specific environmental planning grounds demonstrating that strict compliance is unreasonable and unnecessary in the circumstances of this particular case.

10.0 Matters for Consideration - Clause 4.6(4)(a)(i)(ii)

The relevant provisions under clause 4.6(4)(a)(i) and (ii) are provided below:

“(4) 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”

The relevant provisions of clause 4.6(4) are addressed below:

Clause 4.6(4)(a)(i)

The written request addresses the relevant matters set out in clause 4.6 (3) in section

Provision of Clause 4.6	Addressed in Written Request Report
<i>(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:</i>	Yes - Section 7 and 8
<i>(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i>	Yes - Section 7
<i>(b) that there are sufficient environmental planning grounds to justify contravening the development standard.</i>	Yes - Section 8

Clause 4.6(4)(a)(ii)

The proposed development will be in the public interest because it is consistent with the objectives of the 14.0m height control development standard and the objectives for development within the B6 Enterprise Corridor zone. In this section "Consistency" means "not antipathetic to" rather than the higher threshold of "promotes" or "is compatible" with the objectives.

Clause 4.6(4)(a)(ii) requires a two part test. Each part is addressed within the written request as specified below.

In the first instance Clause 4.6(4)(a)(ii) requires an investigation into the objectives of the standard and this is provided at **Section 7** thus satisfying Clause **4.6(4)(a)(ii)**.

A review of the Zone Objectives confirms that sufficient environmental planning grounds exist to support the height variation given that the objectives are satisfied.

An enquiry is made below in relation to the ability of the proposal to 'be in the public interest', notwithstanding the variation, because it is able to reasonably satisfy the stated objectives of the B6 Enterprise Corridor zone. The zone objectives are:

B6 Enterprise Corridor

The objectives of the B6 Enterprise Corridor zone are as follows:

- *To promote businesses along main roads and to encourage a mix of compatible uses.*
- *To provide a range of employment uses (including business, office, retail and light industrial uses).*
- *To maintain the economic strength of centres by limiting retailing activity.*

The following provides a review of the zone objectives:

- *To promote businesses along main roads and to encourage a mix of compatible uses.*

The Silverwater Road Precinct is a specific area along the eastern and western side of Silverwater Road that has been allocated and planned by Council to cater for a variety of landuse that will promote retail, business and office uses combined with other service

industries to support the employment generated onsite. The amalgamation of the whole block within the Silverwater Road Precinct has allowed for the detailed planning of a high quality mixed use development that will fulfil a significant portion of Council's vision for this area.

The development provides a mix of landuses that are compatible. The two sensitive landuses (hotel/pub and child care centre) are separated, being located at opposite ends of the development with distinctly separate accesses – internally and externally. The retail, business and office floor space is supported by a number of food and drink outlets together with the provision of onsite child care. The development will be a landmark development in the Precinct. The height variation does not reduce the potential of the site to achieve the objective but rather improves the overall offering of space for urban uses. This objective is achieved.

- *To provide a range of employment uses (including business, office, retail and light industrial uses).*

The development seeks to provide for a range of retail, business, office and support services such as food and drink, entertainment and child care services. The variation to height enables the proposal to better achieve the quantum of GFA needed to ensure the urban land uses can be provided on the site. This objective is achieved.

- *To maintain the economic strength of centres by limiting retailing activity.*

The new development is a standalone centre that will not threaten the economic strength of other known retail centres in the area. Specialised retail activities are only part of the development and will provide a support role to the business, office and other smaller support services within the development such as food and drink outlets and the hotel. Other uses will assist in supporting the surrounding industrial areas. It is a mixed use development that is based on sound economic research such that the mix proposed is considered sustainable. The objective is achieved.

7.0 Other Matters For Consideration

Step 4 - Clause 4.6(4)(b) – The Concurrence of the Secretary has been obtained

On 21 February 2018, the Secretary of the Department of Planning and Environment issued a Notice ('the Notice') under cl. 64 of the *Environmental Planning and Assessment Regulation 2000* (the EP&A Regulation) providing that consent authorities may assume the Secretary's concurrence for exceptions to development standards for applications made under cl4.6 of the ALEP.

As we understand Council has power to grant development consent to the proposed development even though it contravenes the HOB development standard, without obtaining or assuming the concurrence of the Secretary.

Clause 4.6(5) - Concurrence Considerations

In the event that concurrence cannot be assumed pursuant to the Notice, cl4.6(5) of the LEP provides that in deciding whether to grant concurrence, the Secretary must consider:

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

The proposed contravention of the development standard has been considered in light of

cl4.6(5) as follows:

- The proposed non-compliance does not raise any matter of significance for State or regional environmental planning as it is peculiar to the design of the proposed development for this particular site. It is not directly transferrable to any other site in the immediate locality, wider region or the State and the scale of the proposed development does not trigger any requirement for a higher level of assessment;
- As indicated in **Sections 7 – 9**, the proposed contravention of the development standard is considered to be in the public interest because it is consistent with the objectives of the relevant zone and the objectives of the maximum height standard.

The proposed development contravenes Clause 4.3 of the ALEP 2010 being a *development standard* and height is not excluded from the application of clause 4.6 of ALEP 2010.

This written request to vary the development standard has been prepared in accordance with cl4.6 of the ALEP 2010 and demonstrates that strict compliance with the development standard is unreasonable and unnecessary for the following reasons:

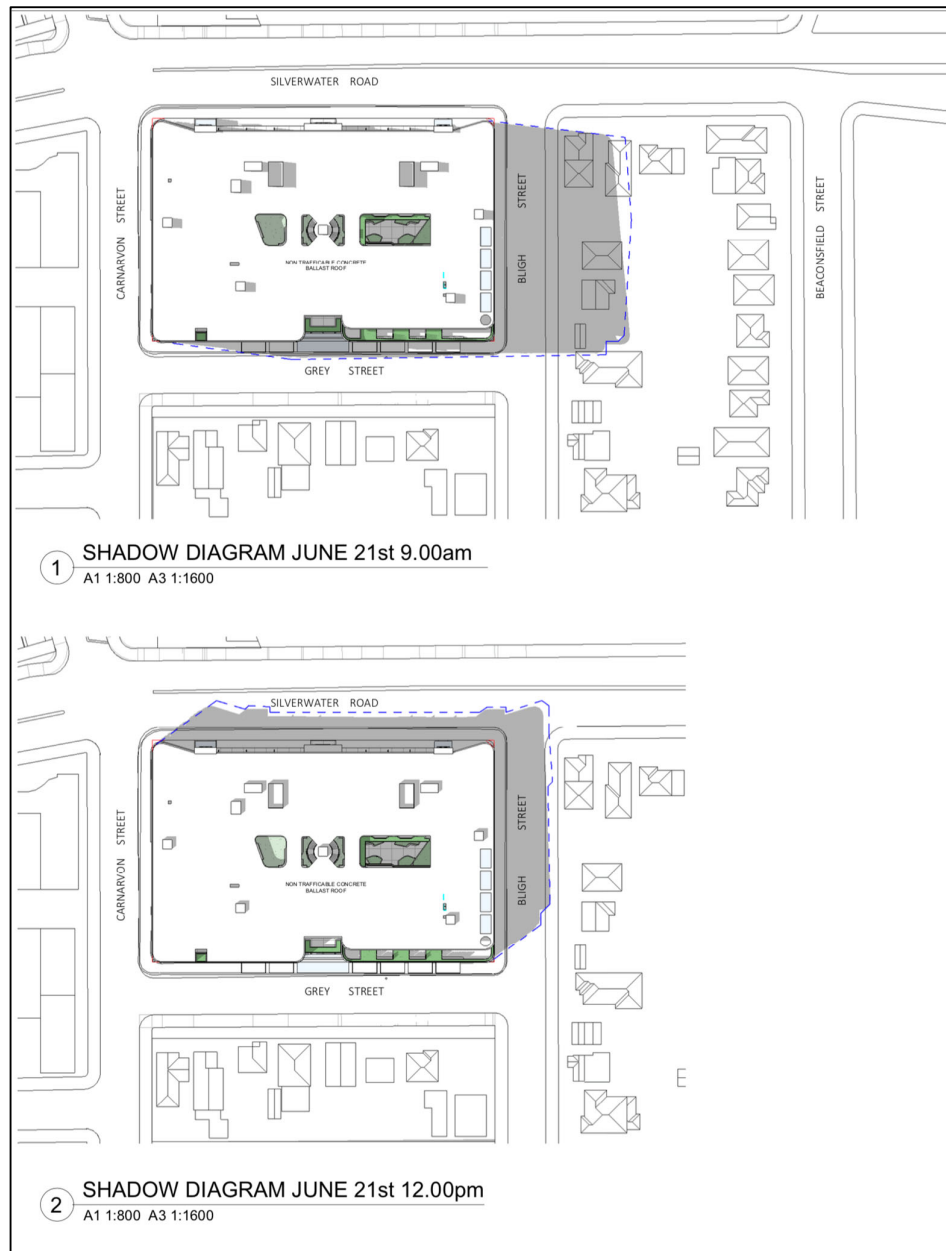
- Notwithstanding the contravention of the development standard, the proposed development is consistent with the relevant aims and objectives of the **ALEP 2010** and is not antipathetic to the stated objectives of the B6 Enterprise Corridor zone and therefore, the proposed development is in the public interest;
- Notwithstanding the proposed height variation as articulated in **Section 3** the proposed mixed use development will not result in adverse environmental harm in that the existing and future amenity of neighbouring properties will be reasonably maintained and the built form is a suitable fit given the planning provisions applying to the development site and its transitional context between the industrial uses to the north and the Parramatta Road Precinct (27m HOB max) to the south.

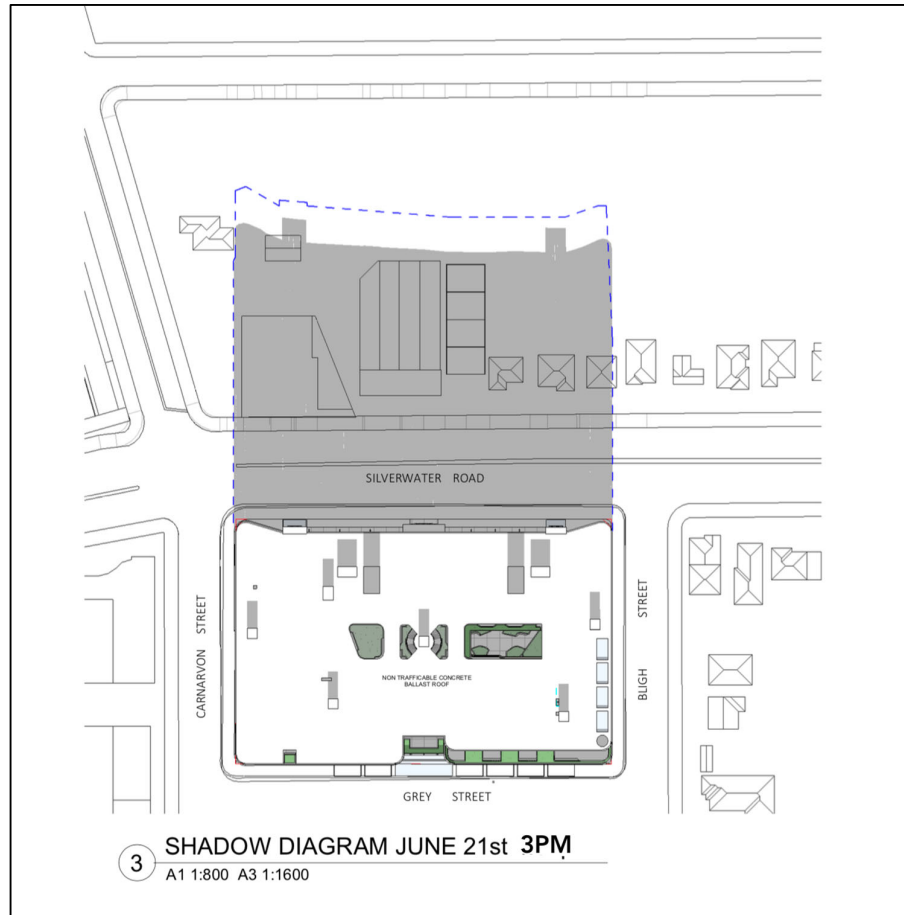
In addition, this written request outlines sufficient environmental planning grounds to justify the variation of the height development standard.



Andrew Martin MPiA
Planning Consultant

Annexure A- Shadow Diagrams





**ATTACHMENT C - Design Excellence Advisory Panel
Recommendations 27 October 2022**

DESIGN EXCELLENCE ADVISORY PANEL RECOMMENDATIONS

City of Parramatta



Address 32 - 48 Silverwater Rd, SILVERWATER
Date 27th October 2022

Application Summary

Application Number	DA/737/2022
Assessing Officer	Denise Fernandez
Applicant/Proponent	CK Design Pty Ltd
Architect and Registration Number	Chris Khoury CK Design Pty Ltd
Landscape Architect	Paul Scrivener (Scrivener Design)
Planner	Andrew Martin (Andrew Martin Planning)
Others in attendance	Bob Nation (Nation Architects)

DEAP Members	David Epstein, Brendan Randles, Oi Choong
Chair	David Epstein
Other Persons in attendance	Jay Ahmed – Snr Project Officer Urban Design Sara Smith – Team Leader Development Assessment
Apologies	-
Item No	1 of 2
DEAP Meeting Number	1st Referral at DA – see PL/30/2021

General Information

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

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

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

Proposal

Details of the proposal are as follows:

- Consolidation of 17 lots;
- Site works including the reinstatement of redundant kerb and gutter to facilitate the proposal;
- Removal of services from the existing allotments;
- Tree removal;
- Excavation works to accommodate 2 basement levels;
- New civil engineering and utility services;
- Construction of a 3 storey mixed use development comprising:
 - specialist retail (24 premises);
 - neighbourhood shops (x2);
 - food and drink premises (x7);
 - business premises (x 21); o office premises (x 18);
 - pub (2-storey) and
 - centre-base child care centre (102 children).
- Onsite parking for 423 vehicles and 36 bicycles;
- Upgraded utility services;
- New stormwater work;
- Landscaping (private and public domain plantings); and
- Signage.

Panel Comments

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

1. The Panel notes that the proposed layout is much better than the previous layout presented at the last DEAP meeting. In particular, the Panel commends the quality of the site and context analysis provided in the Urban Design Report, which provides a clear description of context, its opportunities and constraints, key design strategies and resultant design diagrams – all of which greatly assist the Panel in understanding how the design has been achieved.
2. The design diagrams emphasize the importance of clear spines in anchoring the proposal to its context and providing a legible structure to distribute its various uses and programmed spaces. However, in the translation of these diagrams into an architectural proposal, many of its most compelling design qualities have been lost.
3. Compared to the key diagrams, the lack of “openness” provided to the two spines is of great concern. Rather than rely on small openings at roof level, could the proposed circulation not be more open to the sky?
4. While the proposal’s east west visual links are blocked by a centrally located circulation block, its north south visual links are interrupted by a specialised retail block, resulting in passageways that are only 3m wide. Would it not be better to replace the specialised retail block with north south aligned escalators, build elevators into the walls of adjacent retail and remove the centrally located circulation block altogether?
5. While the diagrams describe clear set out lines for the proposed spatial structure, including continuous retail edges and circulation balustrades (which would read as consistent galleries from below), the proposal deviates from these guidelines at Level 2 to increase childcare space, but this results in adverse impacts on the proposal’s overall spatial quality. Section 3 for example, illustrates that the clarity of the circulation – evident at ground and level one – is simply discarded at level 2.
6. The Panel is concerned that some of the entries feel cramped, insufficiently open and blocked by services, lift cores and other elements. Lifts should be relocated to adjacent walls and stairs widened to ensure that the openness of the circulation referred to above is achieved.
7. While the Panel supports the retail streetscape provided at lower ground floor, the provision of additional gathering spaces is questioned. Rather than the provision of a few tables at lower ground and at level two, would it not be better to have some prominent gathering space at ground level, perhaps at the eastern end of the east west link?
8. The long corridors serving commercial spaces on level two appear very narrow and lacking in generosity.

9. As noted above, the level two childcare space removes the clarity of the proposed circulation diagram, which will impact on the proposal's overall spatial clarity, legibility and architectural integrity. Despite being designed for over 100 children, the childcare entry lobby is very small, which suggests it will be highly congested and inadequate in size to cater for the many parents arriving at peak hour periods.
10. In view of these shortcomings, it is recommended that the layout of the childcare be redesigned so as to allow for the circulation galleries to continue as a circuit (including at its southern end) and that the childcare internal space take over some of the commercial space to its east so as to more comfortably house its entry lobby, waiting and "bump" space and other internal spaces.
11. While the Panel can support marking corners as a principle, it cannot justify all four corners breaching setback requirements to do so. It may be better to allow the pub and the childcare to find an appropriate expression that identifies these two prominent functions, thereby marking their specific corner locations only. Consider opening up the corner with the pub to activate the street rather than a blank wall and elevated ground level.
12. Council advises that circulation galleries are not included in GFA calculations and that the proposal is therefore exceeding the site's allowable density. The proposed retail, commercial and circulation areas proposed should be clarified with Council, so as to determine what is being proposed, and what is allowable GFA.
13. If circulation is not designed as high quality, visually and physically open space and well integrated into the public domain, the Panel would agree that circulation should be counted as internal area. This would lead to substantial area reductions in area being required to align with the site's density requirements.
14. Council also advises that the proposal breaches the height plane, which is also of great concern. A reduction in GFA may allow for the section of the scheme to be modified so as to avoid any breach in height.
15. While the Panel supports the proposal in principle, it is concerned that its architectural resolution has prioritised GFA over design quality, which has impacted on the design quality and open space amenity of the circulation galleries, the entries, the limited amount of gathering spaces provided and even some internal uses, such as childcare.
16. More alignment between the principles of high-quality public domain (as explained in the DCP as well as the urban design diagrams provided) and the architectural proposal is required to justify the GFA currently proposed and any non-compliance with setback and/or height controls.
17. Having both parking and loading dock entry points side by side poses potential pedestrian safety issues particularly if Grey Street is to become a more pedestrian friendly zone with outdoor seating etc. Could one of these entrances be located in Carnarvon Street instead?

18. The Panel supports the enhancement of the footpaths surrounding the site and the buffer planting treatment along Silverwater Road. However, the selection of the footpath paving treatment and street tree planting could be setting a precedent for the whole precinct and should therefore be consistent with the overall vision for the area in general, and Silverwater Road in particular. To this end, the Panel recommends the following :

- i) further discussion with Council to finalise the footpath treatment and principal street tree species, consistent with the vision for Silverwater Road and surrounding streetscapes.
- ii) In relation to Silverwater Road, the Panel is of the opinion that a large Eucalypt with a tall open canopy may be more appropriate than *Tristaniopsis laurina*, which has a lower, dense crown.
- iii) the replacement of the existing turf nature strip along Silverwater Road with a robust range of flowering native groundcovers and grasses, in addition to the *Lomandra* species proposed
- iv) Consider bundling or undergrounding power lines along Bligh Street to allow for the establishment of more substantial sized street trees than the currently proposed *Callistemon Kings Park Special*




The outdoor childcare play area is west facing and would benefit from more shade protection in the form of additional trees in the west and south west corner.

19. Along with the re-configuration of the child care entry and circulation layout on L2, the central space between the business and childcare zones could be redesigned as a 'garden room' gathering space with skylight. (Refer also to Items 9 and 10)

20. The internal paving pattern features a strong, striped geometry, emphasising the east west and north south axes. Whilst strong patterns can be a positive response to way-finding, the developed design should be such that it does not overwhelm the rest of the retail experience. The paving on L2 could likewise be amended to respond more to unifying the central spaces with the different tenancy types on the floor .

21. There appears to be no details provided with regard to sustainability. Given the scale of the development, a comprehensive strategy combining positive environmental, social and economic outcomes should be provided by incorporating efficient thermal design strategies, Solar PV's, water storage and re-use for landscape elements, recycling and re-use of materials and waste as well as use of sustainable materials. The simplicity of the diagram with the spines running through the middle of the site not only works well in terms of circulation, it also has the potential to provide highly efficient internal and external spaces with regard to natural light and ventilation. Combined with other sustainability strategies the scheme has the potential to be a leading-edge development.

Panel Recommendation

Selected Recommendation	Description	Action
<p>Green</p> 	<p>The Parramatta Design Excellence Advisory Panel (The Panel) supports the proposal in its current form. The Panel advises that this is a well-considered and presented scheme and that the architectural, urban design and landscape quality is of a high standard.</p>	<p>Only minor changes are required as noted and provided these changes are incorporated, and presented to the Council, the Panel Does not need to review this application again.</p>
<p>Amber</p> 	<p>The Parramatta Design Excellence Advisory Panel (The Panel) generally supports the proposal. However, substantial amendments to the proposed podium and towers are required to meet the standards expected of a proposal at the scale proposed.</p>	<p>Once the applicant and design team have addressed the issues outlined, the panel looks forward to reviewing the next iteration.</p>
<p>Red</p> 	<p>The Parramatta Design Excellence Advisory Panel (The Panel) does not support the proposal in its current form. The Panel advises that there are a number of significant issues with the proposal.</p>	<p>The Panel recommends that the applicant/proponent contact the Council to discuss.</p>