

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSSCC- 401		
DA Number	843/2022 PAN-261911		
LGA	City of Parramatta Council		
Proposed Development	Demolition of existing buildings, tree removal and construction of a 12 storey mixed use development consisting of a future 76 place centre based childcare centre with 87 residential units above 3 levels of basement parking. The proposal is a Nominated Integrated development pursuant to the Water Management Act 2000.		
Street Address	11-17 Shirley Street, CARLINGFORD NSW 2118		
Property Description	Address	Lot and DP	
	11 Shirley Street	Lot 10 DP 24777	
	13 Shirley Street	Lot 9 DP 24777	
	15 Shirley Street	Lot 8 DP 24777	
	17 Shirley Street	Lot 7 DP 24777	
Applicant Owner	D.R. Design (NSW) Pty Limited <ul style="list-style-type: none"> Nahra Properties Pty Limited Shirley Street Project Pty Limited Hi – Tech Construction Australia Pty Ltd 		
Date of Lodgement	27 October 2022		
Number of Submissions	3 unique submissions		
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 No. 65 – Design Quality of Residential Flat Buildings and Apartment Design Guide (ADG) State Environmental Planning Policy (BASIX) 2004 State Environmental Planning Policy (Transport and Infrastructure) 2007 State Environmental Planning Policy (State Regional Development) 2011 State Environmental Planning Policy (Biodiversity and Conservation) 2021 SEPP (Planning Systems) 2021 State Environmental Planning Policy (Resilience and Hazards) (2021) Parramatta (Former The Hills) Local Environmental Plan 2012 The Hills Development Control Plan 2012 		
Attachments	<ul style="list-style-type: none"> Attachment B – Clause 4.6 Variation Minimum Allotment Area for RFB, Building Height & Floor Space Ratio Attachment C – Design Excellence Advisory Panel Recommendations 24 November 2022 		
Clause 4.6 Requests	Parramatta (Former The Hills) Local Environmental Plan 2012 <ul style="list-style-type: none"> Clause 4.1A – Minimum Lot Size for Residential Flat Building Clause 4.3 – Height of Buildings Clause 4.4 - Floor Space Ratio 		
Report Prepared By	Denise Fernandez, Senior Development Assessment Officer		
Report Date	3 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? **Yes**

e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Not**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions **Applicable**

Conditions

Have draft conditions been provided to the applicant for comment? **N/A**
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 **(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 development seeks approval for a 12 storey mixed use development containing 87 residential units and a future 76 place childcare centre. The site is located within the Carlingford Precinct and is adjacent to an open space corridor. The site is also within proximity to the light rail corridor.

The Clause 4.6 variation request for the minimum allotment size for Residential Flat Buildings, height and floor space ratio standards is not supported by Council as the proposal is not consistent with the objectives of the zone or development standards. There are not sufficient environmental planning grounds to justify the departures, in particular departures from the Apartment Design Guide and The Hills DCP.

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

The proposal is inconsistent with the Desired Future Character and Structure Plan of The Hills Development Control Plan (2012) for the Carlingford Precinct. The proposal does not consider the open space corridor and open space areas which bound the site or has adequately integrated any significant landscaping and deep soil cover to contribute to garden suburb theme. Further, the heights (established by the LEP) would be the tallest around the light rail station and those developments furthest away (such as the subject site) have reduced heights so that the tallest buildings diminish when viewed in its topographic context.

Furthermore, Council considers that there are outstanding site planning matters that are required to be resolved, including stormwater management, accessibility throughout the site and development and integration with the public domain.

The proposal also seeks approval for the use for part of the development for the purposes of a childcare centre for 78 places. The application in this instance has not satisfactorily demonstrated that it is a suitable location having regard to the minimum indoor and outdoor play areas, overlooking and acoustic privacy (from the residential units above and adjacent the childcare facility), its interface with the open space corridor, the quality of the landscaping to the outdoor play areas, solar access and ventilation to indoor and outdoor play areas and parking.

In summary, whilst the subject site has the potential to accommodate a form of high-density development, the proposal subject of this application has not demonstrated that it is a built form designed with acceptable amenity impacts on adjoining developments and on open space corridors and areas. The current layout does not respond to its surrounds, nor provide appropriate design solutions to navigate the topography. Further the public domain is not well defined or integrated with the surrounding streets.

On balance the application is therefore not satisfactory when evaluated against section 4.15 of the Environmental Planning and Assessment Act 1979. Accordingly, this report recommends that the application be refused, for the reasons set out in Section 14.

It is also noted that Council received notice that the applicant has lodged a Deemed Refusal Appeal on 2 May 2023.

2. Key Issues

SEPP65 & Apartment Design Guide

- **Design Principles** - The majority of the design principles are not met.
- **3E: Deep Soil** – poor quality and quantity of deep soil zones for a site of this size
- **3F: Visual Privacy** – non-compliant distances to neighbouring sites.
- **4A Daylight / Solar Access** – does not comply with minimum requirements for solar access.
- **4B: Natural Ventilation** – does not comply with minimum requirements for cross ventilation.
- **4E: Private open space and balconies** – minimum POS area for ground floor apartment not met.
- **4F: Common circulation and spaces** – the development is provided with a corridor that is more than 12m in length

SEPP BASIX 2004

- **ESD** – the NatHERS certificate overstates the number of apartments that achieve natural ventilation.

SEPP (Transport & Infrastructure) 2021

- **Child Care** – site selection and location, local character, public domain interface, building design, landscaping, visual and acoustic privacy, parking, indoor and outdoor play areas, ventilation and natural light, fencing and the provision of a soil assessment.

SEPP (Resilience and Hazards) 2021

- **Remediation of Land** – lack of information regarding the submission of a Phase 1 that concludes the suitability of the site for the proposed development

Parramatta (Former The Hills) Local Environmental Plan 2012

- **R4 High Density Residential Zone Objectives** – inconsistent with the zoning objectives.
- **4.1A Minimum Allotment Size for Residential Flat Buildings** - Acceptability of Clause 4.6 variation.
- **4.3 Height of Buildings** - Acceptability of Clause 4.6 variation.
- **4.4 Floor Space Ratio** – Acceptability of Clause 4.6 variation.
- **4.6 Exception to Development Standards** –. Acceptability of Clause 4.6 variation.

The Hills Development Control Plan 2012

- **Desired Future Character and Structure Plan** – Inconsistency with Part D Section 12 Carlingford Precinct
- **Additional overshadowing to adjoining properties** – 1 - 9 Shirley Street

3. Background and Site Context

3.1 Site location and description

The subject site is known as 11 – 17 Shirley Street, Carlingford. The site consists of four residential allotments with a total site area of 3,141m². The site currently consists of four (4) single storey dwellings, front fences, associated structures, and trees. Surrounding the site are dwelling houses, and high density residential. The site has the following dimensions:

- 65.37m to Shirley Street.
- 33.68m to the northern boundary.
- 91.53m to the western boundary
- 62.49m to the southern boundary

The general character of the locality is predominantly made up of detached, medium/high density residential developments. The site adjoins an open space corridor to the south. The site is also bounded by a reserve and a rail corridor to the west. The site is within proximity to the light rail station.

The subject site falls within the Carlingford Precinct bounded by Pennant Hills Road, Jenkins Road and Moseley Street. Precinct planning established key objectives for development including reducing traffic through better utilisation of public transport, revitalising the centre and public spaces and locating higher density development in an appropriate, well-serviced location. A large portion of the Precinct has been zoned to accommodate high density residential and mixed-use development.

The site is located within an area zoned as R4 High Density Residential under the Hills Local Environmental Plan 2012. Properties within vicinity to the west is zoned SP2 Railway and the site to immediately to the south is zoned RE1 Public Recreation.

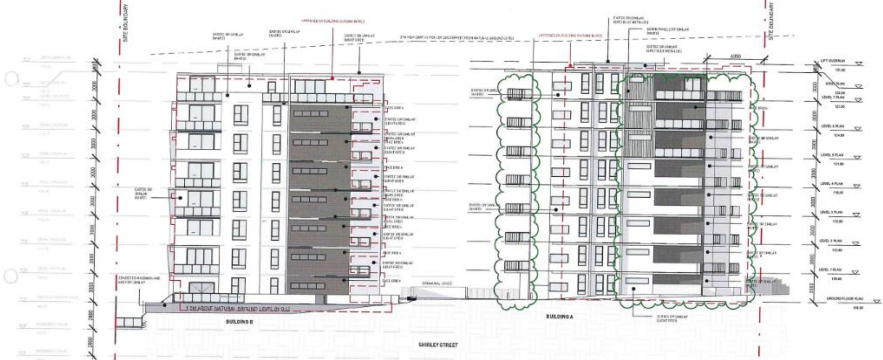
It is noted that site is located within proximity to a heritage listed item, the Carlingford Stock Feeds on 1 Thallon Street.



Figure 1: Aerial photograph of subject site and surrounds

3.2 Related Applications

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

DA/681/2013/HB (The Hills)	<p>This application was approved by Council on 27 August 2013 for the:</p> <ul style="list-style-type: none"> - demolition of existing dwellings and associated structures; - construction of 2 x residential flat buildings containing 68 residential units and basement carparking.
DA/681/2013/HB/A / DA/152/2017 (City of Parramatta)	<p>The modifications sought under this application included:</p> <ul style="list-style-type: none"> - increase the approved floor space ratio to 2.26:1; - changes to the unit mix; - changes to the parking scheme to provide 165 spaces. <p>Council refused the modifications under delegation. The refusal was appealed. However, under a Section 34 agreement, the modifications were approved on 27 September 2018.</p>  <p>Figure 1: Approved development under the Section 34 agreement</p>

4. The Proposal

In summary the application comprises the following:

- Construction of a 12 storey mixed use development containing 87 residential units and a future 76 place childcare centre.
- 3 levels of basement parking for 138 car spaces
- The residential unit mix comprises of 2 x 1 bedroom units, 41 x 2 bedroom units, 43 x 3 bedroom units and 1 x 4 bedroom unit.
- The future child care centre comprises a floor area of 551m².
- Communal open space is provided on the ground floor, Level 10 and roof top with a total area of 787m².
- Perimeter landscaping



Figure 2: Perspective view of proposed mixed use development

4.1 Application Assessment History

Discussions with Council on 10 March 2022 which proposed an 18-storey mixed use development with a FSR of 4.9:1. Council provided advice that it could not support such a significant departure to the height and FSR under Parramatta (Former The Hills) Local Environmental Plan 2012 (P(fTH) LEP 2012). Council also advised that a development that departed so significantly to the standards would be inconsistent with Council’s Local Strategic Planning Statement and Local Housing Strategy.

The application was lodged with Council on 27 October 2022. The application was notified for a 30-day period between 8 November 2022 and 6 December 2022. A letter to the applicant requesting additional information were sent on 22 December 2022.

The Application was subject to a “Kick Off Briefing” with the Sydney Central City Planning Panel (SCCPP) on 9 March 2023. Council expressed its concerns with the development, mainly the significant departures to the height and FSR. The SCCPP resolved that the applicant provide a compliant development and that the Panel will determine the development in the form it is present at or prior to 250 days.

At the time of writing this report (3 April 2023), Council has not received a response from the applicant.

Further, Council received notice that the applicant has lodged a Deemed Refusal Appeal on 2 May 2023.

5. Permissibility

Parramatta (Former The Hills) Local Environmental Plan 2012

The proposed development is defined as the following under Parramatta (former The Hills) LEP 2012:

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

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

Both the residential flat building and the childcare centre are permissible with consent within the R4 High Density Residential zoning applying to the land.

6. Public Notification

Notification Period:	8 November 2022 to 6 December 2022
Submissions received:	3 submissions
Issues raised in submissions:	Density, bulk and scale, acoustic impacts, traffic, height, overshadowing, privacy, streetscape, incompatibility with surrounding development, tree removal and retention, errors in detail on plans and documentation.

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

7. Referrals

Any matters arising from internal/external referrals not dealt with by conditions. A detailed assessment is provided at Attachment A .	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	Yes - A detailed assessment is provided at Attachment A .
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10. Parramatta (Former The Hills) Local Environmental Plan 2012

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	• All relevant provisions satisfied
Part 6 – Urban Release Areas	• Not Applicable
Part 7 – Additional Local Provisions	• Not compliant

11. The Hills Development Control Plan 2012

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

DCP Section	Comment or Non-Compliances
Part A – Introduction	• Inconsistent
Part B – Section 5 Residential Flat Building	• Inconsistent
Part B – Section 6 Business	• Inconsistent
Part C – Section 1 Parking	• Inconsistent
Part D - Section 12 Carlingford Precinct	• Inconsistent

12. Response to Panel Briefing Minutes

The application was considered at a SCCPP Kick Off Briefing Meeting held on 9 March 2023.

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

- *The Chair noted proposed height and FSR represent significant departures. The Panel supports Council's request for a compliant development.*
- *The Chair noted that the "Meriton development" referred to in the Applicant's presentation of their traffic study was refused by the Panel on (but not necessarily limited to) height and FSR grounds.*

- *Panel targets determinations of RSDAs within 250 days and notes this matter is approximately halfway through its process. The Chair recommends that the Applicant expedite their efforts to facilitate the significant amendments to provide a compliant development. Panel will determine development in the form it is presented at or prior to 250 days.*

Following the Panel briefing, Council sent the Applicant correspondence on 9 March 2023 advising the applicant that amended plans per Council's request (and supported by the SCCP Panel) be submitted by COB 31 March 2023 to enable Council to determine the applicant. As previously noted, to date, Council has not received a response from the applicant. 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/843/2022 for reasons contained within the Assessment Report.

ATTACHMENT A - PLANNING ASSESSMENT

SCCPP Reference:	PPSSCC-401
DA No:	DA/843/2022 PAN-261911
Address:	11-17 Shirley Street, Carlingford

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	Refer to Section 5 below
Section 4.15 (1)(a)(iv) - The regulations	Refer to Section 6 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 7 below
Section 4.15 (1)(c) - Site suitability	Refer to Section 8 below
Section 4.15 (1)(d) - Submissions	Refer to Section 9 below
Section 4.15 (1)(e) - The public interest	Refer to Section 10 below

1.2 Referrals

The following external and internal referrals were undertaken:

External Referrals	
WaterNSW	The application received concurrence from WaterNSW pursuant to Section 90(2) of the Water Management Act 2000.
TfNSW (Light Rail)	The application was referred to TfNSW as the site is within proximity to the light rail corridor. TfNSW raise no objections to the proposed development subject to the imposition of conditions. The conditions relate to the provision of a reflectivity report and boundary fencing. Notwithstanding, as the proposal has been assessed as unacceptable on the site, the application cannot be considered for approval.
Endeavour Energy	The application was referred to Endeavour Energy as it proposes a new substation as well as being within proximity to overhead power lines. Upon review of the proposal, Endeavor Energy raised no objections to the proposal subject to conditions of consent.
Internal Referrals	
ESD Consultant (Flux)	Council's ESD/BASIX consultant has reviewed the documentation and upon review has identified several issues that should be corrected to satisfy BASIX certification requirements. These include: <ul style="list-style-type: none"> - The NatHERS Exposure category for many apartments being set too high which overstates natural ventilation.

	<ul style="list-style-type: none"> - The areas allowed for natural ventilation openable areas are inconsistent with the NatHERS requirements. <p>To date, Council has not received a response to the above concerns from the applicant.</p>
DEAP	<p>The application was referred to the Design Excellence Advisory Panel (DEAP). A copy of the DEAP recommendations is located elsewhere in this report. Amended plans have not been received in response to the DEAP recommendations, Council cannot recommend approval of the application.</p>
Urban Design	<p>Council's Urban Designer has reviewed the proposal and raised several concerns. These concerns relate to:</p> <ul style="list-style-type: none"> - The proposed development and building height is likely to unduly occupy the horizon from a distance as it sits on and close to the ridge line and is considered an unacceptable built form outcome within its context. - The proposed height is likely to overshadow the landscaped corridor to the south, 1-9 Shirley Street, 8 Shirley Street to the southeast and the proposed open space to the Childcare centre. - The proposal has not addressed the landscaped corridor, nor has it demonstrated that the development will not inhibit the growth and habitat of tree canopies in that zone due to overshadowing. - The proposed site coverage exceeds 35% of the site. - The proposal does not meet the dimension requirements for deep soil zones under the ADG's. - The submission of Public Domain Alignment Drawings showing existing and proposed levels for roads, kerb and gutter, footways, forecourts and through site links have not been submitted. - The provision of landscape drawings for internal site areas showing boundary treatments and compliant private and communal open space areas have not been submitted.
Accessibility Officer	<p>Council's Accessibility Officer has reviewed the proposal and raised the following concerns:</p> <p>Childcare</p> <ul style="list-style-type: none"> • Clearly identify intuitive safe paths of travel through the childcare carparking areas. • Ensure the lift is as large as possible and provides a sufficient footprint. • Ensure the ramps providing access to the childcare follow AS1428.1 • The Accessible WCs (on both levels) do not appear to provide sufficient circulation areas. • Review the childcare laundry access • The reception/ sign in desk must provide accessible features. • Access is required to the rear outdoor play area. • Ensure the staff room kitchen features can be adjusted to suit a person with disabilities. • Ensure low level thresholds are provided at the external doors. • Ensure abutments of varying surfaces have level transitions.

	<ul style="list-style-type: none"> • Ensure equipment and furniture provide suitable features for a child or person with a mobility impairment. <p>Residential</p> <ul style="list-style-type: none"> • Revise the use of a platform lift • No accessible access has been provided to the residential waste room. • Ensure low level thresholds are provided at the external doors. • Ensure abutments of varying surfaces have level transitions. • Ensure equipment and furniture provide suitable features for a child or person with a mobility impairment. <p>Council has not received a response to the above concerns. As the requested information has not been received, Council's Accessibility Officer cannot complete the assessment of the proposal.</p>
Traffic Engineer	<p>Council's Traffic Engineer reviewed the proposal and provided the following comments:</p> <ul style="list-style-type: none"> • The Childcare facility is to provide a minimum of 26 off-street parking spaces. However, the plans indicate only 19 parking spaces. This is a shortfall of 7 spaces. The non-compliance with not supported. • As a result, the applicant is to be required to provide minimum 26 off-street car parking spaces for the child care centre component of the proposed development in accordance with the requirements of the Hills DCP 2012. Alternatively, the number of children in attendance can be reduced such that the required parking provision be equal to the proposed 19 off-street car parking spaces. <p>Amended plans have not been received in response to the above concerns.</p>
Development Engineer	<p>Council's Development Engineer has reviewed the proposed development and has requested additional information that relates to the design of the Water Sensitive Urban Design chamber. The overall On-Site Detention layout shall also be designed in accordance with Council's Technical Design Guide – Stormwater Cartridge filters.</p> <p>It is noted that the abovementioned request for additional/amended information was not included in the initial correspondence to the applicant. Despite this, the application is recommended for refusal for reasons stated throughout this report.</p>
Heritage Adviser	<p>Council's Heritage Adviser has reviewed the proposed development. Upon review of the application, Council's Heritage Adviser raised no objections to the proposal on Heritage grounds.</p>
Environmental Health (Acoustic)	<p>Council's Environmental Health Officer has reviewed the submitted acoustic report and supports the application subject to the imposition of appropriate conditions.</p>
Environmental Health (Waste)	<p>Council's Waste Officer reviewed the proposal and upon review, raised no objections with regards to waste collection, during and post construction works. Had the application been recommended for approval, the relevant conditions recommended by Council's Waste Officer would have been included in the conditions of consent.</p>

Landscape Officer	The application was referred to Council's Tree Management & Landscape Officer who raises no concerns with the proposed development.
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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 issued their General Terms of Approval (IDAS1146520 issued 24 November 2022).

If the application had recommended approval, this approval would have been referenced in the recommended conditions of consent. However, for reasons stated in this report, the application cannot be supported.

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
Chapter 2 Vegetation in non-rural areas	Council's Landscape Officer raised no objections to the removal of 19 trees subject to appropriate conditions of consent. It is considered that the removal of 19 trees on site will not have an adverse impact of the ecological, heritage, aesthetic and cultural significance of the area.
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	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. 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.

	The site is not located within a Foreshores and Waterways Area identified under Part 10.3 of the policy.
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3.3 SEPP (INDUSTRY AND EMPLOYMENT) 2021

SEPP Section	Comment
Chapter 3 Advertising and signage	Not applicable. No advertising or signage is proposed as part of this application.

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 does not have an obvious history of a previous non-residential land use that may have caused contamination and there is no specific evidence that indicates the site is contaminated.</p> <p>It is however noted that the application also proposes a Childcare Centre. The application was not accompanied by a soil assessment/Preliminary Site Investigation that determines the suitability of the site for the purposes of a childcare centre as required by the relevant SEPP. Accordingly, as the suitability of the childcare centre cannot be determined due to the lack of information contained in the application, Council cannot recommend the proposal for approval.</p>

3.5 SEPP (TRANSPORT AND INFRASTRUCTURE) 2021

SEPP Section	Comment
Chapter 2 Infrastructure	
Electricity Infrastructure	A new substation is proposed to service the development. The application was referred to Endeavour Energy who raised no objections to the proposal subject to conditions.
Development likely to affect an electricity transmission or distribution network	Not applicable. The subject site is not within proximity to electricity infrastructure or substation.
Development in or adjacent to rail corridors	Not applicable. The subject site does not adjoin a rail corridor.
Frontage to a classified road	Not applicable. The site does not have frontage to classified road.

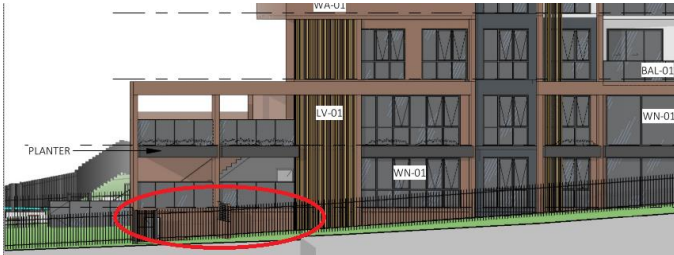
Traffic Generating Development	The development does not meet the criteria for referral to Transport for NSW under Schedule 3 of the SEPP.
Chapter 3 Educational Establishments and Childcare Facilities Centre based childcare facility – concurrence of Regulatory Authority required for certain development Centre based childcare facility in Zone IN1 or IN2 Floor Space Ratio Non-discretionary development standards	<p>Whilst the application does not apply for a variation to regulation 107 (indoor unencumbered space requirements) or Regulation 108 (outdoor unencumbered space requirements) of the Childcare Planning Guidelines, the area calculated for indoor space did not exclude the door swing area and as such, the unencumbered indoor space area is 242m² which is less than the minimum 247m² required for a 76-place childcare centre. In addition, the proposal also does not provide sufficient outdoor unencumbered space as it proposes 516m² when 532m² is required. It is noted that areas allocated for screen planting was not included in the calculation of outdoor play area.</p> <p>Not applicable. The subject site is zoned R4 High Density Residential</p> <p>Not applicable. The subject site is not zoned R2 Low Density Residential where a maximum 0.5:1 FSR would be applicable.</p> <p><u>Location</u> – The site is not within proximity to another childcare centre. <u>Indoor Space</u> – The proposal does not comply as it provides 242m² of unencumbered indoor space area when it should provide 247m². <u>Outdoor Space</u> – The proposal requires a minimum 532m² of outdoor unencumbered space for 76 children under Regulation 108 of the Guidelines. The proposal provides 516m². <u>Site Area and Dimensions</u> – The site is of a satisfactory size and shape. <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	
C1 For proposed developments in or adjacent to a residential zone, consider: <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. 	No Council acknowledges that the proposal is only for the use of the lower ground floor and ground level area as a childcare facility and that the fit out would be considered in a future application. Notwithstanding, the proximity of the ground floor residential units to the childcare centre is considered to result in unacceptable acoustic impacts. Further, due to the 2-storey nature of the childcare facility, concern is raised that opportunities exist for overlooking to and from the residential units to the childcare centre.

	<p>This is further supported by the Design Excellence Advisory Panel (DEAP) who stated that the design scheme for the overall development has not contemplated the childcare facility and its operational planning to its relationship to the adjacent residential units which potentially results in amenity conflicts.</p> <p>Council's Traffic Engineer has reviewed the proposal and does not support the application as it does not provide the required number of parking spaces for the childcare facility.</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 and east are zoned R4 High Density residential. The areas to the west are zoned SP2 Rail Infrastructure Facility and the site immediately to the south is zoned RE1 Public Recreation zone.</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 Stage 1 Report or soil assessment 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 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 ability to provide satisfactory ventilation and solar access which have not been demonstrated.</p> <p>The application has also not demonstrated that the childcare facility will be protected from acoustic and visual impacts from adjoining / adjacent residential units.</p> <p>Drop off and pick up are located within the lower ground. Council's Traffic Engineer notes that there is a shortfall in the number of parking spaces provided for the 76-place childcare facility. In this regard, it cannot be supported.</p>
<p>C3 A child care facility should be located:</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>Yes</p> <p>The site is located within proximity to the following:</p> <ul style="list-style-type: none"> - Future light rail - Reserves and Parks for recreation (ie Shirley Street Reserve and Eric Mobbs Memorial Park) - Carlingford Village - Local shops at Carlingford Court - Carlingford Library - Carlingford Uniting Church - Public transport on Marsden Road and Cumberland Highway
<p>C4 A child care facility should be located to avoid risks to children, staff or visitors and adverse environmental conditions arising from:</p>	<p>Yes</p> <p>The site is not located within proximity hazardous uses, extractive industries, intensive agriculture or agricultural activities.</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. 	
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 exceeds the maximum FSR and height for the site which result in undesirable amenity impacts within and external to the development site. Further, the design of development as a tower and podium scheme is inappropriate for its location as it further emphasises its excessive mass and scale.</p> <p>Further, the Carlingford Precinct's topography slopes down west from the ridgeline of Pennant Hills Road towards Hunt's Creek Reserve. The design controls for the precinct envisage buildings to be designed with the existing topography where sites in the lower lying areas should not overwhelm the ridgeline. The substantial departures to the maximum height and FSR for the site as proposed by the development contradicts this design objective to the detriment of the streetscape and the overall local character.</p> <p>The proposal also neglects the RE1 link (green link) to the south and due to its proposed height and FSR, it overshadows this area which potentially limits solar access to vegetation that is in the area.</p> <p>Further, DEAP noted that the proposal provides limited opportunities for landscape integration with adjacent landscape settings and open spaces. The development has also poorly defined access to the public reserve and nearby site for a light rail station.</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 • integrating existing and proposed landscaping with fencing. 	<p>No</p> <p>Whilst a path from the street frontage to the childcare centre's entry is provided, the entry is directly adjacent to the substation which should be located away from this area to provide more space for pram parking and social interaction around the reception lobby.</p> <p>Due to the raised nature of the ground floor levels and the height of the front fence, it is unlikely that the passive surveillance of the street from within the development can be achieved.</p>
<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 for the childcare centre and the lobby for the residential units.</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>No</p> <p>The elevation plans submitted with the application indicates the provision of a front fence along the length of the street frontage. However, its dimensions have not been provided. Open style fencing is proposed along the southern boundary to address the open space corridor to the south. However, to ensure that the outdoor play area that cannot be screened by vegetation cannot be viewed from the open space corridor it is raised from the natural ground level. As a result, this portion of the development is a blank wall with a height that appears to be of a similar height to the boundary fence and is not an acceptable design outcome. See image below.</p>  <p>Figure 3: Southern elevation</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>No</p> <p>Elevation plans submitted with the application indicates the provision of a front fence along the length of the street frontage. The front fence appears to have been designed to allow some views within and beyond the street setback. However, dimensions of the fence have not been provided. In particular, the overall height of the fence cannot be determined and whether this obscures sightlines to the street.</p> <p>The site does not adjoin a classified road.</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: - 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>The outdoor play areas are located on the lower ground floor and ground floor and is in the immediate vicinity of residential dwellings to the north and on the upper floors. As the current application does not include internal fit outs and operations details, the Acoustic Report recommended that noise attenuation measures be incorporated within the residential facades (rather than from the noise source) and that the noise criteria adopted in this instance be applied with the doors and windows of residences closed. Whilst this protects the users of the residential units from amenity impacts from the childcare centre, it limits the amount of cross ventilation available for the users of the residential units, particularly during daytime hours when the childcare centre is in operation.</p> <p>The Acoustic Report also recommends that a solid canopy be provided over the 'outdoor seating area', adjacent to the lower ground floor outdoor play area. However, this has not been illustrated on the submitted plans.</p> <p>The current application proposes only the use of the lower ground and ground floor areas for the purposes of a childcare centre. Details of measures to protect children and staff from</p>

	wind and other climatic condition would form part of any future application for the fit out of the premises for the purposes as a childcare centre.
<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>The rear setback from the childcare centre, particularly from the outdoor play area on the ground floor is less than the minimum 8m required under local development controls. This encroachment further exacerbates the scale of the development when viewed from the properties to the west.</p> <p>The overall design of the proposal does not satisfactorily address the RE1 Link to the south or the public reserves to the north that is adjacent to the Light Rail Corridor. In this regard, the proposal has insufficiently provided a design response that excludes the open spaces around the site. It is noted that the RE1 link to the south provides an open space corridor with a precinct level of importance and is therefore integral to the design process for development on the site.</p> <p>DEAP has noted that the proposal does not in this instance provided adequate separation to protect the childcare centre from the residential units adjacent to the facility and those located on the upper floors.</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>The Hills DCP 2012 requires that development within the Carlingford Precinct be provided with a minimum 8m rear setback. However, a minimum 3.5m (approx.) rear setback to the outdoor play area on the ground floor is provided.</p> <p>It is noted that whilst C14 refers to applying setbacks required for a dwelling house for childcare centres, this control envisages childcare centres of a one storey nature. The proposal is located over 2 floors and therefore requires setbacks beyond what is required for a dwelling house to reduce the perception of bulk and scale on adjoining properties whilst protecting these properties from amenity impacts from the facility, particularly when outdoor play areas are located on the upper floors.</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>	<p>Yes</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>A separate access is provided to the childcare centre and is visible from the street.</p>
<p>C17 Accessible design can be achieved by:</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>No</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.</p>
<p>3.4 Landscaping</p>	
<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 	<p>No</p> <p>As mentioned elsewhere in this report, the proposal does not comply with the required amount of unencumbered outdoor play area as it does not appear that screen planting along the boundary was excluded from the calculations.</p> <p>Further, it does not satisfactorily incorporate trees, rocky outcrops, and vegetation communities as half of the outdoor play areas are located on the upper floors.</p> <p>Significant tree planting is also limited due to the extent of the basement and that deep soil areas are restricted.</p> <p>It is noted that very limited landscaping is provided within the front setback and altogether lacking around the location of the driveway and appears to be a result of the extensive building coverage of the overall development.</p>

<ul style="list-style-type: none"> • 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. 	
3.5 Visual and acoustic privacy	
C20 Open balconies in mixed use developments should not overlook facilities nor overhang outdoor play spaces.	<p>No</p> <p>The proposal is for a mixed-use development where residential units are located on the upper floors above the childcare centre. The design of the development provides balconies that allow for a direct view of the outdoor play areas of the childcare centre below. In this regard, visual and acoustic privacy into and external of the childcare centre are not protected.</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>No</p> <p>As noted elsewhere, open style fencing is proposed along the southern boundary. Whilst views to and from the open space corridor is limited to the outdoor play areas due to the screen planting and the terraced nature of the outdoor play areas, the second level outdoor play area is significantly raised from the ground level which results in blank walls that inevitably address the open space corridor which is a poor design outcome.</p> <p>Floor to ceiling windows is also used along the front and southern elevations which relate to administration and indoor play areas. These windows allow for direct views into the indoor play areas from the open space corridor to the south.</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>No</p> <p>It appears that the blade wall that interfaces the residential units along the outdoor play area on the ground floor does not extend to the entire length of this area. As such, it cannot be determined whether direct views are restricted of the balconies and internal living areas from the outdoor play area.</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>An acoustic fence has not been provided. Further, no details of screening of mechanical plants have 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>

3.6 Noise and air pollution	
<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 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>N/A</p> <p>The proposal is for the use of the premises for the purposes of a childcare centre. The internal fit out and operational details is subject of a future application. As such, design solutions specifically to control noise impacts to the facility cannot be determined at this time.</p> <p>N/A.</p> <p>The site is not located on industrial land, subject to an ANEF contour, adjacent to a railway corridor or a major/busy road.</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. 	<p>N/A</p> <p>The site is not located on a major road or within proximity to industrial development.</p>

<p>Landscaping has the added benefit of improving aesthetics and minimising visual intrusion from an adjacent roadway</p> <ul style="list-style-type: none"> • incorporating ventilation design into the design of the facility. 	
3.7 Hours of operation	
<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>Yes</p> <p>Whilst complete operational details are not provided under this application, the proposed hours of operation is:</p> <p>Monday to Friday: 7AM to 7PM</p> <p>The above complies with the requirements under C29 of the Guidelines.</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>Yes</p> <p>The proposed hours of operation are compliant with the provisions of this Chapter. Accordingly, the hours of operation are considered acceptable.</p>
3.8 Traffic, parking and pedestrian circulation	
<p>C31 Off street car parking should be provided at the rates for child care facilities specified in a Development Control Plan that applies to the land.</p>	<p>No</p> <p>As previously discussed, the proposal does not meet the minimum parking requirements for a 76 place childcare centre and therefore Council's Traffic Engineer does not support the proposal.</p>
<p>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.</p>	<p>No</p> <p>On-street parking has not been nominated for consideration for the proposed childcare centre.</p>
<p>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:</p> <ol style="list-style-type: none"> 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. 	<p>No</p> <p>Council's Traffic Engineer 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.</p>
<p>C37 Mixed use developments should include:</p> <ol style="list-style-type: none"> 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. 	<p>Yes</p> <p>The development, whilst a mixed use, does not require loading bays or truck manoeuvring areas as the other use is residential in nature.</p> <p>A review of the basement plans 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.</p> <p>The parking allocated for the childcare centre is located and grouped together near the access point to the facility in Lower Ground Level.</p>

Part 4 – Applying the National Regulations to development proposals	
4.1 Indoor space requirements	
<p>Regulation 107 Education and Care Services National Regulations</p> <p>Every child being educated and cared for within a facility must have a minimum of 3.25m² of unencumbered indoor space.</p>	<p>No</p> <p>Required – 247m² Provided - 242m²</p>
<p>Verandahs as indoor space</p> <p>For a verandah to be included as unencumbered indoor space, any opening must be able to be fully closed during inclement weather. It can only be counted once and therefore cannot be counted as outdoor space as well as indoor space (refer to Figure 1).</p> <p>Storage</p> <p>Storage areas including joinery units are not to be included in the calculation of indoor space. To achieve a functional unencumbered area free of clutter, storage areas must be considered when designing and calculating the spatial requirements of the facility. It is recommended that a child care facility provide:</p> <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>N/A</p> <p>A verandah is proposed however it is allocated as an outdoor play area.</p> <p>No</p> <p>The proposal is for the use of the premises for the purposes of a childcare centre. The internal fit out, including the storage areas is subject of a future application. Notwithstanding, concern is raised that as storage areas have not been nominated that this will encroach on the areas nominated as indoor and outdoor play areas which will further reduce the amount of these areas that is required for a 76-place childcare centre.</p> <p>No.</p> <p>A pram parking area has not been provided.</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>N/A</p> <p>The proposal is for the use of the premises for the purposes of a childcare centre. The internal fit out, including hygiene facilities details are subject of a future application.</p> <p>It is noted that a laundry room is in the Lower Level of the childcare facility.</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>N/A</p> <p>The proposal is for the use of the premises for the purposes of a childcare centre. The internal fit out, including toilet and hygiene facility details are subject of a future application.</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</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>

<p><i>National Construction Code.</i> Ceiling height requirements may be affected by the capacity of the facility.</p>	
4.5 Administrative space	
<p>Regulation 111 Education and Care Services National Regulations 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 Child care facilities must provide for children who wear nappies, including appropriate hygienic facilities for nappy changing and bathing. All nappy changing facilities should be designed and located in an area that prevents unsupervised access by children. Child care facilities must also comply with the requirements for nappy changing and bathing facilities that are contained in the <i>National Construction Code</i>.</p>	<p>N/A</p> <p>The proposal is for the use of the premises for the purposes of a childcare centre. The internal fit out, including details of the nappy change facilities are subject of a future application.</p>
4.7 Premises designed to facilitate supervision	
<p>Regulation 115 Education and Care Services National Regulations 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>N/A</p> <p>The proposal is for the use of the premises for the purposes of a childcare centre. The internal fit out, including details that facilitate supervision of areas within the facility are subject of a future application.</p>
4.8 Emergency and evacuation procedures	
<p>Regulations 97 and 168 Education and Care Services National Regulations 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>N/A</p> <p>The proposal is for the use of the premises for the purposes of a childcare centre. The operational details, including emergency evacuation procedures are subject of a future application.</p>
4.9 Outdoor space requirements	
<p>Regulation 108 Education and Care Services National Regulations 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>	<p>No</p> <p>Number of Children: 76 Minimum Required: 532m² Proposed: 516m²</p> <p>Areas that provide screen planting and staircases have not been included in the calculation of outdoor play areas.</p>

<p>1 Pathway or thoroughfare, except where used by children as part of the education and care program;</p> <p>2 Car parking area;</p> <p>3 Storage shed or other storage area;</p> <p>4 Laundry; and</p> <p>5 Other space that is not suitable for children.</p> <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>	
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 allow children to explore and experience the natural environment.</p>	<p>No, insufficient information received.</p> <p>The terraced design of the outdoor play area on the lower ground floor and the location of the remaining outdoor play area on the ground floor has restricted the ability of the proposal to incorporate natural play elements such as grass instead of turf to ensure the best learning and development outcomes are achieved. Further, significant tree planting cannot be achieved due to the extensive basement layout below the development which reduces the amount of deep soil areas available.</p>
4.11 Shade	
<p>Regulation 114 Education and Care Services National Regulations</p> <p>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.</p>	<p>N/A</p> <p>The proposal is for the use of the premises for the purposes of a childcare centre. The fit out details such as shade sails are subject of a future application.</p>
4.12 Fencing	
<p>Regulation 104 Education and Care Services National Regulations</p> <p>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>.</p>	<p>No, insufficient information</p> <p>Fencing details have not been provided in accordance with the NCC.</p>
4.13 Soil assessment	
<p>Regulation 25 Education and Care Services National Regulations</p> <p>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:</p> <p>1 A soil assessment for the site of the proposed education and care service premises;</p> <p>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</p> <p>3 A statement made by the applicant that states, to the best of the applicant's</p>	<p>No</p> <p>See discussion under C2 of the Guidelines.</p>

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.	
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3.6 STATE ENVIRONMENTAL PLANNING POLICY NO. 65 – DESIGN QUALITY OF RESIDENTIAL APARTMENT DEVELOPMENT

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

- The 9 SEPP 65 Design Quality Principles
- The Apartment Design Guide (ADG).

Design Quality Principles

SEPP 65 sets 9 design quality principles. The development has adequately addressed the 9 design quality principles in the following way:

Design quality principle	Response
Context	The design of the proposed buildings exceeds the maximum height and FSR for the site and does not in this instance respond or contribute to its context. The proposal has not demonstrated how the building relates to the surrounding reserves and open space which is considered significant as the open space corridor is of precinct level of importance. Further, the perimeter podium apartments and childcare centre are significantly elevated from the ground level which restricts opportunities for street activation and complementary interfaces with adjoining sites. The application also does not provide a defined access to the public reserve to the south and nearby site for a light rail station.
Built form	The building is designed as a podium and tower. However, the minimal street setback to the podium results in excessive mass and scale. The elevated podium reduces opportunities for surveillance and landscaping. Additionally, the proposed built form dominates the ridgeline due to the exceedances in height and FSR for the site which is contradictory to the design outcomes envisaged for the Carlingford Precinct.
Density	The proposal which exceeds the FSR is of a density that is unsuitable for the site. The application proposes a density that is unsustainable and inconsistent with the current housing strategies and policies for Carlingford. The Parramatta LGA, including the Carlingford precinct is forecasted to exceed its 20-year housing target under the existing controls. Accordingly, additional density in this area is not required.
Sustainability, resource, energy & water efficiency	A review of the submitted BASIX certificate has identified issues that requires correction. These issues include apartments overstating compliance with natural ventilation and inconsistencies with the requirements for natural ventilation for openable areas. DEAP has also identified that the use of excessive glazing along the western façade results in poor amenity to living rooms and bedrooms from solar / heat load during the summer months and in this regard is unacceptable.
Landscape	Despite the ample site area and therefore extensive landscaping opportunities, the proposal does not satisfactorily incorporate landscaping with the design scheme proposed for the site. The proposed landscaping appears to be relegated to 'left over' spaces around the perimeter. Direct ground floor access to communal spaces is restricted due to the level changes. Further, significant vegetation is limited because of the extensive basement level.

Amenity	Interior apartment amenity is compromised due to the length of the corridors. Some units are also designed with complex internal access. There is also insufficient building separation to the development to the west which increases opportunities for overlooking and increased perception of bulk and scale.
Safety & security	The front fence appears to be at a height that exceeds 1.2m which obscures direct views from within the ground floor units to the street. Additionally, the proximity of the residential units adjacent and above the childcare centre also allows direct views resulting in increased safety and security risks.
Social dimensions/housing affordability	Despite the density of the proposed development and the number of units proposed, the unit mix disproportionately favours 2 and 3 bedroom units which further reduces the housing options in this area.
Aesthetics	The proposed development is inappropriate in terms of the composition of building elements despite the materials and colours used for the external treatment of the building. The development is of a bulk and scale that does not aesthetically respond to the environment and context, nor does it contribute to the desired future character of the area. The design has been reviewed and is not supported by the Parramatta Design Excellence Advisory Panel.

3.6.1 APARTMENT DESIGN GUIDE (ADG)

The SEPP requires consideration of the ADG which supports the 9 design quality principles by giving greater detail as to how those principles might be achieved. The table below considers the proposal against key design criteria in the ADG.

Site area for ADG = 3,141m²

PARAMETER	DESIGN CRITERIA	PROPOSAL	COMPLIANCE
Communal Open Space	Min 25% of the site area = 785.25m ²	<p>= 787m² or 25.1%</p> <ul style="list-style-type: none"> • Large roof top communal open space contains BBQ area, seating and covered communal spaces. • Level 10 common open space includes covered seating area, landscaped perimeter and access to toilets. • Lower ground floor contains landscaped area and seating. <p>Whilst the size of the COS complies under the ADG, concern is raised that the COS located on the lower ground floor will be underutilised as it is adjacent to the outdoor play area of the childcare centre where there is potential for amenity impacts.</p>	No

	Min 50% of the communal open space is to receive 2 hours direct sunlight between 9.00am and 3.00pm on June 21	More than 50% of the common open space receives 2 hours of direct sunlight.	Yes												
Deep soil zone	15% of the overall site area Minimum dimension of 6m required = 471.15m ²	= 368m2 or 11.7% with min. 6m dimension. It is noted that most of the deep soil area is in the south-west triangular pocket of the site.	No												
Building Separation	<table><tr><th>Building Height</th><th>Habitable rooms and balconies</th><th>Non-habitable rooms</th></tr><tr><td>up to 12m (4 storeys)</td><td>12m</td><td>6m</td></tr><tr><td>up to 25m (5-8 storeys)</td><td>18m</td><td>9m</td></tr><tr><td>over 25m (9+ storeys)</td><td>24m</td><td>12m</td></tr></table>	Building Height	Habitable rooms and balconies	Non-habitable rooms	up to 12m (4 storeys)	12m	6m	up to 25m (5-8 storeys)	18m	9m	over 25m (9+ storeys)	24m	12m	Ground = 16m balcony to balcony (west) = 11.5m balcony to window (north) Level 1 to Level 3 = 16m balcony to balcony (west) = 14m balcony to window (north) Level 4 to 7 = min.16.5m balcony to window (west) Level 8 to 11 = min. 16.5m balcony to window (west)	No Yes No No
Building Height	Habitable rooms and balconies	Non-habitable rooms													
up to 12m (4 storeys)	12m	6m													
up to 25m (5-8 storeys)	18m	9m													
over 25m (9+ storeys)	24m	12m													
Solar Access	At least 70% of living rooms and private open space to receive at least 2 hours direct sunlight between 9.00a.m and 3.00p.m on June 21 A maximum of 15% of apartments are permitted to receive no direct sunlight between 9.00am and 3.00pm midwinter.	70 (80.45%) of apartments will receive a min. 2 hours of direct sunlight including their respective POS. 15 (17%) apartment will not receive any direct sunlight on 21 June	Yes No												
Cross Ventilation	At least 60% of apartments are to be naturally cross ventilated. Apartment depth is not to exceed 18m	46 (first 9 storeys) = 52% Appears to comply	No Yes												
Ceiling Heights	2.7m for habitable, 2.4m for non-habitable	Lower Ground Floor: 3m Ground Level: 3.3m Upper Floors: Min. 2.8m to 3.3m	Yes												
Apartment Size	Studio – 35m ² 1 bd – 50m ² 2 bd – 70m ² 3 bd – 90m ²	Complies	Yes												

	(note: minimum internal size increases by 5m ² for additional bathrooms, 10m ² for 4 + bedroom)		
	All rooms to have a window in an external wall with a total minimum glass area not less than 10% of the floor area of the room.	Appears to comply	Yes
	Habitable room depths to be a maximum 2.5 x the ceiling height (=6.75m)	Appears to comply	Yes
	Maximum depth (open plan) 8m from a window.	Appears to comply	Yes
Bedroom size	Master bedrooms – 10m ² Other bedrooms – 9m ² Bedroom dimensions – 3m min. Living rooms have a width of: <ul style="list-style-type: none"> • 3.6m for studio/1bd • 4m for 2 or 3 bd 	Appears to comply	Yes
Balconies	Studio – 4m ² 1bd – 8m ² / 2m 2bd - 10m ² /2m 3bd – 12m ² /2.4m	Complies	Yes
	Ground or podium apartments to have POS of 15m ² /3m	Unit 3 on the ground floor is provided with a min. POS of 14m ²	No
Circulation	Maximum 8 apartments per level	Max. 10 units	No
Storage	1bd – 6m ³ 2bd – 8m ³ 3bd – 10m ³	Insufficient information has been received that allows Council to satisfactorily assess this requirement.	No

3.6.2 PARRAMATTA DESIGN EXCELLENCE PANEL (DEAP)

The application was considered by the DEAP on 24 November 2022. The following comment were provided by DEAP in response to the review of the application.

Overview

The Panel noted the detailed site analysis provided for this DA in this evolving higher density precinct, in a location well-served by public transport being within 200m of the imminent light rail station and nearby bus stops, close to schools and retail, and an apparent legacy of open space in the vicinity.

The Applicant referenced the previous DA 2013 with modifications under The Hills Shire Council that was refused (subsequently appealed and approved in the LEC), and the view that current controls under THLEP 2012 are relevant but dated. Analysis by the Applicant showed heights within the area are varied, from 57m height limit near light rail station down to 33m for sites to the east while the DA proposal site has a height limit of 27m.

On the premise that the area is moving towards larger footprint buildings and the context is changing from low-scale to high-scale buildings, the Applicant has proposed that the site in this location should make an 'entry' statement for the light rail precinct and thereby justify greater height and density. The Panel does not support this view and given the significant departures from current planning controls and Parramatta Council's Local Strategic Planning Statement and local Housing Strategy, a Pre-DA process would have been beneficial to review options for appropriate built form given what had been previously approved and what was now envisaged.

The DA scheme must be assessed against the current planning controls and design excellence provisions under the ADG, not what has been proposed or approved in the area. The Panel makes the following assessment and recommendations that must be addressed in a revised proposal:

1. Context and Neighbourhood Character

This site offers much potential in its proximity to transport and services, and relationship to the adjacent open spaces, and the current DA proposal does not respond to these opportunities due to:

- How the building relates to the surrounding open space, views and amenity,
- Most of the perimeter podium apartments and the childcare centre are elevated above the existing ground line limiting scope for street activation, and complementary interfaces with adjacent sites,
- Concerns with integration of the childcare centre, operational planning and relationship to adjacent units with possible amenity conflicts,
- Limited opportunities for landscape integration with adjacent landscape settings and open spaces
- Limited and poorly defined access to the public reserve adjacent and nearby site for a light rail station.

Recommendation

As the DA application is intending through a VPA to make open space improvements to the area between the subject site and the light rail station, there must be improved ground plane and streetscape resolution to benefit the public domain in this emerging precinct through:

- A podium that better relates to the site context and levels,
- Built form that resolves impacts from overshadowing of public spaces, streets, footpaths and amenity of adjoining development,
- Reconfiguration of garbage and driveway facilities along the street frontage to minimise footpath crossings,
- Ground floor apartments with individual entries from the street to improve activation (alluded to by the applicant but not shown on the drawings.)
- Landscaping improvements that can utilise increased deep soil provisions and provide more generous tree canopy.

2. Scale and Built Form

The Applicant indicated that their DA proposal for a consolidated podium and single tower was to optimise solar access to eastern and western sides and to resolve perceived downsides to the originally approved DA with two towers on a discontinuous podium.

The Panel noted that based on this design many of the planning controls and standards are not achieved with building footprint coverage, height and FSR all exceeded. Compliance with the relevant and current planning controls is considered critical given the precedent that could be set by this development, and the following issues are also of concern:

- While the podium as a base can be supported in terms of bringing down the scale, this proposal with minimal street setback to the podium creates an excessive massing and scale.
- The built form would be more appropriate for a town centre or denser urban setting, does not provide sufficient articulation and is not consistent with nearby apartment buildings and the extent of greenery around them.

- The podium façade to Shirley Street is impacted by the entry to the childcare centre, the substation, carpark driveway, waste collection dock, building services and the elevated building entry.
- A lack of perimeter cross sections makes it difficult to assess level changes and impacts to the surrounding context from unit layouts and retaining walls.
- Lower levels in the podium have 10-12 units per floor resulting in long access corridors to units, and typical floors in the tower are 8 units with south facing units having long convoluted internal circulation via kitchens to reach living areas.
- Concentration of multiple entry doors at the ends of corridors further diminishes the quality of the common access space and residential amenity.
- Some units having poor layout configuration with dining tables within circulation areas and inset balconies creating awkward access and use.
- While understood as a viable part of the proposal, planning of the Childcare facility is lacking sufficient detail to fully review how it will interface with the units above and surrounding open spaces.
- The entry is directly adjacent the substation, and this would be better located away from childcare centre area to also provide more space for pram parking and social interaction around the reception lobby.
- Some of the above issues and those raised in following points may be resolved if the development reverted to a two tower form, as per the originally approved DA.

3. Density

With the density of this development, a better mix of different size units should be considered for a broader cross-section of community. As the building doesn't have an affordable housing component, increasing the number of 1 bedroom units could make them more accessible to first home unit buyers who can't afford a larger unit.

4. Sustainability

Increasing impacts from climate change and energy costs requires greater consideration of ESD provisions and building electrification to remove gas appliances. The Panel recommends the following issues are addressed:

- The western façade has a lot of glazing and amenity to living rooms and bedrooms is a real issue as they will be significantly impacted by solar/heat load in summer unless they are screened or have effective louvres or shading devices for sun control.
- Cross ventilation to units is not clearly explained, and ceiling fans should be shown for bedroom and living areas to assist natural air flow.
- P/V solar panels on roof should be provided to power communal spaces and could be incorporated into a pergola system on the roof terrace.
- Allow for rainwater capture to supply irrigation to landscaped areas.
- Provide 100% EV charging in the basement.

5. Landscape

A comprehensive set of landscape plans has been prepared. However, taking into consideration the unique location, Carlingford's agricultural history and the verdant setting of the adjacent developments, the site offers extensive landscape opportunities which have not been realised in this scheme. Instead of actively engaging with the building, the landscaping appears to be relegated to 'left over' spaces around the perimeter. The opportunity to create a landscaped podium and 'green façade' more in character with the precinct has been missed.

Direct ground floor access to communal open spaces is compromised by level changes. There is also limited deep soil for larger canopy trees due to the extent of the basement. The roof gardens are relatively generous in size, but the geometric designs appear to be influenced by 'pattern making', thereby reducing the amenity of the residents.

As mentioned in Items 1 and 2, the limited relationship with the adjacent public open space corridor has also compromised opportunities to enhance access, amenity, and environmental benefits for the scheme.

The Panel recommends the following in relation to the landscape:

a) Engage with the architect to:

- i) successfully integrate landscaping and built form across the site
- ii) improve access, amenity and the relationship with the adjacent public open space
- iii) improve on-grade access to landscaped outdoor terraces and the ground plane where possible
- iv) create a landscaped podium and 'green façade' more in character with the precinct
- v) reconfigure the basement to improve the quantum of deep soil and increase tree canopy
- vi) re-dress the streetscape and entry experiences to reduce the impact of levels, services (substation) and paving, including enhancing the access to the Child Care centre as a short-term gathering space for parents

b) Enhance the design of the roof gardens to improve the amenity for a range of age groups and uses - such as places for meeting and engaging, BBQ and protected seating areas, informal play facilities for young children (not necessarily play equipment), communal planter boxes, exercise platforms etc. Consider also wind and sun protection.

c) The podium roof incorporates wide terraces with pebble ballast finishes. The roof should be landscaped to improve the outlook from the adjacent units and above.

d) Provide more detail cross sections, levels and retaining wall heights on landscape plans to show how the site terracing is resolved.

6. Amenity

Access to the future light rail is proposed from the lobby, through the outdoor common open space and then out to the reserve at the western boundary, but without equitable access and a clearly legible path to encourage resident use.

Interior apartment amenity:

- Corridors are longer than expected under ADG guidelines.
- Units on the south end of typical floors have convoluted internal access with 'bowling alley' corridors.
- Potential conflicts with so many unit entry doors so close to one another.

7. Safety

The extent of vehicle and waste collection crossover to the footpath diminishes the pedestrian amenity and safety, and a revised layout is needed.

Consideration of the Childcare Centre requirements to avoid privacy issues from units above.

8. Housing Diversity and Social Interaction

Main entrance off the street is generous but should include bump space for social interaction of residents, and with consideration of mail/parcel boxes and such services integrated into lobby entry.

With limited common open space at ground level there needs to be greater allowance for the roof level terrace to cater to mixed groups.

9. Aesthetics

As noted above the desired future character for this proposal should not be based on previous DA approvals and aim to set a higher standard as a precedent for new developments in this precinct. Building services (e.g., downpipes, alc condensers) must be shown to ensure aesthetics are not impacted, and detailed cross sections of façade at 1:20 should be provided.

DEAP Summary:

The Panel is of the opinion the development has not achieved design excellence on a number of key criteria and should be re-designed to meet relevant planning controls, attain better designed apartments, improve on the amenity of the future residents and integrate more sympathetically with the surrounding context and precinct.

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.

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.

3.7 STATE ENVIRONMENTAL PLANNING POLICY – BASIX

The application for the residential development has been accompanied with a BASIX certificate that lists commitments by the applicant as to the manner in which the development will be carried out. The BASIX certificate was reviewed by Council's external consultant who raised concerns regarding the number of apartments that achieve natural cross ventilation. This was raised with the applicant, however to date, insufficient information has been received addressing these concerns. Accordingly, the proposal cannot be considered for approval.

3.8 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 if this Plan had not commenced.

The current DA was lodged on 27 October 2022 and therefore shall be assessed under Parramatta (former The Hills) Local Environmental Plan 2012.

The site remains zoned as R4 High Density Residential under PLEP 2023 with the site subject to the same maximum height and FSR under Parramatta (former The Hills) Local Environmental Plan 2012. However, there are no provisions for a minimum site allotment for Residential Flat Buildings under PLEP 2023.

3.9 THE PARRAMATTA (FORMER THE HILLS) LOCAL ENVIRONMENTAL PLAN 2012

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

Requirement	Comment
Part 1 Preliminary	Noted.

Requirement	Comment		
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 for RFB 4000m ²	3141m ²	No Clause 4.6 variation submitted
	Height 27m	44m to lift overrun	No Clause 4.6 variation submitted
	Floor Space Ratio 1.99:1	3.06:1	No Clause 4.6 variation submitted
	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 of proposed development is not individually heritage listed however it is in the vicinity of the Carlingford Stock Feeds (I46) located to the west of the site on 1 Thallon Street. Council’s Heritage Adviser reviewed the proposal and raised no objections based on heritage impacts. The site is also not identified as being of European or Aboriginal archaeological significance.		
	Clause 5.11 Bush Fire Hazard Reduction Zone The site is not identified as bushfire prone land.		
Part 6 Urban Release Area	Not applicable. The site is not identified as an urban release area.		
Part 7 Additional Local Provisions	Clause 7.1 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 7.2 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 7.3 Flood Planning Not applicable. The site is not identified as flood prone land.		

3.9.1 Clause 4.6 Variation Assessment Minimum Lot Size for Residential Flat Building / Height / FSR

The proposal seeks approval for variations to the following development standards;

Clause	Clause 4.1A Minimum Lot Size for RFB	Clause 4.3 Height	Clause 4.4 FSR
Standard	4000m ²	27m	1.99:1 (6250.59m ²)
Proposal	3141m ²	44m to the lift overrun	3.16:1 (9925.56m ²)

Variation	859m2 variation or 21.4%	17m variation or 62.9%	3674.97m2 or 58.7%
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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 minimum lot size for RFB’s, height of building and FSR development standard. The applicant has provided justification for each of the variations sought and is summarised as follows (The full request is included at **Attachment B**):

Minimum Lot Size for RFB	<p>The subject site is located next to the rail corridor within a high density zone adjacent to the transport hub of the Carlingford Precinct. The proposed development represents a building height compatible with consented built form in the area.</p> <p>The proposed development achieves compatibility with existing, under construction and consented developments in the site’s vicinity. This is evident by referring to the streetscape elevations in the Architectural drawings and in the Urban Design Report which forms part of the Development Application.</p> <p>To the south of the site is a public park and there is no opportunity for amalgamation that would create a more orderly development to that interface. To the north the site is development with numerous strata lots and not possible to be amalgamated. To the east, 8-10 Boundary Road is already developed for an 8 storey building.</p> <p>Zoning of the area makes amalgamation unnecessary since the only potential sites which would be amalgamated include an RE-1 zoned area adjacent to their shared boundary with the subject site. Thus, amalgamation would in no way alter future built forms on the site, even if the sites were amalgamated.</p>
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	<p>The building has been designed to achieve acceptable acoustic and visual privacy. The proposed built form achieves setbacks and orients apartments to meet relevant ADG objectives at 3F and 4H. A further consideration is the unique location of the site which abuts RE1 public recreation areas therefore there are no immediate residential buildings to consider from a privacy or acoustic perspective to the south.</p> <p>The floor plans show the proposed dwellings can be accommodated on site while still providing suitable building separations, open space area and landscape to the site boundaries.</p> <p>The development delivers 62 out of 87 units (71%) with a minimum 2 hours solar access. This meets the 70% outlined in Criteria 1 of the Objective 4A-1 of the ADG. This is an improvement from the consented development on the site. The proposal also achieves at least 60% of units with natural cross ventilation. In addition, all common circulation corridors are natural lit and ventilated. The proposed building materials achieve a good thermal mass. Living rooms are oriented and façade elements design in accordance with passive solar design principles.</p> <p>Landscape Plans form part of the Development Application and the design provides landscaping within all setbacks. The roof top areas are also landscaped. The proposal satisfies the DCP requirement for Deep Soil by providing 19% of the site area as deep soil. The proposed deep soil zones accommodate soft landscape planting suitable to the site. Suitable landscaped interfaces to the adjoining public open space zones are also achieved. A deep soil landscape front setback to the street is also proposed at the residential interface. The entry to the proposed childcare centre is not deep soil to create an accessible and functional entry; however, landscape planting above slab is proposed to add amenity.</p>
Height	<ul style="list-style-type: none"> • The streetscape and planned character of the area is a high density residential and mixed use precinct with a high level of public transport access. The development, notwithstanding the height non-compliance, is commensurate with the context. • To the east of the site, the height limit increases and the land rises. New and consented development east of the subject site and further form the light rail station will be higher than what is proposed on the subject site. • To the east is 8-10 Boundary Road, an 8 storey building. Across Boundary Road near the site is 11 Boundary Road which comprises a 9 storey building. Directly to the north of the site is an existing 4 storey building. Thus, the site context is eclectic with a range of building heights, scale and character. • The proposed built form has a height of 12 storeys, fits within the pattern of building height considered from both north to south and east to west across the Carlingford Precinct south area (south of Post Office Road). The proposal will be compatible with the greater bulk and scale of buildings along the east-west open space link through the precinct. The building achieves a transition down in scale from the 20 storey building at the light rail station towards the north east and past the subject site and thus achieves compatibility with the site context. • The development provides a three to four storey podium which aligns with the street and public open space, creating a streetscape response compatible with the existing four storey buildings to the north and to the south across the public reserve. The proposed tower is setback from the podium to the northern boundary and southern boundary to provide visual relief and achieve compatibility with the existing Shirley Street streetscape and context. • The ceiling heights proposed at the ground level are greater than the minimum required to meet BCA requirements, allowing for a more, better quality non-residential tenancy to Shirley Street and the public

	<p>open space, which will provide opportunities to enliven the public domain and improve the quality of the streetscape.</p> <ul style="list-style-type: none"> • The provision of communal open space at roof level is an appropriate response to the site's town centre location. Extending the lift to the roof garden achieves universal access and maximises amenity of the open space. It also contributes to the building height noncompliance. Provision of a roof garden achieves compatibility with the character of the local area with other buildings having similar open spaces and in providing a variety of open spaces for residents. • Sufficient deep soil landscape is provided on site. On structure planting is proposed to soften built form and enhance the landscape character of the site. The proposed balance of built form and landscape is compatible with the character and site context. • The consented building at 12 Shirley Street shall maintain at least 2 hours direct solar access to at least 70% of the units at mid-winter consistent with the ADG criteria and guidance at 3B-2 and 4A-1. Overshadowing of a part of the building arises at late afternoon but the development at 12 Shirley Street maintains good solar access. • Additional overshadowing to 1-9 Shirley Street does arise but the affected apartments but they maintain at least 2 hours direct solar access in midwinter consistent with SEPP 65 and the ADG. • The proposed development will impact the linear green open space to the south of the subject site. The overshadowing will be no greater than what currently arises from the consented DA on the subject site (DA/152/2017). • The proposal will cast shadows on the public open space to its immediate south given its position to the north. However, it is noted that a compliant envelope will generate shadows at a similar level with additional overshadowing being minimal. • The proposed residential development is setback from the north and east where the site directly adjoins existing residential sites. At the tower form, balconies and living rooms are offset from the balconies and living rooms at 8-10 Boundary Road. To the east the tower is setback 9m, providing sufficient separation to the adjoining site to protect amenity. To the north, the tower is setback 9-12m. A small encroachment into the 9m setback arises for the edge of a proposed Juliet balcony. • The proposed COS is located at Level 1 adjoining the public reserve and at the roof levels. The trafficable areas of the roof garden and setback from the roof edge to limit privacy impacts.
FSR	<p>The development is located within very close proximity of the light rail station and immediately adjoining the existing east-west open space link. To the south east directly across from the public reserve adjoining the site is a significant 21 storey building with an FSR of 3.85:1 including the RE-2 zoned part of the site and 5.17:1 excluding the RE-2 zoned part of the site.</p> <p>To the east of the site, the height limit increases and the land rises. New and consented development east of the subject site and further from the light rail station will be higher than what is proposed on the subject site. In particular, to the west of the site much further from the light rail station than the approved development is the approved development at the Janell Crescent Key Site. The consented development has an FSR of 2.25:1 including the RE-1 zoned lands within the site and an FSR of 3:1 excluding the RE-1 zoned lands on the site.</p> <p>Further sites on the western side of Shirley Street (which are not key sites) have a base FSR standard of 2.3:1, greater than what is permitted on the subject site even though they are further from the light rail station than the subject site. The proposed density sits between the higher FSR standard at the light rail station of 4:1 and the lower FSR of 2.3:1.</p> <p>The site is unique in its immediate setting. The site interfaces with open spaces on two sides.</p>

	<p>The sites directly north of the subject site which are further from the light rail station and not on the east-west open space link are more limited in bulk and scale.</p> <p>The proposed development achieves compatibility with its multiple interfaces by achieving a transition to the lower bulk and scale areas.</p> <p>The proposed built form in its bulk and scale fits within the pattern of buildings considered from both north to south and east to west across the Carlingford Precinct south area (south of Post Office Road). The proposal provides a transition in both the north-south and east-west directions in terms of the bulk and scale of built form. The Urban Design Report by Dickson Rothschild provides a detailed analysis of the contextual fit of the proposal.</p> <p>The proposal limits building bulk and floor space close to the northern boundary of the site where the interface is with a lower scale existing building, meeting the objective. The proposed tower is setback from the podium to the northern boundary to provide visual relief to the north and achieve an effective transition to the north, thus achieving compatibility with the streetscape and context.</p> <p>The development provides a three to four storey podium which aligns with the street and public open space, creating a streetscape response compatible with the existing four storey buildings to the north and to the south across the public reserve. The proposed tower is setback from the podium to the northern boundary and southern boundary to provide visual relief, limit the impact of bulk and scale and achieve compatibility with the existing Shirley Street streetscape and context.</p> <p>The tower is setback above the proposed podium with a curved form, being distinct from the rectilinear, public domain defining podium. The curved tower relates in character to the curved form of the prominent 21 storey tower (1-7 Thallon Street) across the public reserve to the southwest. However, the proposed tower's bulk and scale is significantly less than the 21 storey tower, and the proposed bulk and scale achieves a transition to the buildings on the eastern side of Shirley Street. Along the east-west public open space corridor the building maintains a general transition in bulk and scale from the 18-21 storey buildings at its western end and the 9-11 storey buildings at its eastern end, effectively achieving compatibility with the streetscape and context.</p> <p>The proposal also has an increased front setback to its southwestern half to protect significant trees which exist on site. The proposed siting of the building which responds to site context and on-site constraints limits the tower footprint, pushing the building up in scale while maintain an overall building bulk compatible with the immediate streetscape context.</p> <p>The proposed FSR and resulting bulk and scale fits within the context of densities within the precinct particularly since the site has a significant frontage to the east-west open space link. The proposed FSR sits between the much higher FSRs at Thallon Street and the slightly lower FSRs east of Shirley Street.</p> <p>The proposed built form responds to the particulars of each of its site interfaces and provides adequate building separation, landscape and open space areas to fit within its immediate built form context.</p> <p>The proposal is consistent with the desired future character statement for the Carlingford Southern Precinct as set out in the Hills DCP – Part D, Section 12, Clause 3.3. The proposal achieves the desired street-oriented village built form and character, using a podium/tower building typology to achieve a human scale within the streetscape.</p> <p>The site's landscape character of the site is not diminished by the floor space and bulk and scale proposed. Sufficient deep soil landscape is provided on site, consistent with DCP standards. On structure planting is proposed to soften built form and enhance the landscape character of the site. The</p>
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	<p>proposed balance of built form and landscape is compatible with the character and site context.</p> <p>Development of the site to a lower FSR would not represent a full utilisation of the site's potential for delivering housing in an urban renewal precinct with new public transport infrastructure. The site is uniquely positioned adjacent to the rail corridor. An FSR of 1.99:1 would be an underutilisation of a site in an optimal location within a strategic planning area.</p> <p>The proposed development achieves a transition in built form between the higher, bulkier buildings to the south and west and the lower, less bulky buildings to the north and east. This is consistent with the general urban design principles set out in the Carlingford Precinct Plan which has two key built form/urban design elements:</p> <ul style="list-style-type: none"> • To transition in built form from the light rail (at the time of the precinct plan being formulated it was a heavy rail) where densities and heights are greatest towards the rail hub and reduced at the precinct periphery, particularly towards the north where densities are lower. • To utilise Key Site Controls and increased densities adjoining the RE-2 zoned land along an east-west spine (a corridor that adjoins the subject site's southern boundary). <p>Therefore, the proposal achieves consistency with the overarching objectives of the master plan for the precinct.</p>
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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.

Minimum Lot Size for Residential Flat Building

Clause 4.1A Minimum lot sizes for Residential Flat Buildings Objectives	Council Officer Assessment
<i>(1) The objective of this clause is to achieve planned residential density in certain zones</i>	<p>The development has not demonstrated that it has achieved the planned residential density on the site which is zoned R4 High Density Residential.</p> <p>The proposal exceeds both height and FSR for the site which results in various bulk and scale issues that impact both internal amenity and of the sites external of the development. For instance, the design of the floor plan includes more than 15% of apartments which receive less than 2 hours or no direct sunlight. The development also does not provide satisfactory building separation to the development to the west which risks overlooking and acoustic impacts. Furthermore, the proposed density of the development limits the opportunities for deep soil zones and what is provided, appears to be 'left over space' rather than integrated into the development scheme to allow for significant vegetation and the provision of balance between hard and soft surfaces,</p> <p>The design scheme does not promote a development that fits within the context of the area. The Carlingford Precinct's topography slopes down west from the ridgeline of Pennant Hills Road towards Hunt's Creek Reserve. The objectives of the design controls of the precinct are for development to follow the topography and that development on the lower sites should not dominate the ridgeline.</p> <p>It is noted that a compliant scheme meets the strategic land use policies of the City of Parramatta. The City of Parramatta's key strategic land use policies in relation to the Carlingford Precinct, namely the Local Strategic Planning Statement 2020 (LSPS) Council's Local Housing Strategy 2020 (LHS) 2020) identify that housing growth in City of Parramatta LGA is forecast to exceed it's 20-year Central City District Plan dwellings target as the most of this growth is already accounted for in the growth precincts, including Carlingford. This means that the Carlingford Precinct is already zoned to support substantial housing growth and has capacity under the existing controls to accommodate new housing so dwelling targets can be achieved.</p>

Height

Clause 4.3 Height Objectives	Council Officer Assessment
<i>(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape.</i>	<ul style="list-style-type: none"> - The heights of the Carlingford Precinct have been established based on design principles set out in The Hills DCP 2012 - Carlingford Precinct, to provide the tallest towers around the light rail station to create landmarks and those developments further away are designed so heights are diminished when viewed in its topographic context. The proposed variation to height is not consistent with this core design principle. - The height variation is 44m to the lift overrun (80.9% variation to 27m height) is not in keeping with the approved height to the north of 25m and opposite the sites to the east at 32m and 34m respectively. - The proposed height variation is also inconsistent with the maximum heights for the sites to the south and south-east which are consistently a maximum of 27m. - The western streetscape of Shirley Street has a maximum height of 27m which then tapers down to 25m on the adjoining property to the north and then 21m. As such, a development on the subject site with a height of 44m will disrupt the development rhythm and will therefore be incompatible with the overall streetscape.
<i>(b) to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.</i>	<ul style="list-style-type: none"> - The building separation to the development to the west does not meet the ADG criteria and is therefore insufficient in protecting residents of the proposal and the adjoining property from visual and acoustic impacts. - Submitted solar access diagrams indicate that the development with an exceedance in height of 44m will overshadow the development at

Clause 4.3 Height Objectives	Council Officer Assessment
	<p>1 – 9 Shirley Street where a compliant scheme is unlikely (or very minimally) affecting the solar access of this adjoining development.</p> <ul style="list-style-type: none"> - It also does not appear that the childcare centre located on the lower ground and ground floor will receive satisfactory solar access to the indoor or outdoor play areas. - The overshadowing to the open space corridor also goes beyond that is envisaged for a compliant development.

Floor Space Ratio

Clause 4.4 Floor Space Ratio Objectives	Council Officer Assessment
<i>(a) to ensure development is compatible with the bulk, scale and character of existing and future surrounding development,</i>	<p>The development has not demonstrated that it is compatible with the bulk and scale and character of existing and future surrounding development.</p> <ul style="list-style-type: none"> - The height and density of the Carlingford Precinct has been established based on design principles set out in The Hills DCP 2012 - Carlingford Precinct, to facilitate the tallest towers around the light rail station to create landmarks and those developments further away are designed so heights are diminished when viewed in its topographic context. The proposed variation to height and density are not consistent with these design principles. - The bulk and scale of the development is not in keeping with the surrounding development or proposed due to its large building footprints and inadequate landscaping. The lack of deep soil for large shade trees, safety issues and poor connectivity is inconsistent with the design principles within the ADG. - The built form as a podium and tower presents as a massive scale due to insufficient podium setbacks. Further, the elevated podium area not only reduces opportunities for landscaping and passive surveillance of the street, but it is also detrimental on the streetscape presentation. - The proposal does not meet apartment solar access, natural ventilation, building separation and other key design criteria of the Apartment Design Guide. - To date, the proposal has not adequately demonstrated how a compliant scheme may address the outstanding site planning and built form issues and be consistent with the design principles for the Carlingford Precinct.
<i>(b) to provide for a built form that is compatible with the role of town and major centres.</i>	<p>The non-compliance with the FSR standard does not deliver a built form outcome that is compatible with the role of Carlingford.</p> <ul style="list-style-type: none"> - The open space corridor to the south is of precinct level of importance and despite the built form and the density of the development it lacks any address to the south. Further, due to its density it also overshadows the open space corridor and the significant vegetation which occupy it which risks its health due to a lack of sunlight. - Whilst the development is designed as a podium and tower, the proposal provides insufficient podium setbacks which exacerbates the bulk and scale of the proposal. - The development with its raised ground floor level reduces opportunities for streetscape activation despite the provision of the childcare centre on the ground floor. The raised levels also reduce opportunities for ground floor entries for the residential units which also limits pedestrian activation and passive surveillance. - Despite the density proposed, the unit mix disproportionately favours 2 bedroom which further reduces housing options in this area.

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

Minimum size allotment for RFB and Height

The applicant does not suggest that the objectives are not relevant to the development.

FSR

The written request does not challenge the underlying objective or purpose is 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 requests for the variations to the standards 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*

Height and FSR

The applicant does not challenge that the height or FSR standard has been abandoned.

Minimum size allotment

The written request states that strict compliance is unreasonable or unnecessary as the development standard has been virtually abandoned or destroyed by Council's own actions in granting consents departing from the standard. The request notes examples of development sites where Council has approved an RFB despite its respective sites being less than the minimum 4000m². Notably, it cites the current approval on the site for an 8-storey building (approved by The Hills Council under DA/681/2013/HB). The Statement of Environmental Effects indicate that DA/681/2013/HB is an active consent.

Council Officers do not consider that the departure to the minimum allotment size for RFBs is of a similar nature as that of the former approval for the following reasons:

- The former DA was recommended for approval by The Hills Council's Officers, prior to the City of Parramatta Council's and the current Sydney Central City Planning Panel roles as assessment and consent authorities;
- The former DA may be a consideration; however Council Officers are not beholden by it and the current application must be assessed against the relevant planning controls under Parramatta (former The Hills) LEP 2012 and The Hills DCP;
- The development to which DA/681/2013/HB relates is of a scale that is much less than the current proposal for a development with a FSR of 3.16:1. Even the modified development which was approved under a Section 34 agreement has a FSR of 2.26:1. The consented development is also of a height of 8 storeys which is less than the proposed 12 storey mixed use development.

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

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

The written 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.

The written request does not in this instance demonstrate sufficient environmental planning grounds for the Clause 4.6 variation to the **minimum size allotment for RFBs**, for the following reasons:

- The minimum allotment size for RFBs dictates the appropriate bulk and form of a proposal. Where a subject site does not meet the minimum allotment size required, a development with a scale suitable for the site that is informed by generally compliant design controls is more appropriate. The proposal in this instance varies greatly the maximum density and scale of the development in addition to other design guideline variations under the ADG's where the result is lack of amenity internal and external of the site. Accordingly, it is not considered to be a suitable built form for a smaller site.
- The design scheme of the development does not respond to the topographical nuances of the site and its locality which is the overall objective for developments in the Carlingford Precinct. As a result, the development is not a built form that is envisaged on the site.
- A variation to the allotment size for RFBs must also consider how the proposal responds to its surroundings. In this instance, the site is directly adjacent to an open space corridor link which is of precinct level of importance. The design of the development does not provide a proper address to the corridor and much of the southern elevation is elevated on the ground level eliminating any potential relationship with the corridor.
- The site is bounded by 2 open space sites / corridor and whilst an RFB of some form may be appropriate to compensate for the lack of amalgamation opportunities to ensure a site of 4000m², it is not considered that the proposed built form is suitable for this particular site given the significant bulk and scale.

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:

- Maximum height within this area of the Carlingford Precinct is informed by the topography and design controls for development in this area ensures that the tallest and bulkiest development are located around the rail corridor where the topography is at its lowest. The proposed development contradicts this precinct-wide objective by proposing a development with a maximum height of 44m which is an 80.9% variation to the development standard on the subject.
- The development height disrupts the rhythm of scale along the western streetscape of Shirley Street where development on the western side is a maximum height of 27m which tapers down to 21m.

- The development is designed as a tower and podium. However, insufficient podium setbacks have been applied which intensifies the perception of the overall height of the proposal.
- The variation to the height in this instance has resulted in more than 15% of the apartments not being able to receive sufficient solar access as prescribed by the ADG's. It also does not appear that the childcare centre located on the lower ground and ground floor levels have access to satisfactory solar access to its indoor and outdoor play areas. Council is particularly concerned with the amount of solar access impacts on 1 – 9 Shirley Street when it appears that a compliant development on the subject site would not otherwise reduce its solar access. Furthermore, the amount of overshadowing on the open space corridor extends beyond what is envisaged by a compliant scheme when overshadowing should be limited to reduce any risks to the health of any vegetation located in that area.
- The overall development height is exacerbated as the ground floor levels do not appear to be satisfactorily resolved. The current proposal has the ground floor levels raised so that there is very little connection between the street and the open space corridor.

Similarly, the written request for the Clause 4.6 variation to the **floor space ratio** does not demonstrate sufficient environment planning grounds for the following reasons:

- As stated throughout this report, the proposed bulk of the development because of the significant departure to the maximum FSR for the site results in a form of development that does not respond to the desired future character of the site.
- The large building footprint as well as the encroachment of the basement into the setbacks reduces landscaping opportunities on the site which is detrimental to the balance of hard and soft surfaces. It also results in a lack of deep soil areas to allow for new significant vegetation on the site. This is of importance particularly as the childcare centre on the lower levels require outdoor play spaces that reflects the natural environment.
- Due to the large building footprints, its results in a lack of internal amenity particularly to the apartments with the length of its corridors and complex internal access.
- The bulk of the development also reduces the ability to provide adequate building separation to adjoining development which increases the risks for overlooking and acoustic impacts.
- The application proposes a density that is unsustainable and inconsistent with the current housing strategies and policies for Carlingford. The Parramatta LGA, including the Carlingford precinct is forecasted to exceed its 20-year housing target under the existing controls. Accordingly, additional density in this area is not required.

Public Interest

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

R4 Zone Objectives	Proposal
<ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a high-density residential environment.</i> 	<p>The Local Strategic Planning Statement 2020 (LSPS) and Council's Local Housing Strategy 2020 (LHS) are Council's key strategic land use policies that has determined that housing growth in the City of Parramatta LGA is forecast to exceed its 20-year Central City District Plan dwellings target as most of this growth is already accounted for in the growth precincts, including Carlingford. The Carlingford Precinct is already zoned to support substantial housing growth and has capacity under the existing controls to accommodate new</p>

	housing so dwelling targets can be achieved. Accordingly, additional density in this area is not required.
<ul style="list-style-type: none"> <i>To provide a variety of housing types within a high density residential environment.</i> 	The proposal comprises of residential apartments and does not contribute any variety of housing type within the general residential zone. Additionally, the unit mix proposed favours 2 and 3 bedroom units which reduces housing options in the area.
<ul style="list-style-type: none"> <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> 	The proposal provides a space for a child care centre.
<ul style="list-style-type: none"> <i>To encourage high density residential development in locations that are close to population centres and public transport routes.</i> 	The argument presented in the Report implies that Council should accept, through the development application, additional density within Carlingford Precinct, due to its proximity to centres and public transport. As outlined above, a compliant scheme would achieve the objectives of the zone as Council's key strategic planning documents identify that that Carlingford has sufficient capacity for residential development.

Concurrence

Assumed concurrence is provided to regional planning panels (such as the SCCPP) as per NSW Department of Planning Circular '*Variations to development standards*' Ref: PS 20-002 dated 5 May 2020. There is no limit to the level of non-compliance for which concurrence can be assumed.

a) Conclusion

In summary, it is considered that the applicant's request to vary the minimum site area for RFB's as well as height and floor space ratio standards should be not supported for the following reasons:

- The proposal is not consistent with the objectives of the minimum site area for RFB's, height and floor space ratio standards, as it is not compatible with the bulk, scale and character of the existing and future surrounding development, nor is it consistent with its role within the Carlingford Precinct.
- There are not sufficient environmental planning grounds to justify the departures, noting the consequential departures from the design criteria of the SEPP 65 – Apartment Design Guidelines and objectives and controls of The Hills DCP 2012.

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

4. Development Control Plans

4.1 THE HILLS DEVELOPMENT CONTROL PLAN 2012

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

PART B SECTION 5 – RESIDENTIAL FLAT BUILDING

Clause	Comment	Complies												
3.1 Site Requirements <i>Min. 30m road frontage and is not accessed via right of access way or access handle.</i> <i>The proposal will not result in isolation of adjoining lots so they are incapable of multi dwelling housing development</i>	<p>The site exceeds the road frontage minimums.</p> <p>The proposal will not result in the isolation of adjoining lots.</p>	<p>Yes</p> <p>Yes</p>												
3.2 Site Analysis	The development has not been designed to respect site constraints including topography and the natural environment. The proposal is not sympathetic with the character of the area. The siting of development also does not consider solar passive design principles.	No												
3.6 Landscaped Area <i>Min. 50% of the site area with a minimum dimension of 2m.</i>	<p>Required – 1570.5m²</p> <p>Provided – Approx. 759m² (24% of the site) with min. dimension of 2m.</p>	No												
3.7 Building Length <i>The maximum linear length of any residential flat building is to be 50m</i>	The development has a length that exceeds 50m.	No												
3.11 Unit Layout and Design <i>(b) No more than 25% of the dwelling yield is to comprise either studio or one-bedroom apartments,</i> <i>(b) ©No less than 10% of the dwelling yield is to comprise apartments with three or more bedrooms.</i>	<p>The proposal seeks the following unit mix:</p> <table border="1"> <thead> <tr> <th>Bedrooms</th><th>Control</th><th>Proportion</th></tr> </thead> <tbody> <tr> <td>1 bedroom</td><td>max. 25%</td><td>2%</td></tr> <tr> <td>2 bedroom</td><td>-</td><td>47%</td></tr> <tr> <td>3+ bedroom</td><td>min. 10%</td><td>50.5%</td></tr> </tbody> </table> <p>As stated, despite compliance with this control, the unit mix disproportionately favours 2- and 3-bedroom units which further reduces the housing options in this area.</p>	Bedrooms	Control	Proportion	1 bedroom	max. 25%	2%	2 bedroom	-	47%	3+ bedroom	min. 10%	50.5%	Yes
Bedrooms	Control	Proportion												
1 bedroom	max. 25%	2%												
2 bedroom	-	47%												
3+ bedroom	min. 10%	50.5%												
3.14 Solar Access <i>Buildings must be designed to ensure that adjoining residential buildings and the major part of their landscape receive at least four hours of sunlight between 9am and 3pm on 21 June</i>	It is noted that a compliant development is unlikely (or very minimally) impact on a development that is located as far away from the site as 1 – 9 Shirley Street and is a result of the significant exceedance in height and scale of the development.	No												
3.17 Stormwater Management	Council's Development Engineer has raised concerns with regards to the WSUD chamber and overall OSD layout. This has not been addressed in amended plans and therefore a detailed assessment against this control cannot be undertaken.	No												
3.21 Access and Adaptability	Council's Universal Access Officer has raised concerns with regards to the accessibility of the site. To date, these issues have not been resolved.	No												

	Accordingly, Council cannot support the applicant in its current form.	
3.27 Fencing <i>All boundary fencing/ walls fronting a street shall be setback a minimum of 2 metres, to permit landscaping, and shall include recesses and other architectural features.</i>	The plans do not indicate where the front fence is located and whether it provides a minimum 2m front setback to allow for landscaping.	No

PART B SECTION 6 – BUSINESS		
Clause	Comment	Complies
1.2 Access and Mobility	Council's Universal Access Officer has raised concerns with regards to the accessibility of the facility. To date, Council has not received amended plans that addresses these concerns. Accordingly, the proposal cannot be considered for approval.	No
2.1 Precinct Plans	Not applicable. The site is not subject to a Precinct Plan.	N/A
2.3 Development Sites	For reasons stated throughout this report, it is considered that the subject development site is unsuitable for a childcare centre.	No
2.7 Building Design and Materials	See ADG for building design / material discussion.	No
2.8 Signage	Not applicable. The application does not seek approval for signage.	N/A
2.9 Hours of Operation	See Childcare Guideline discussion	Yes
2.15 Vehicular Access	Vehicle access is located on Shirley Street.	Yes
2.22 Waste Management	Council's Waste Officer reviewed the proposal and raised no objections subject to conditions of consent.	Yes
2.34 – Centre based childcare facilities – additional controls	As noted elsewhere in this report, the development has been designed that result in the overshadowing of the internal and external play areas of the childcare facility.	No
	The parking area for the development is located within the LG/basement levels. Specifically, the childcare centre parking areas / bays are located on Lower Ground Level.	Yes
	Front setback does not include landscaping with a min width of 2m	No
	Existing boundary trees will be retained along the southern boundary to screen outdoor play areas. However, no significant planting is proposed along the western boundary (rear) to ensure the privacy of the outdoor play area.	No

PART C SECTION 1 – CAR PARKING		
Clause	Comment	Complies
Residential Flat Buildings	Refer SEPP 65 assessment Table in relation to car parking for the residential component of the development.	Yes

Child Care Centre 1 space per employee = $1 \times 13 \text{ staff} = 13$ 1 space per 6 children enrolled for visitors and/or parent parking = $1 \times (76 \text{ children} \div 6) = 12.6$ (13) Total Child Care Spaces = 26	The proposed development provides 19 childcare spaces, which is a shortfall of seven (7) child care parking spaces. The applicant has been requested to address this issue via amended plans increasing the number of childcare parking spaces or via the reduction of childcare placements. To date, an amended proposal addressing this issue has not been provided.	No
Bicycle Parking	Based on the Hills DCP 2012, bicycle parking is not required for residential and child care centre developments.	N/A
Motorcycle Parking <ul style="list-style-type: none"> Motorcycle parking is to be provided for all developments with on-site parking of more than 50 car parking spaces, at a rate of 1 motorcycle parking space for every 50 car parking spaces or part thereof. $1 \times (139 \text{ car parking spaces} \div 50) = 2.78$ (3) Total = 3 motorcycle spaces	3 motorcycle spaces are provided, as shown on the submitted plans.	Yes
Loading requirements	No loading requirements are required for residential and childcare centre developments.	N/A

PART D SECTION 12 – CARLINGFORD PRECINCT	
Clause	Complies
3.3 Desired Future Character Statements <i>Southern Precinct</i> The subject site is located within the Southern Precinct. <i>Streetscapes are to be resident and visitor friendly in an urban landscaped setting associated with a street hierarchy that promotes a safe pedestrian and vehicular environment. The landscape works in the public realm help to define the character areas in the Precinct. These characters range from the more urban, civic and train station oriented village to the suburban character further from the train station.</i> Comment: The proposal in its current form is not considered to be a development that meets the desired future character of the southern precinct.	No (also refer to discussion above in the ADG, LEP & Clause 4.6)
3.4 Structure Plan – Access and Circulation Principle: Proximity to Transport <i>Locate the proposed residential flat buildings with highest density closest to the train station to maximise infrastructure use, improve convenience for commuters and to contribute to a critical mass for a future civic/transport hub.</i> Comment: The existing densities are the maximum that is considered appropriate within this locality and that would benefit the future residents and visitors of the area. An increase in development density on the subject site beyond the maximum	No (also refer to discussion above in the ADG, LEP & Clause 4.6)

<p>pursuant to the relevant controls is not necessary in this instance and does not justify the departure to the height and FSR for reasons stated throughout this report. Further, despite the benefit of being within some proximity to the rail corridor, DEAP has noted that the proposed design scheme has limited and poorly defined access to the public reserve and to the nearby light rail station.</p>	
<p>3.5 Structure Plan – Open Space Strategy</p> <p>Principle: Open space and built form relationships <i>In areas further from the train station, site planning for buildings could aim to amalgamate private green spaces to optimise deep soil planting areas, communal open space, shared views and landscape and contribute to the garden suburb theme.</i></p> <p>Comment: Landscaping and deep soil areas are lacking within the proposal and what is proposed has not been adequately integrated into the design scheme. The significant density of the development prioritises the provision of car parking spaces within the basement which encroach on potential landscaping/deep soil areas. Further, the design scheme has not satisfactorily addressed the open space corridor to the south that maintains any relationship with this area.</p> <p>Principle: Quality residential open space areas <i>Communal open space at ground or podium level for residents is to be provided. This open space should enhance the quality of the built environment by providing opportunities for landscaping in a parkland setting as well as providing a visual and activity focus for the new residential community created through this development.</i></p> <p>Comment: The main COS areas provided are located within the tower of the development (Level 10 and rooftop). A COS area is located on the Lower Ground Floor; however, this is adjacent to the outdoor play area of the childcare facility. Due to its location, it is unlikely that this COS will be utilised given the potential for amenity impacts from the childcare facility.</p> <p><i>Water Sensitive Urban Design (WSUD) guidelines and On-site Stormwater Detention (OSD) principles are to be incorporated in both private and communal open space design.</i></p> <p>Comment: Council's Development Engineer could not complete its assessment of the proposal as it requires amended/additional information.</p>	<p>No (also refer to discussion above in the LEP & Clause 4.6)</p>
<p>3.6 Structure Plan – Public Domain</p> <p>Principle: Streetscape - <i>Street tree planting and landscaping is to be consistent with the Carlingford Precinct Public Domain Plan</i></p> <p>Comment: Public Domain Plans have not been submitted that illustrates any planting or landscaping that could be considered consistent with the Carlingford Precinct Public Domain Plan.</p> <p>Principle: Sustainability and WSUD - <i>Development in the Precinct will be required to undertake sustainability initiatives: stormwater capture, bio-retention basins, integration of watercourses with open space and landscaping.</i></p> <p>Comment: Council's Development Engineer could not complete its assessment of the proposal as it requires amended/additional information.</p>	<p>No</p>
<p>3.7 Structure Plan (Indicative Building Height and FSR) Principle: Building heights should increase the closer sites are to the train station - <i>Concentration of the residential density close to the station will maximise usage of the train service by the maximum number of people in the shortest, most</i></p>	<p>No (also refer to discussion above in the</p>

<p><i>convenient walking distance from the station. Concentration of high-rise buildings close to the station will provide an orienting landmark for the village centre.</i></p> <p>Comment: The design of the development has not adequately integrated the adjacent open space areas / corridors which is a pivotal link to the nearby light rail station and therefore contradicts this principle to encourage walkability to this service.</p> <p>Principle: Built Form Should Address Open Space - <i>In areas further from the train station, building placement should address adjacent open space to allow interaction of residents with that space and for passive surveillance.</i></p> <p>Comment: The design of the proposal does not address the open space link to the south of the site as evidenced by the raised ground floor levels.</p> <p>Principle: Built Form Should Respond To Street Hierarchy - <i>In general, the low-rise buildings are proposed together with lower FSR limits on the local roads within the northern part of Precinct. This approach responds to the lower scale suburban desired future character for areas further from the train station. Maximum of 9 storeys is proposed for development fronting Pennant Hills Road. This is to achieve a presence associated with deep setbacks for major planting, footpath upgrades and pedestrian amenities.</i></p> <p>Comment: The bulk and scale of the development interrupts the street hierarchy which tapers the height and scale of development from the south (Pennant Hills Road) to the north of Shirley Street and as such does not respond to the desired future character of this location that is further from the light rail station.</p>		LEP & Clause 4.6)
<p>3.8 Illustrative Masterplan Principle: Response of Building Bulk and Scale to Topography</p> <p><i>High rise developments are to be concentrated in the low ground close to the train station. This is an opportunity for the apparent height of high-rise buildings to be diminished when viewed in their topographic context. The proposed building envelopes thus take up the opportunity for the prominence of tower buildings to be visually absorbed by the backdrop of the slopes leading up to the ridge lines along which runs Pennant Hills Road.</i></p> <p>Comment: This design outcome has not been achieved given the significant departure to the FSR and height of the proposed development.</p> <p><i>In areas further from the train station, the built form, site coverage, setbacks and composition of boundaries and building placement are to create a garden suburb character. This character should complement, in style and function, the public open space adjacent to the train station and community facilities to the east.</i></p> <p>Comment: The built form and siting of the development has compromised significant landscaping and deep soil locations to achieve a garden suburb character. The proposed development in this regard does not compliment the public open space corridor to the south or the open space area that is adjacent to the rail corridor.</p>		No (also Refer to discussion above in the LEP & Clause 4.6.)
Clause	Comment	Complies
4.2 Building Height	Building Height – 27m / 9 storeys Provided – 44m / 12 storeys	No
4.3 Site Coverage	Max 35% of site area (ie. Max. 1099.35m2) Provided – Approx. 1645m2 (52%)	No
4.4 Site Requirements	The development site according to Figure 8 requires amalgamation with the site to the west at 8 – 10 Boundary Road. However, the site at 8 – 10 Boundary Road is already developed with an 8/9 storey RFB.	No, but acceptable

4.7 Setbacks <i>Front Setback – 6m</i> <i>Rear Setbacks – 8m</i> <i>Side –Min. 4.5m</i>	<p>Provided: Front - 6m Rear – Min. 3.5m (to the childcare centre) Side - Min. 3m</p> <p>The non-compliance with the side setback is of particular significance given the poor address of the development to the open space corridor to the south with its elevated ground floor levels.</p>	No
4.10 Landscape Design	The proposal does not demonstrate that the public domain or landscape areas and buildings are designed in an integrated manner. There is poorly located deep soil zoned within the site due to the extent of the basement. Further, the terraced outdoor play area for the childcare facility is not considered to be an appropriate landscape treatment.	No
4.11 Open Space <i>Min communal open space provision required is at least 30% of site area, with larger sites have potential for more</i>	Required – 942.3m ² Provided - 787m ² (25% of the site)	No (See ADG discussion)
4.13 Solar Access <i>All adjoining residential buildings and the major part of their landscape receive atleast 4 hours of sunlit between 9am and 3pm on 21 June.</i>	The submitted shadow analysis indicates that additional overshadowing occurs to the residential buildings and their landscape areas at 1 – 9 Shirley Street during the winter solstice. It is noted that the shadow diagrams submitted with the application indicate that with a compliant development on the subject site, the development at 1 – 9 Shirley Street will be largely unaffected.	No
4.15 Vehicle Access	Council's Traffic Engineer has not been able to complete its assessment of the proposal as concerns regarding the amount of parking spaces provided for the development has not been resolved. To date, amended plans have not been submitted and therefore the application cannot be considered for approval.	Yes
4.16 Fences and Walls <i>Front fences should not be of a height so as to prevent casual surveillance of the public realm and adjacent properties.</i>	The height of the front fence along the Shirley Street frontage has not been determined but appears to be higher than 1.2m. As such, it cannot be determined that the front fence allows casual surveillance of the public realm.	No
4.19 Stormwater Management	Council's Development Engineer has raised concerns with regards to the WSUD chamber and overall OSD layout. This has not been addressed in amended plans and therefore a detailed assessment against this control cannot be undertaken.	No
4.23 Ground Floor Apartments	Due to the elevated nature of the ground floor level, no ground floor level apartment is provided with a separate street level access.	No
4.25 Mixed Use Developments	Whilst a childcare facility in this location is appropriate, the design of the building does not positively contribute to the	No

	public domain and streetscape as it provides blank walls at the ground floor level (that interface with the public open space corridor to the south) due to the elevated nature of the ground floor.	
4.31 Adaptable Housing <i>Min. 5% or (4.35/5) units must be accessible or capable of being adapted.</i>	Proposed – 7 units are identified as adaptable.	Yes
4.32 Site facilities	The development accommodates appropriate waste holding area for collection, recycling bins and bulky waste. The laundry facilities are located within individual units. The location of the mailbox has not been provided; however, conditions could have resolved this issue.	Yes
4.33 Ecologically Sustainable Development	The submitted plans does not demonstrate the proposed development complies with the requirements of ESD.	No
4.35 Access, Safety and Security	An access report has been provided with the application by ABS. However, Council's Universal Access Officer has raised concerns regarding accessibility throughout the site and development. To date, amended plans have not been submitted addressing these concerns.	No
4.37 Geotechnical	The application included a Geotechnical Report indicating the site is capable of supporting the development in line with recommendations presented in this report include specific issues to be addressed during the construction phase of the project.	Yes
4.40 Development near rail corridors	<p>The proposed development does not limit access by TfNSW to the nearby rail assets/facilities.</p> <p>Due to the distance between the building fenestrations and the rail corridor, it is unlikely that objects could be thrown from the building to the corridor.</p> <p>An Acoustic Report was submitted with the application which notes that the development can achieve sound level requirements to bedrooms once acoustic amelioration measures, as per its recommendations, are implemented. These measures include window glazing and the use of masonry and brick elements for the external walls.</p>	Yes

5. Planning Agreements

The application was accompanied by documentation stating that the owner and developer of the property proposes to enter into a planning agreement which involves a monetary contribution to the total value of \$250,000.00 in the event the development is consented to.

In the correspondence to the applicant dated 22 December 2022, Council noted that the VPA has not been prepared in accordance with the *City of Parramatta Planning Agreements Policy* and that any issues with the preparation of the VPA is to be made to Council's Property Development Unit.

It is noted that to date, a VPA prepared in accordance with Council's relevant policy has not been submitted.

6. Environmental Planning and Assessment Regulation 2000

This application satisfies relevant clauses of the Regulation as follows:

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

7. Likely Impacts

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

8. Site Suitability

Due to the site's location within the Carlingford Precinct, it provides an opportunity to deliver a high-density development that responds to its landscaping setting whilst being in proximity to the light rail station. However, the proposal does not adequately achieve these design principles.

Furthermore, the proposal's clause 4.6 variation request to vary the minimum size allotment for RFBs, height and floor space ratio standards in clauses 4.1A, 4.3 and 4.4 of the *Parramatta (Former The Hills) Local Environmental Plan 2012* is not considered to be well founded because the proposal has not demonstrated that there are sufficient environmental planning grounds to vary the standards, and the proposal is not in the public interest as it does not adequately satisfy the zone objectives.

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

9. Submissions

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

The advertisement ran for a 30-day period between 8 November 2022 and 6 December 2022. Three (3) submissions were received during this notification period.

The issues raised within the submissions are discussed in the table below.

Issue Raised	Planning Comment
Density / Bulk and Scale	The proposed density under the subject application is considered to be unsuitable for the subject site and in this regard is not a form of development that contributes to the desired character of the Carlingford Precinct. This forms reason to refuse the application.
Acoustic	The proposal provides non-compliance building separation to adjoining properties which potentially risks increasing acoustic impacts, particularly on the upper levels where building

	separation should be increased. This forms reason to refuse the application.
Traffic	The applicant has not submitted adequate information which demonstrates that the proposal will have an acceptable traffic impact. This forms reason to refuse the application.
Height	As stated throughout this report, the significant departure to the height is not considered to be acceptable which results in unacceptable amenity impacts. This forms reason to refuse the application.
Overshadowing	The proposed variation to height standards and impact on solar access to adjoining properties, reserves and open space corridor is not supported and forms a reason for refusal of this application. This forms reason to refuse the application.
Privacy	As noted, the non-compliance with building separation increases the risks of overlooking to adjoining properties. Further, overlooking of the outdoor play areas on the lower floors from the upper floor residential apartments are also likely. This forms reason to refuse the application.
Streetscape	The proposed bulk and scale of the development is undesirable on the streetscape. This forms reason to refuse the application.
Incompatible with surrounding development	The compatibility of the proposed development is discussed extensively throughout this report and for such reasons, cannot be considered for approval. This forms reason to refuse the application.
Tree removal / retention Concern is raised that Tree 4 should be retained as it provides a habitat and food source for birds. The removal of 29 trees of the 40 on the site is unacceptable.	<p>Council's Landscape Officer has reviewed the proposed tree removal which includes Tree 4 (as identified by the Arborist Report prepared by All Arbor Solutions) and concludes that it is appropriate subject to conditions of consent. Further commentary on the removal of Tree 4 is provided below:</p> <p><i>Council's Tree and Landscape Assessment Officer makes their own independent assessment of which trees are to be retained or removed by attending the site and relying upon their own expert experience to make a determination for each prescribed tree. Assessment of development applications also takes into consideration succession planting proposed and whether it is suitable and functional, either environmentally or for its suitability to the development proposed and/or amenity or impacts to adjoining properties.</i></p> <p><i>In relation to the submission made to Council regarding Tree No. 4 for this application, this tree has undergone a Visual Tree Assessment (VTA) by both Council's Tree and Landscape Assessment Officer (on many occasions) and other expert Arborist's associated with this Application the previous LEC approved application. The subject tree has a significant wound to the base of the stem which may potentially compromise its structural integrity and its useful life expectancy. Tree 4 also has a history of previous branch failures. It is for these reasons that in the first instance, Council's Tree and Landscape Assessment Officer will permit the removal of Tree No. 4 to facilitate development, as it was also approved for removal in the previous LEC development approval for the same reasons. Tree No. 4 should not be deemed a constraint to any permissible development as may be assessed by Council's Planning Team.</i></p>

Errors in detail on plans/documentation	This is acknowledged. Council has undertaken a separate assessment as demonstrated throughout this report which finds the proposal to be unsuitable for the site.
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AMENDED PLANS

No amended plans were submitted as part of this current application.

10. Public interest

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

11. 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.

12. Development Contributions and Bonds

As this Development Application was lodged on 27 October 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.

13. Summary and Conclusion

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

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 the Parramatta (Former The Hills) Local Environmental Plan 2012.
- The proposal whilst permissible within R4 High Density Residential zone does not comply with the provisions against Section 4.15 of the *Environmental Planning and Assessment Act 1979*;
- The proposal has not demonstrated the suitability of the design of the proposal required to satisfy the Panel as to its appropriateness in its context;
- The development has not demonstrated its compatibility with the emerging and planned future character of the area; and
- Sufficient information has not been provided to demonstrate that the application is in the public interest.

14. Recommendation

- A. **That** the Sydney Central City Planning Panel, as the consent authority, **Refuse Consent** to Development Application No. DA/843/2022 for construction of 12 storey

mixed use development consisting of a future 76 place centre based childcare centre with 87 residential units above 3 levels of basement parking for the following reasons:

1. **Minimum Size Area for Residential Flat Buildings** – The clause 4.6 variation request to vary the minimum size area for Residential Flat Building standard in clause 4.1A of the Parramatta (Former The Hills) Local Environmental Plan 2012 is not considered to be well founded because the proposal has not demonstrated that there are sufficient environmental planning grounds to vary the standard and the proposal is not in the public interest as it does not adequately satisfy the zone objectives.
2. **Height** – The clause 4.6 variation request to vary the height standard in clause 4.3 of the Parramatta (Former The Hills) Local Environmental Plan 2012 is not considered to be well founded because the proposal has not demonstrated that there are sufficient environmental planning grounds to vary the standard and the proposal is not in the public interest as it does not adequately satisfy the zone objectives.
3. **FSR** - The clause 4.6 variation request to vary the floor space ratio standard in clause 4.4 of the Parramatta (Former The Hills) Local Environmental Plan 2012 is not considered to be well-founded as the proposal has not demonstrated that there are sufficient environmental planning grounds to vary the standard and the proposal is not in the public interest as it does not adequately satisfy the zone objectives.
4. **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.
5. **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.
6. **SEPP (BASIX)** - The application is not satisfactory for the purposes of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that insufficient information has been provided to demonstrate compliance with the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
7. **SEPP 65 (Design Quality of Residential Apartment Development)** - The application is not satisfactory for the purposes of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal does not meet the design principles as nominated in State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development)
8. **Apartment Design Guide** - The application is not satisfactory for the purposes of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal does not meet the criteria and guidance in relation to deep soil zones, building separation, solar access, natural cross ventilation, balconies on the ground floor and length of as nominated in State Environmental Planning Policy (Design Quality of Residential Apartment Development) via the Apartment Design Guide.

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 indoor and outdoor play areas, site selection and location, local character, public domain interface, building envelope and design, landscaping, visual and acoustic privacy, traffic and car parking, ventilation and natural light, 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. **The Hills DCP 2012-** The application is not satisfactory for the purposes of section 4.15(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 in that the proposal does not demonstrate consistency with the principles, objectives and controls of Part B Section 5, Part B Section 4 and Part D Section 12 of The Hills Development Control Plan 2011 in relation to:
- a) The application is not consistent with the urban design principles for the Carlingford precinct. The principles aim to concentrate the highest residential flat buildings around the low ground of Carlingford light rail station in order to create orientating landmark for the village centre and provide an opportunity for the apparent height of high-rise buildings to be diminished when viewed in their topographic context. That the areas furthest from the station (such as the subject site) the built form, site coverage, setbacks and composition of boundaries and building placement are to create a garden suburb character. A maximum of 9 storeys buildings along the western side of Shirley Street to achieve a presence associated with deep setbacks for major planting, footpath upgrades and pedestrian amenities.
 - b) Provision of sufficient and integrated landscaping and deep soil areas commensurate with the size of the site;
 - c) Adequate consideration of the interface with the open space corridor and areas that bound the site;
 - d) Impact of the non-compliant rear and side setbacks on the childcare facility, adjoining development to the west and the open space corridor;
 - e) Additional overshadowing caused to the property at 1 – 9 Shirley Street during mid-winter.
 - f) The proposal does not incorporate water sensitive design measures or satisfactorily satisfy stormwater management and groundwater issues.
 - g) The proposal has not given regard to the accessibility of the site for those with accessibility issues.

- B. That submitters be notified of the decision.

**ATTACHMENT B - Clause 4.6 Variation Minimum Allotment
Area for RFB, Building Height & Floor Space Ratio**

Request for Variation under Clause 4.6 to Clause 4.1A

Reduced Minimum Lot Size for Residential Flat Building
The Hills Local Environmental Plan 2012

Proposed Mixed Use Development
11-17 Shirley Street
Carlingford NSW

Project 12-087
5 September 2022
Revision A



Rev	Description	DATE	AUTHOR	CHECK
A	For DA Lodgement	5/09/2022	KM	KM

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1 Introduction

This variation request is part of the Statement of Environmental Effects supporting the proposed residential flat building development at 11-17 Shirley Street, Carlingford. The proposed development includes a 12-storey mixed use development being a residential flat building which includes a childcare centre. The site area is 3,141 m². Subclause 2 of Clause 4.1A 'Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings' requires a minimum lot area of 4,000 square metres.

Despite subclause 2 of Clause 4.1A 'Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings', subclause 3 states that development consent may be granted to development on a lot less than the area specified if Council is satisfied that:

- (a) *the form of the proposed structures is compatible with adjoining structures in terms of their elevation to the street and building height, and*
- (b) *the design and location of rooms, windows and balconies of the proposed structures, and the open space to be provided, ensures acceptable acoustic and visual privacy, and*
- (c) *the dwellings are designed to minimise energy needs and utilise passive solar design principles, and*
- (d) *significant existing vegetation will be retained, and landscaping is incorporated within setbacks and open space areas.*

Therefore, the Clause affords for variations to the standard and the proposed development satisfies the test.

It is noted that there are numerous examples in the area of Council permitting residential flat building development on lots of less than 4,000 m². In this regard, the standard has been abandoned. The site is very unique in the precinct being surrounded by public domain interfaces and within a 3-minute walk of the light rail station.

This justification confirms the site is suitable for a residential flat building consistent with SEPP 65 and the Apartment Design Guide. The development of the site does not isolate any adjoining sites. The site although less than 4,000 m² can accommodate a residential flat building and meet other DCP controls.

Given the strategic location of this site, bounded by public open space and on a direct desirable line to the light rail station as well as its high accessibility level and Council's vision to provide increased housing types and density in Centres with good public transport options, it is considered acceptable and logical that a building of this scale be developed on the subject site. The proposed development on the lot does not give rise to adverse environmental impacts with appropriate setbacks to each boundary fitting in with its future built form context.

Amalgamation with adjoining lots is not feasibility given the current development on sites to the north and west. It is also noted that Council has already considered the site suitable for high

density residential development even though the site is under the minimum lot size under DA/152/2017 which is connected back to DA681/2013/HB.

This written request is made pursuant to the LEP and relevant judgements in the NSW Land and Environment Court, and it justifies why compliance with the Minimum Lot Size development standard in the LEP is unnecessary in the circumstances of the case, and demonstrates that there are sufficient environmental planning grounds to justify contravening the 4,000 m² minimum lot size standard. This request also explains how the proposal is consistent with the objectives of Clause 4.1A and the R4 High Density Zone.

Given the LEP sets out a special and specific test for allowing variations to Clause 4.1A, this variation request addresses the Clause 4.3A test as a justification for the variation.

For the reasons set out, a contravention of the development standard is considered appropriate for the site, raises no matter of significance for State or regional environmental planning and there is no public benefit in maintaining the development standard in this particular case.

1.1 Clause 4.6

Clause 4.6 of The Hills LEP 2012 states:

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.*
- (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.*
 - (ca), (cb) *(Repealed)*

2 Standard from Which Variation is Sought

2.1 The Proposal

The site area is 3,141m². Subclause 2 of Clause 4.1A 'Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings' requires a lot area at a minimum of 4,000 m².

2.2 The Relevant LEP Clauses

Despite subclause 2 of Clause 4.1A 'Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings', subclause 3 states that development consent may be granted to development on a lot less than the area specified if Council is satisfied that:

- (a) *the form of the proposed structures is compatible with adjoining structures in terms of their elevation to the street and building height, and*
- (b) *the design and location of rooms, windows and balconies of the proposed structures, and the open space to be provided, ensures acceptable acoustic and visual privacy, and*
- (c) *the dwellings are designed to minimise energy needs and utilise passive solar design principles, and*
- (d) *significant existing vegetation will be retained, and landscaping is incorporated within setbacks and open space areas.*

3 Grounds for Variation

Justification in accordance with *Wehbe v Pittwater Council* (2007) and *Four2Five Pty Ltd v Ashfield Council* (2015) is set out below demonstrating that the proposed development achieves the objectives of the R4 Zone and Minimum Lot Size objectives. The request will demonstrate that the development of the subject site provides a better development outcome on the site than if compliance with the Minimum Lot Size was achieved.

3.1 Meeting the Relevant Objectives of LEP 2012 (Clause 4.6(4)(a))

The LEP Clause 4.1A Minimum Lot Sizes (subclause 3) objectives are:

- (a) the form of the proposed structures is compatible with adjoining structures in terms of their elevation to the street and building height, and*
- (b) the design and location of rooms, windows and balconies of the proposed structures, and the open space to be provided, ensures acceptable acoustic and visual privacy, and*
- (c) the dwellings are designed to minimise energy needs and utilise passive solar design principles, and*
- (d) significant existing vegetation will be retained and landscaping is incorporated within setbacks and open space areas.*

3.1.1 Assessment against the relevant objectives of the Development Standard – Clause 4.1A – Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings LEP 2012

The proposal is consistent with the objectives for development within the lot as explained below:

- (a) the form of the proposed structures is compatible with adjoining structures in terms of their elevation to the street and building height,*

The subject site is located within next to the rail corridor within a high density zone adjacent to the transport hub of the Carlingford Precinct. The proposed development represents a building height compatible with consented built form in the area.

The proposed development achieves compatibility with existing, under construction and consented developments in the site's vicinity. This is evident by referring to the streetscape elevations in the Architectural drawings and in the Urban Design Report which forms part of the Development Application. Excerpts are provided in the Figures overleaf.

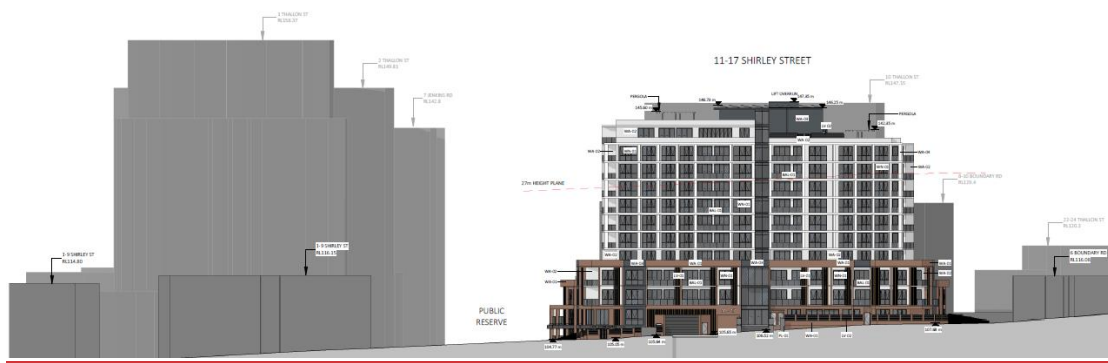


Figure 1: Streetscape Elevation, DA-0-300

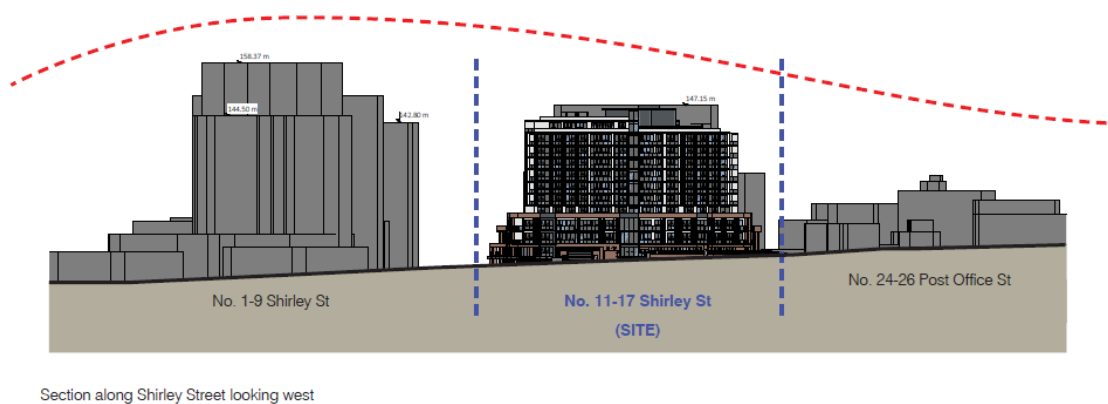


Figure 2: Excerpt, Urban Design Report, Dickson Rothschild, pg. 13

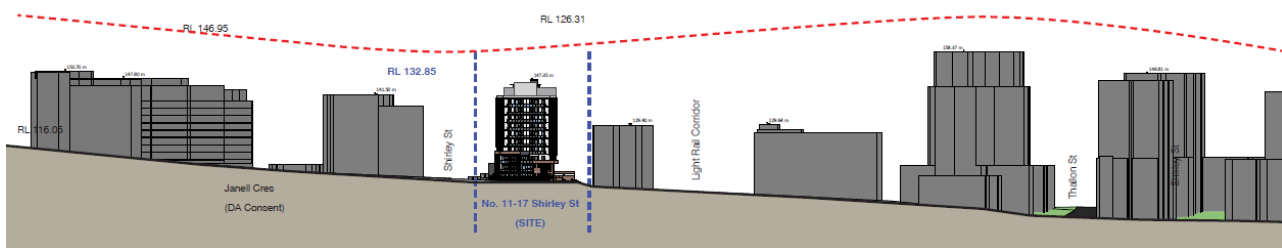


Figure 3: Excerpt, Urban Design Report, Dickson Rothschild, pg. 13

To the south of the site is a public park and there is no opportunity for amalgamation that would create a more orderly development to that interface. To the north the site is development with numerous strata lots and not possible to be amalgamated. To the east, 8-10 Boundary Road is already developed for an 8 storey building.

Zoning of the area makes amalgamation unnecessary since the only potential sites which would be amalgamated include an RE-1 zoned area adjacent to their shared boundary with the subject site. Thus, amalgamation would in no way alter future built forms on the site, even if the sites were amalgamated.

The proposal meets the objective regardless of the reduced site area.

(b) the design and location of rooms, windows and balconies of the proposed structures, and the open space to be provided, ensures acceptable acoustic and visual privacy,

The building has been designed to achieve acceptable acoustic and visual privacy. The proposed built form achieves setbacks and orients apartments to meet relevant ADG objectives at 3F and 4H. A further consideration is the unique location of the site which abuts RE1 public recreation areas therefore there are no immediate residential buildings to consider from a privacy or acoustic perspective to the south.

The floor plans show the proposed dwellings can be accommodated on site while still providing suitable building separations, open space area and landscape to the site boundaries.

The proposal meets the objective regardless of the reduced site area.

(c) the dwellings are designed to minimise energy needs and utilise passive solar design principles, and

The development delivers 62 out of 87 units (71%) with a minimum 2 hours solar access. This meets the 70% outlined in Criteria 1 of the Objective 4A-1 of the ADG. This is an improvement from the consented development on the site. The proposal also achieves at least 60% of units with natural cross ventilation. In addition, all common circulation corridors are natural lit and ventilated. The proposed building materials achieve a good thermal mass. Living rooms are oriented and façade elements design in accordance with passive solar design principles.

The proposal meets the objective regardless of the reduced site area.

(d) significant existing vegetation will be retained and landscaping is incorporated within setbacks and open space areas.

Landscape Plans form part of the Development Application and the design provides landscaping within all setbacks. The roof top areas are also landscaped. The proposal satisfies the DCP requirement for Deep Soil by providing 19% of the site area as deep soil. The proposed deep soil zones accommodate soft landscape planting suitable to the site. Suitable landscaped interfaces to the adjoining public open space zones are also achieved. A deep soil landscape front setback to the street is also proposed at the residential interface. The entry to the proposed childcare centre is not deep soil to create an accessible and functional entry; however, landscape planting above slab is proposed to add amenity.

The proposal meets the objective regardless of the reduced site area.

3.1.2 The Objectives of the Zone

Zone R4 High Density Residential –

The objectives of the R4 Zone are:

- *To provide for the housing needs of the community within a high density residential environment.*

- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage high density residential development in locations that are close to population centres and public transport routes.*

The proposal is consistent with the objectives for development within the zone as explained below.

- *To provide for the housing needs of the community within a high density residential environment.*

The proposed development through the provision of one, two, three and four bedroom apartments. The site area allows for residential amenity on the site such as landscaped areas surrounding the built form.

The site area does not restrict a high-quality outcome in an urban location achieving good amenity, protects the privacy of neighbouring properties, has high amenity communal open space and an appropriate spatial arrangement.

It is also noted that a number of other sites in the area have been consented with site areas of less than 4,000 m². In the policy documents that justified the inclusion of Clause 4.1A(3) in the LEP, it was acknowledged the challenge of achieving 4,000 m² site and that high density residential development could be achieved in an orderly way on sites of less than 4,000 m². Other sites where variations have been accepted to the minimum lot size are:

- 11-17 Shirley Street Carlingford (previous DA for 8 storey building on site)
- 1 Post Office Street Carlingford
- 780-786 Pennant Hills Road Carlingford
- 8-10 Shirley Street Carlingford
- 12 Shirley Street Carlingford
- 35 Jenkins Road Carlingford
- 17-19 Jenkins Road Carlingford
- 7A Boundary Road Carlingford
- 28-34 Donald Street Carlingford
- 19-21 Thallon Street Carlingford
- 9 Boundary Road Carlingford
- 11 Boundary Road Carlingford

In accordance with *Wehbe v Pittwater Council* [2007] NSW LEC 82, it can be considered that the 4,000 m² minimum lot size has largely been unabandoned and a merit based assessment is warranted.

In other words, in the area reduced site area does not thwart the meeting of the housing needs of the community. On the contrary, the burden of achieving a 4,000 m² site has been demonstrated in several cases to be unwarranted.

- *To provide a variety of housing types within a high density residential environment.*

The proposed development provides for one, two, three and four bedroom apartments. The proposed development provides adaptable housing. The proposed development provides open plan living/dining areas throughout the building allowing the potential for internal reconfigurations and personalisation of each unit. Thus, a sufficient variety of housing types are achieved.

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development includes a childcare centre which is highly suited to the site location with its large interface to the public domain. The use provides direct address to the public open space which is currently poorly activated and where existing development does not have a high quality interface to the open space network. The proposed mix of uses is geared towards meeting the day-to-day needs of residents. Childcare centres in high density environments are in high demand and having a centre with excellent public transport access and which has high density residential development within walking distance is ideal.

The proposed development in maximising the residential density on the site contributes effectively to housing supply to support the mixed use buildings nearby. The proposed development provides sufficient setbacks so that adjoining sites would be capable of developing to any of the range of permissible land uses in the zone without being burdened by the subject site.

- *To encourage high density residential development in locations that are close to population centres and public transport routes.*

The site as shown in the previous figure is ideally located within a 3 minute walk of the Carlingford Light Rail. There are also multiple bus stops within walking distance of the site. The site is considered ideal for a high density residential flat development. The site is in an urban renewal area as identified by the Region and District Plan. It is also part of the GPOP planning area. The site is optimally located strategically to achieve high density residential that meets the full potential of the site.

The site's central location and proximity to services and amenities does not require a significant site area for development to occur. The design proposed is representative of the potential for development on a modest site area.

3.2 Development Standard is Unreasonable or Unnecessary (Clause 4.6(3)(a))

3.2.1 Local and Regional Strategic Priorities

The site is located just a few minutes' walk to the light rail train station. It is within close proximity to major employment, health and education, and various retail centres. The site is spoilt for choice with access to several recreational open space areas. The importance of Carlingford as a Strategic Centre with increased housing densities has only been strengthened by Region Plan, the District Plan and the inclusion of Carlingford within the GPOP.

The site is representative of high density development appropriate to the locality and complying with lot size requirements would in this instance conflict with the underlying objectives of the Plan for Growing Sydney to maximize the number of dwellings in accessible locations and to concentrate intensity in strategic centres. Accelerating housing supply, choice and affordability and building great places to live is a priority outlined for the District. Delivering a high density development is the prerogative and flexibility in considering lot sizes should be applied. There are unique features of the site which justify a residential flat building in this instance.

The area (sqm) of the subject site (3,141sqm), despite being less than the minimum lot size prescribed within the LEP, is still able to accommodate appropriate setbacks to surrounding public recreation spaces and adjoining sites.

The site is also much larger than many of the sites in the local area which have been approved for high density development. Thus, a high density development on a site of this size is in keeping with the spatial characteristics of development already set in the area.

3.2.2 The Particulars of the Site

Site Isolation

The site is bounded by a street to the west, a public open space to the south and existing medium and density development to the east and north. Thus, there is no opportunity for the site to amalgamate.

Previous Development Consent

The site has already been deemed suitable for redevelopment for high density residential under DA/152/2017 which is connected back to DA681/2013/HB.

3.3 Sufficient Planning Grounds (Clause 4.6(3)(b))

There are sufficient environmental planning grounds to justify contravening the development standard due to the following:

- The proposed development meets the objectives of the R4-High Density Residential Zone.
- The proposed development meets the objectives outlined in Subclause 3 of 4.1A “Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings”.
- There are numerous examples of sites which have been permitted to redevelopment for residential flat buildings with sites of less than 4,000 m².
- The subject site is not reasonably capable of being amalgamated to create a larger development parcel.
- The subject site has already been deemed suitable for high density development with a similar site coverage under DA/152/2017 which is connected back to DA681/2013/HB.
- The strategic location of the site in terms of existing and future sustainable transport, its connections to strategic centres and major employment lands, mean that the site is highly

suited to a development within a site with an area less than 4,000 square metres outlined in Subclause 2 of Clause 4.1A.

- The proposed development establishes appropriate built form incorporating reasonable setbacks to adjoining land zoned RE1 Public Recreation and R4 High Density Residential.
- The site area accommodates a mix of uses and does not unreasonably restrict the provision of deep soil and landscape.
- The residential flat building can be accommodated on the site, without unreasonably adversely impacting surrounding sites and without isolating any adjoining sites.
- The proposal is considered orderly and economic development of the land and there is a strategic public benefit in developing the site maximising the provision of high density development on the site.

4 Clause 4.6(4)(b) and (5) Concurrence of the Planning Secretary

We have assumed that the Consent Authority has delegated authority from the Secretary to consider this request.

5 Conclusion

Under Clause 4.1A Minimum lot sizes for dual occupancy, multi dwelling housing and residential in LEP 2012, the minimum lot size for a Residential Flat Building is 4,000 m². Subclause 3 allows for a variation to the minimum lot size if Council is satisfied that:

- (a) the form of the proposed structures is compatible with adjoining structures, in terms of their elevation to the street and building height, and*
- (b) the design and location of rooms, windows and balconies of the proposed structures, and the open space to be provided, ensures acceptable acoustic and visual privacy, and*
- (c) the dwellings are designed to minimise energy needs and utilise passive solar design principles, and*
- (d) significant existing vegetation will be retained and landscaping is incorporated within setbacks and open space areas.*

The proposed development is compatible with the adjoining site context. There is no opportunity for the site to amalgamate and the site does not isolate any adjoining sites. While the site does not meet the minimum 4,000 m² site area, the design demonstrates that orderly and economic development of the site can still occur and achieves a building consistent with SEPP 65.

The proposed development ensures acceptable acoustic and visual privacy within the high density residential zone with unreasonable adverse impacts on surrounding site not arising. The proposed development achieves solar access and cross-ventilation criteria set out in the ADG and the proposed development achieves high levels of residential amenity. The proposed development achieves adequate areas of deep soil and soft landscape to achieve a building within a garden setting as envisaged in the DCP.

The planning control has clearly been abandoned in the local area with numerous high density residential developments approved and constructed in the Carlingford Precinct. Compliance with the standard is unreasonable and unnecessary in the circumstances of the case.

Thus, the proposed development satisfies the clause and the site area of less than 4,000 m² is acceptable in this particular circumstance.

Clause 4.6 Variation Height of Buildings

Clause 4.3 – HOB – Parramatta (Form The Hills) Local Environmental Plan 2012

Proposed Mixed Use Development
11-17 Shirley Street, Carlingford NSW

Project 12-087
11 October 2021
Revision B

Prepared by Dickson Rothschild



REV	DESCRIPTION	DATE	AUTHOR	CHECK
A	For DA Lodgement	5/09/2022	KM	ND
B	For Lodgement	11/10/2022	KM	ND

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1. Introduction

1.1. Overview

This is a formal written request that has been prepared in accordance with clause 4.6 of the Parramatta (*Former The Hills*) **Local Environmental Plan 2012 (the LEP)** to justify a variation to the Height of Buildings development standard imposed by clause 4.3(2) of the LEP sought in the subject application.

The proposal seeks consent for a mixed use development at 11-17 Shirley Street, Carlingford. The proposed development is 12 storeys and includes a landscaped rooftop garden with lift and stair access.

1.1.1. The standard to be varied – Clause 4.3 Building Height

Clause 4.3 of the LEP and the associated map prescribes a maximum building height of 27m for the site.

1.1.2. Nature and extent of the variation

The proposed development seeks a variation to the height control across the whole tower. The extent of variation changes across the site due to sloping topography. The proposed height at key locations is as follows:

- 44.0 m (RL 147.35) to the lift overrun, which is a variation of 63%. The height exceedance is 17m.
- 43.1m (RL 146.73) to the photovoltaic panels at the roof. This results in a maximum non-compliance of 16.1m, which is equivalent to a variation of 35.7%. The height exceedance is 10m
- 30.7m (RL144.25) to the northeast corner of the building parapet, which is a variation of 50.7%. The height exceedance is 13.7m.
- 38.7m (RL143.25) to the northwest corner of the building at the roof of the top floor balconies, which is variation of 43.3%. The height exceedance is 11.7m.

The height non-compliances are illustrated at DA-0-900 (See Figure 1 overleaf for excerpt of DA-0-900).

The maximum variation sought is 17m.

Clause 5.6(2) of the LEP permits an architectural roof feature to exceed the building height limit with development consent, subject to satisfaction of the matters in clause 5.6(3). The proposed development incorporates architectural roof feature elements associated with the roof garden. This includes pergolas, balustrades and planters. These elements are disregarded when taking into consideration the maximum height of the building. They do not represent the area of greatest height exceedance. They do not give rise to adverse impacts such as overshadowing and visual impacts.

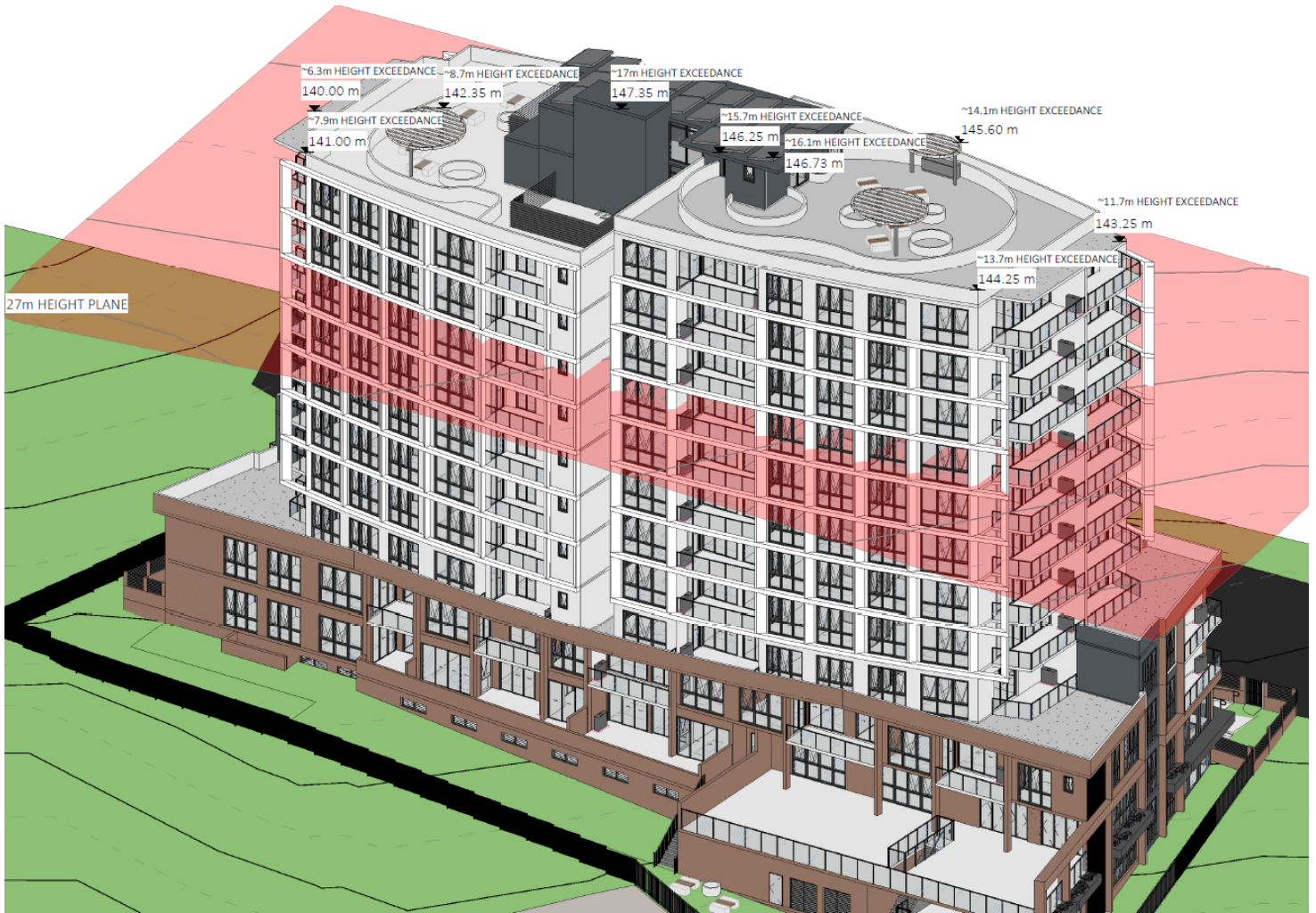


Figure 1: Excerpt, DA-0-900, Height Plane Building Diagram

1.2. Clause 4.6 framework and relevant case law

The proposal seeks a variation to the building height control in clause 4.3 of the *Parramatta (Former The Hills) Local Environmental Plan 2012*. The objectives of clause 4.3 are:

- (a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,
- (b) to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.

The site is zoned R4 with proposed childcare centre and residential flat building permitted with consent. The R4 zone objectives are:

- To provide for the housing needs of the community within a high density residential environment.
- To provide a variety of housing types within a high density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of

residents.

- *To encourage high density residential development in locations that are close to population centres and public transport routes.*

Clause 4.6 of the LEP states:

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 C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 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.

(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), (cb) (Repealed)

This document constitutes the written request referred to in Clause 4.6(3) in relation to the Development Application's proposed breach of the height of building development standard. This request has been prepared having regard to the latest authority on Clause 4.6, contained in the following guideline judgments:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118
- *RebelMH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130

In summary, the principles arising from the above matters are:

- a. In as far as they are relevant, there are five methods of establishing that compliance is unreasonable or unnecessary identified by Preston J in *Wehbe* that remain relevant. However, in order to satisfy the unreasonable and unnecessary test in Clause 4.6(3)(a), you need something more than Method 1 in *Wehbe*, because that test is now encompassed in Clause 4.6(4)(a)(ii) where consistency with the objectives of the standard is a mandatory precondition.

- b. Preston CJ in *Initial Action* held (at paragraph 15) that for there to be power to grant development consent for a development that contravenes a development standard, cl 4.6(4)(a) requires that the Court, in exercising the functions of the consent authority, be satisfied that the written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a) and cl 4.6(4)(a)(i)) and adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(ii)). The Court must also be satisfied that the proposed development will be consistent with the objectives of the zone and with the objectives of the standard in question, which is the measure by which the development is said to be in the public interest (cl 4.6(4)(a)(ii)).
- c. At paragraphs 23 and 24 in *Initial Action*, Preston CJ held that with respect to “environmental planning” grounds, although not defined, the grounds should relate to the subject matter, scope and purpose of the EP&A Act, including the objects in s. 1.3 of the Act. Further, in order that the environmental planning grounds proffered in the written request are “sufficient”, firstly the focus should be on the aspect or element of the development that contravenes the development standard, rather than the development as a whole and why the contravention is justified and secondly, the environmental planning grounds must justify the contravention of the development standard, not just promote the benefits of carrying out the development as a whole.

In *RebelMH* the Court, in exercising the functions of the consent authority, must “in fact” be satisfied of the above matters. The satisfaction that compliance is “unreasonable or unnecessary” and that there are “sufficient environmental planning grounds” to justify the contravention must be reached only by reference to the cl 4.6 request. The evidence in the proceedings cannot supplement what is in the request, although the evidence may assist in understanding the request and in considering its adequacy. On the other hand, the satisfaction that the proposed development is consistent with the relevant objectives, and therefore in the public interest, can be reached by considering the evidence before the Court and is not limited to what is contained in the cl 4.6 request.

2. Grounds for Clause 4.6 Variation

Justification in accordance with the five grounds established in *Wehbe v Pittwater Council* (2007) is set out below.

3.1 Compliance with the standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

The principle set out in *Wehbe v Pittwater Council* (2007) (*Wehbe*) provides an accepted method for justifying that compliance with the development standard is unreasonable or unnecessary. This request relies on method 1 in *Wehbe* which requires an applicant to demonstrate that the objectives of the relevant development standard will be achieved, despite the non-compliance with the numerical standard.

Compliance with the height control is unreasonable and unnecessary in the circumstances of this proposal as the objectives of the development standard (building height) are achieved, notwithstanding the non-compliance with the height control. The Development Application achieves the objectives of the development standard contained at clause 4.3 of the LEP, as outlined below. Further, the height non-compliance itself is related to achieving a better planning outcome than what would otherwise be achieved by a building that strictly complied with the height limit. This is also discussed below.

2.1.1. Building Height - Objective (a)

(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,

The height of the development is compatible with that of the adjoining development and the overall streetscape. The development is consistent with the height objective despite the non-compliance for the following reasons:

- The site is located in the core of the R4 High Density zone and as such is planned for future high-density residential development. The site is located in a higher density portion of the Carlingford precinct that has an increased building height and FSR control. As illustrated in the Figure below despite being located in an R4 High Density setting, the site is surrounded by RE1 Public Recreation land as shown in the figure below (subject site identified by yellow star). To the south west of the site across on the other side of the site is B2 zoned land being the local centre core of the precinct. On the light rail station is a 20 storey building. Accordingly, the streetscape and planned character of the area is a high density residential and mixed use precinct with a high level of public transport access. The development, notwithstanding the height non-compliance, is commensurate with the context.

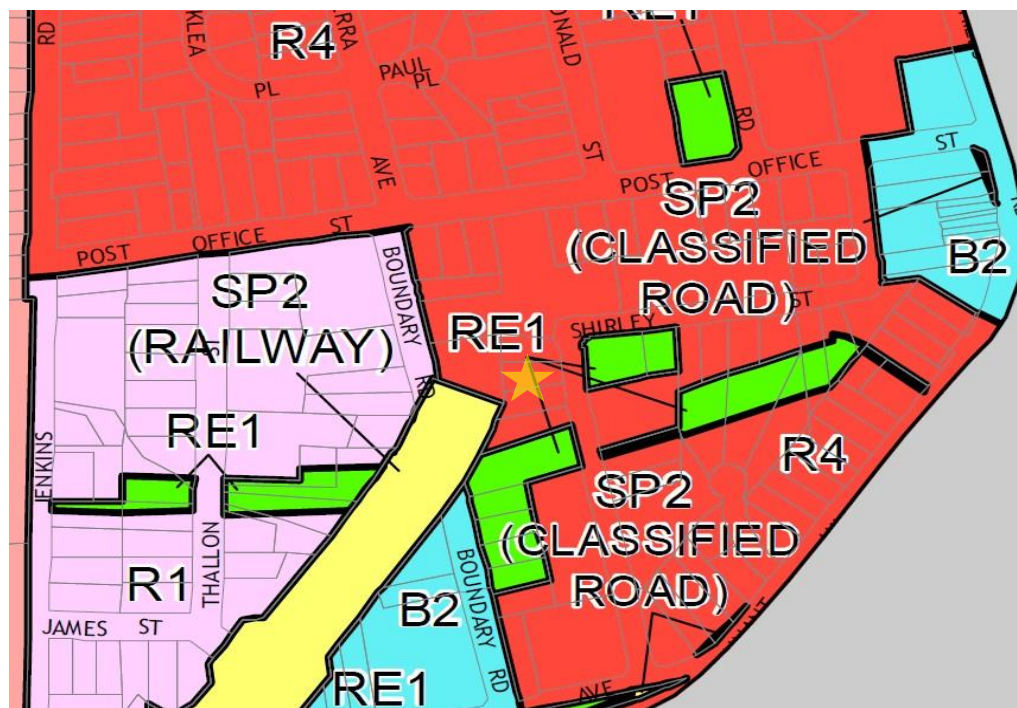


Figure 2: The Hills LEP 2012 Land Zoning Map (LZN_025)

- The development is located within very close proximity of the light rail station and immediately adjoining the existing east-west open space link. To the south east directly across from the public reserve adjoining the site is a significant 20 storey building.



Figure 3: View from Shirley Street towards the east showing subject site interface with public reserve

- To the east of the site, the height limit increases and the land rises. New and consented development east of the subject site and further from the light rail station will be higher than what is proposed on the subject site. In particular, the higher building is the approved development at the Janell Crescent Key Site (refer to the figure below, which shows the consented development, noting that Meriton currently has an application under assessment for a development on the site which varies from what is consented and which seeks increased bulk and scale from what is currently consented).



Figure 4: Janell Crescent Development photomontage from DA application drawing by Dyldam with subject site also identified

- The site is unique in its immediate setting. The site interfaces with open spaces on two sides. Across Shirley Street to the east is a future public park. To the south of the site immediately adjoining the site boundary is an existing public reserve which forms part of the planned continuous east-west open space corridor through the precinct. The site is

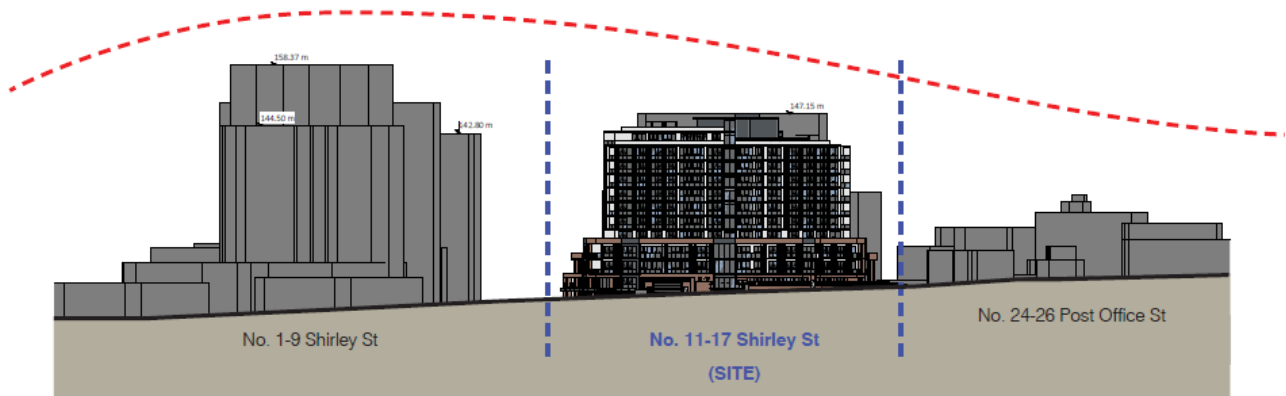
adjoined on the south east by the old railway corridor, part of which is envisaged as an extension of Boundary Road in the Carlingford Precinct Plan. As part of the light rail development a bicycle/shared path has been developed connecting the light rail to Boundary Road (Refer to the Figure below). Still, it forms an access corridor. Refer to the Figure below.



Figure 5: View from southern boundary of site looking towards light rail and 20 storey building (L. Zhang, 2022)

- To the east is 8-10 Boundary Road, an 8 storey building. Across Boundary Road near the site is 11 Boundary Road which comprises a 9 storey building. Directly to the north of the site is an existing 4 storey building. Thus, the site context is eclectic with a range of building heights, scale and character.

The proposed built form has a height of 12 storeys, fits within the pattern of building height considered from both north to south and east to west across the Carlingford Precinct south area (south of Post Office Road). The proposal will be compatible with the greater bulk and scale of buildings along the east-west open space link through the precinct. The building achieves a transition down in scale from the 20 storey building at the light rail station towards the north east and past the subject site and thus achieves compatibility with the site context. Refer to the figures below. The Urban Design Report by Dickson Rothschild provides a detailed analysis of the contextual fit of the proposal.



Section along Shirley Street looking west

Figure 6: Excerpt, Urban Design Report, Dickson Rothschild, pg. 13

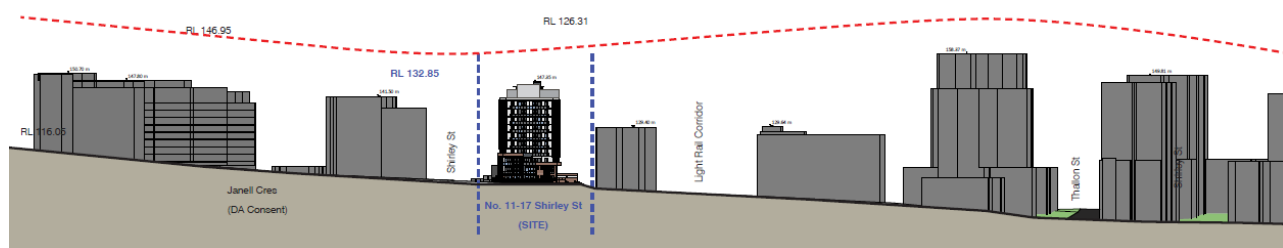


Figure 7: Excerpt, Urban Design Report, Dickson Rothschild, pg. 13

- The site context in and around the light rail station and east-west open space link does not represent a uniform character and built form. Building types range from medium rise to high rise and from 4-20 storeys within 150m of the site. Generally, the precinct is emerging as a high density precinct, but there is a variety of heights, density, built form, and character in the area. Refer to the figure below.

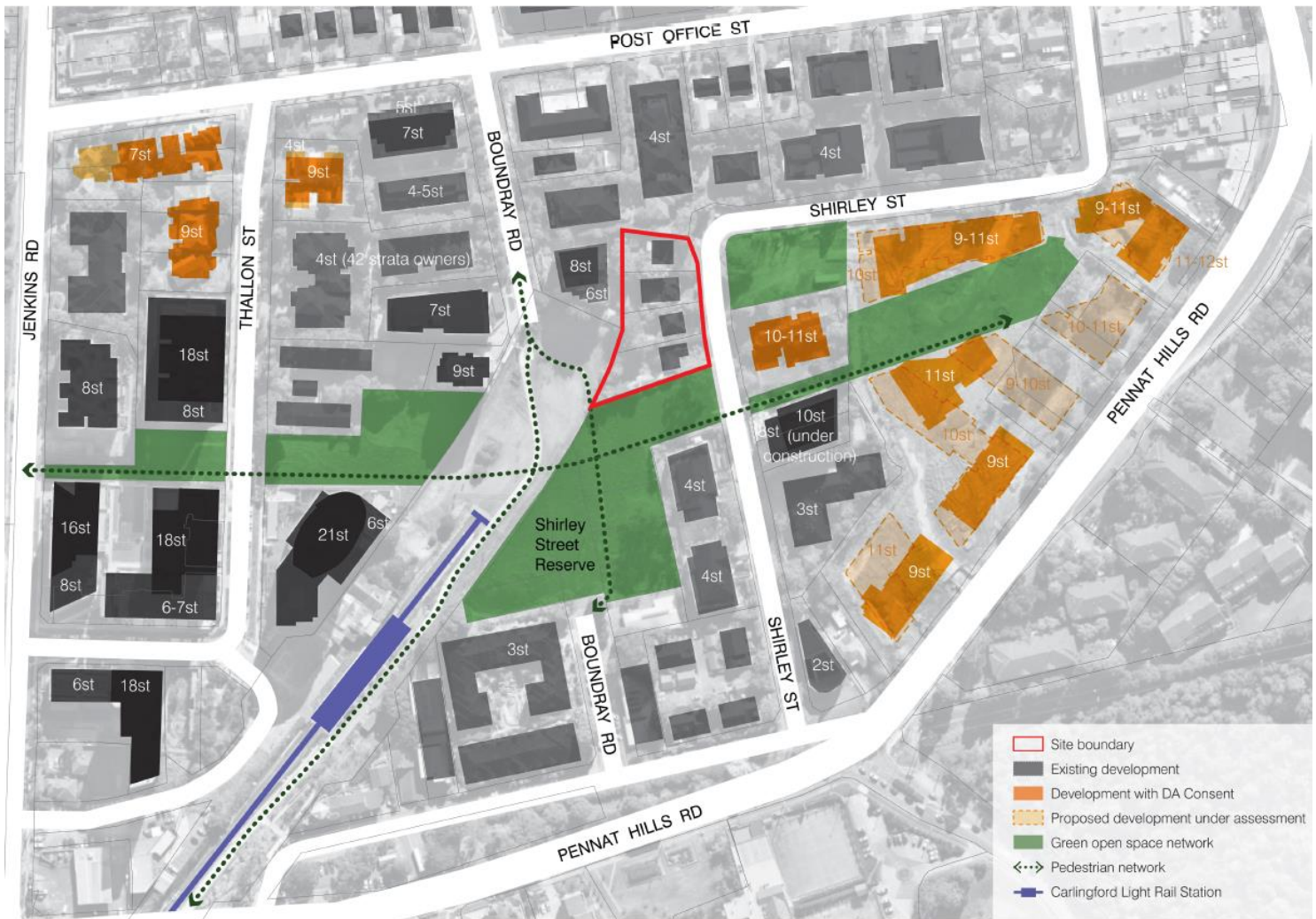


Figure 8: Excerpt, Site Context Analysis - Building Heights, Dickson Rothschild, DA-0-111

- The development provides a three to four storey podium which aligns with the street and public open space, creating a streetscape response compatible with the existing four storey buildings to the north and to the south across the public reserve. The proposed tower is setback from the podium to the northern boundary and southern boundary to provide visual relief and achieve compatibility with the existing Shirley Street streetscape and context.
- The tower is setback above the proposed podium with a curved form, being distinct from the rectilinear, public domain defining podium. The curved tower relates in character to the curved form of the prominent 21 storey tower (1-7 Thallon Street) across the public reserve to the southwest. However, the proposed tower's scale is less than the 20 storey tower, and the 12 storey scale achieves a transition to the buildings on the eastern side of Shirley Street (Janell Crescent, 8-10 Shirley Street and 12 Shirley Street, taking into consideration both approved and under construction buildings). Along the east-west public open space corridor the building maintains a general transition in scale from the 18-21 storey buildings at its western end and the 9-11 storey buildings at its eastern end, effectively achieving compatibility with the streetscape and context.
- Each façade is well articulated, limiting the impact of bulk and scale.

- The ceiling heights proposed at the ground level are greater than the minimum required to meet BCA requirements, allowing for a more, better quality non-residential tenancy to Shirley Street and the public open space, which will provide opportunities to enliven the public domain and improve the quality of the streetscape. The ceiling heights enhance amenity for the proposed childcare centre and provide a flexible space which could change use over time. The generous ceiling height together with sloping topography increases the overall height of the building. The childcare centre is very well located, desirable and compatible with the surrounding uses being a much in demand use to support high density residential settings.
- The proposal seeks a floor-to-floor height of 3.5m in the podium to allow for future flexibility of use and maximise amenity. The tower is proposed with floor-to-floor heights 3.15 m, greater than what was used as the standard when the height limit was formulated in 2007-2010 where a floor to floor of 3m and sometime 2.9m was considered adequate. The increased floor-to-floors allow for accommodation of services, waterproofing, sound insulation, etc, and high quality construction standards consistent with the NCC and to address issues raised by the Building Commissioner, while avoiding reliance on bulkheads within apartments. The increased floor-to-floors do add to overall building height, but the building scale still achieves compatibility with the local context and streetscape.
- The provision of communal open space at roof level is an appropriate response to the site's town centre location. Extending the lift to the roof garden achieves universal access and maximises amenity of the open space. It also contributes to the building height non-compliance. Provision of a roof garden achieves compatibility with the character of the local area with other buildings having similar open spaces and in providing a variety of open spaces for residents.
- The proposal is consistent with the desired future character statement for the Carlingford Southern Precinct as set out in the Hills DCP – Part D, Section 12, Clause 3.3. The proposal achieves the desired street-oriented village built form and character.
- The site's landscape character of the site is not diminished by the height non-compliance. Sufficient deep soil landscape is provided on site. On structure planting is proposed to soften built form and enhance the landscape character of the site. The proposed balance of built form and landscape is compatible with the character and site context.
- The site achieves full compatibility with its streetscape and context. The building height proposed provides a transition, achieving a smoother transition than would a 7 or 8 storey building, which would be lower than the other newer buildings along the east-west open space corridor and close to the light rail station within the precinct.

2.1.2. Building Height - Objective (b)

(b) to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.

Overshadowing

The development is consistent with (b) regarding overshadowing due to the following:

- The additional building height gives rise to a minimal impacts regarding overshadowing of

adjoining properties and the objective is met.

- The consented building at 12 Shirley Street shall maintain at least 2 hours direct solar access to at least 70% of the units at mid-winter consistent with the ADG criteria and guidance at 3B-2 and 4A-1. Overshadowing of a part of the building arises at late afternoon but the development at 12 Shirley Street maintains good solar access.
- The additional building height gives rise to minimal impacts on 8-10 Shirley Street. It is noted that overshadowing of 8-10 Shirley Street will already arise from the consented development at 12 Shirley Street as well as the Janell Crescent Key Site development. Taking into consideration these adjoining developments, 8-10 Shirley Street has 43 apartments and achieves 2 hours solar access at mid-winter to 65% of apartments. The proposed development will overshadow an additional 4 apartments at mid-winter. This is a reduction in solar access for a building that does not meet the standard of 70% by less than 20%. This is consistent with the ADG objective and guidance at 3B-2 which states:

Objective

Overshadowing of neighbouring properties is minimised during mid winter

Guidance

Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20% (ADG, pg. 29)

Therefore, the proposed overshadowing can be considered minimised, and the objective is therefore met.

- Additional overshadowing to 1-9 Shirley Street does arise but the affected apartments but they maintain at least 2 hours direct solar access in midwinter consistent with SEPP 65 and the ADG.
- The proposed development does not overshadow apartments at 8-10 Boundary Road at mid-winter and therefore shadow impacts are considered minimal.
- The proposed development will impact the linear green open space to the south of the subject site. The overshadowing will be no greater than what currently arises from the consented DA on the subject site (DA/152/2017). While DA/152/2017 is lower than the proposed development the width of the tower to the southern boundary is larger and so the shadow is to the public open space is larger. A comparison of the 12 p.m. shadow between the consented development and the proposed development is provided in the Figure below.

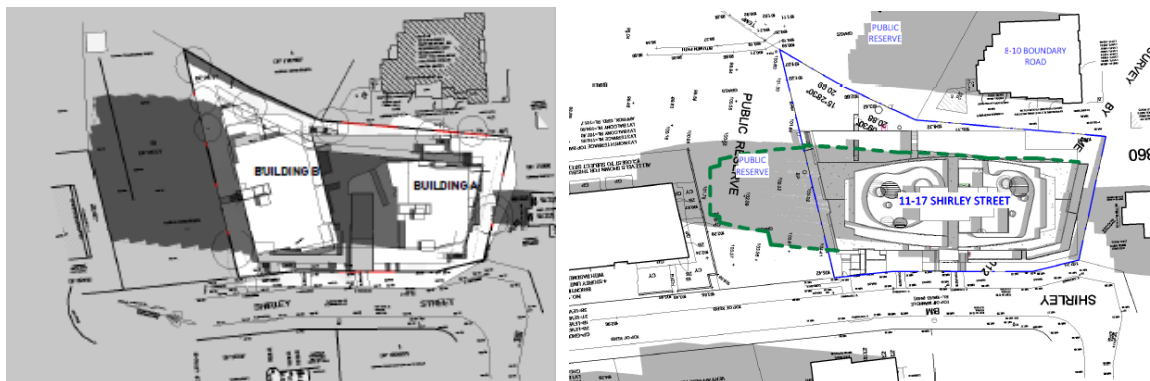


Figure 9: Comparison Shadow 12 p.m. mid-winter Consented Development (left) and proposed development (right)

- The proposal will cast shadows on the public open space to its immediate south given its position to the north. However, it is noted that a compliant envelope will generate shadows at a similar level with additional overshadowing being minimal. The shadow diagrams which form part of the DA application indicate demarcate the shadow of the part of the building which does not comply with the height limit.
- In summary, the overshadowing impact caused by the proposed development and in particular the part of the building which does not comply with the height limit is minimal with adverse impacts minimised and adjoining buildings and public open space maintaining good amenity and meeting the objective.

Visual Impact

The development is consistent with (b) regarding visual impact due to the following:

- The proposed development fits within its immediate and wider streetscape context and does not give rise to adverse visual impacts.
- The built form is compatible with its context sitting in a transitional locations between the 18-21 storey buildings to the west, the 9-11 storey buildings to the east and the 4-9 storey buildings to the north. The proposed height transitions from high buildings at the light rail to the lower buildings away from the light rail.
- The proposed built form minimises visual impacts by employing a podium with a maximum height of 4 storeys and by setting back the tower form above. The podium modulates visual impacts within the streetscape. The tower form is setback above. Its articulation and curved form limits visual impacts particularly to the north and south where the tower. The northern and southern edges of the tower are tapered and highly articulated, limiting the visual impact of bulk and scale.
- The elevations which form part of the Architectural Plans demonstrate the building is limited in its bulk and scale when compared to the backdrop formed by the key site development on adjoining sites and the building sits comfortably within its transitional setting between the taller buildings to the south and west and the lower buildings to the north and east. An excerpt is provided in the figure below.



Figure 10: Streetscape elevation, DA-0-300

Loss of Privacy

The development is consistent with (b) regarding loss of privacy due to the following:

- The proposed residential development is setback from the north and east where the site directly adjoins existing residential sites. At the tower form, balconies and living rooms are offset from the balconies and living rooms at 8-10 Boundary Road. To the east the tower is setback 9m, providing sufficient separation to the adjoining site to protect amenity. To the north, the tower is setback 9-12m. A small encroachment into the 9m setback arises for the edge of a proposed Juliet balcony. Since the balcony is shallow, it does not give rise to adverse privacy impact. The proposed living rooms that face north are setback behind this Juliet balcony with frosted/translucent glass balustrade to limit overlooking. The principal balconies of the north facing units are setback 9-12m. These setbacks are sufficient to protect the privacy of adjoining sites.
- Vehicular access is well away from neighbouring properties giving rise to no adverse impact on acoustic or visual privacy for adjoining sites.
- The proposed COS is located at Level 1 adjoining the public reserve and at the roof levels. The trafficable areas of the roof garden and setback from the roof edge to limit privacy impacts.
- Casual surveillance of public open spaces by the proposed development is a positive planning outcome.

2.2. Sufficient Planning Grounds for Justifying the Non-Compliance (Clause 4.6(3)(b))

The strength of the relevant grounds ought to be a balancing factor when assessing the reasonableness of the variation to a standard. This is because the word “sufficient” is included in clause 4.6(3)(b). Environmental planning grounds will be “sufficient” having regard to the circumstances of each case such that matters will have different weight in different circumstances.

A large breach with many impacts must have weighty and strong environmental planning grounds. A relatively minor breach without real amenity impacts, such as that proposed in this application, will require a different weighing of factors and therefore a different approach to what may constitute that which is “sufficient” (see Initial Action at paragraphs 23 and 24).

There are sufficient environmental planning grounds to justify contravening the development standard due to the following:

- The breach of the height control promotes the orderly and economic development of the land (object (c) of the *Environmental Planning and Assessment Act 1979*). The non-compliance with the height control allows for an infill development maximising its capacity to deliver residential and non-residential development in a precinct that is an urban renewal area with high public transport accessibility and which responds to the site’s transitional location very close to the light rail station and between key sites which occur along the east-west open space corridor of the precinct.
- The strategic location of the site very near the light rail station means that the site is highly suited to a development with a density and scale consistent with the principles of Transit Orientated Development (TOD). The HOB breach allows for a density on the site which is

suitable for the site because of its close proximity to public transport and its location within the core of an identified Urban Renewal precinct as set out in the Region Plan and District Plans. This reduces demand for development of more sensitive land such as land at the urban fringe, and it serves to better satisfy object (a) (b) and (c) of the *Environmental Planning and Assessment Act 1979*. A lower scale development would be an underutilisation of strategic land with a unique context within Carlingford, highly suited to high density residential development.

The green roof elements and shading structures to the communal open space proposed is a space that is consistent with SEPP 65 and contemplated in the ADG because the site is in a high density residential zone close to the local centre and light rail station. Other nearby developments have been consented with roof gardens which are located above the applicable height limit. Rooftop communal open spaces are considered a reasonable solution (ADG, 3D-1) providing a high quality facility for future residents. In *MGT 6 Pty Ltd v The Council of the City of Sydney [2017] NSWLEC 1211*, Martin SC and Dixon C considered a similar request to vary the building height standard that arose from the extension of the lift to the roof in order to provide accessible access. Dixon C found at [50]

"Without the lift overrun and the breach of the standard the communal open space would need to be accessed by a chair lift (and stair) which is less equitable access to the area. Maintaining the standard would result in a sub-optimal outcome for all residents, with a reduction in the amount and type of communal open space provided in the development."

The proposed development would result in a sub-optimal outcome for all residents if strict compliance with the standard was required.

- The proposed development meets the objectives of Clause 4.3 and the objectives of the R4 High Density Residential Zone.
- It is noted that the height limits within the LEP arose out of a precinct master plan and developer initiated planning proposal. In the DCP it notes that the height limits do not take into account overruns and the like. Part of the height non-compliance of the proposal arises from overruns and plant areas.
- The non-compliance relates to achieving amenity on the site, without adversely impacting surrounding sites and ensuring that the subject site and surrounding sites maintain reasonable privacy and solar access.
- The proposal is a better planning outcome than what is currently consented on the site under DA/152/2017. This DA has a very poor interface with the adjoining public open space, in the form of a blank wall. The DA also has a greater impact on the public open space to the south due to its wider profile to the southern boundary. The additional height achieves a slenderer building form oriented on the north-south access which creates narrower and faster moving shadows to the open space network to the south.
- The proposed height non-compliances give rise to a building which better meets the objectives of the zone than a building which complied with the height limit. In particular this is maximising housing in close proximity of the light rail, providing non-residential floor space which addresses the public domain to meet the day to day needs of the community, providing conveniently located parking for non-residential uses while:
 - addressing the sloping topography of the site,
 - facilitating additional setbacks to the front boundary at the ends of the tower

- avoiding building bulk at the south east corner of the site and instead providing open space that is collocated with the public reserve and which expands the visual amenity of the area around Boundary Road, the Public Reserve and the light rail termination point.
 - Avoiding building bulk at the south east corner of the site to improve solar access to public open space.
- The height exceedance contributes to the building creating a transition in scale from the light rail towards the lower scale areas to the north.
- The height exceedance contributes to the building compatibility with the scale of built form along the east-west open space link which is 18-21 storeys at the east and up to 11 storeys at the west. Given the site's proximity to the light rail station, a height of 8 storey (to comply) is incongruous with the pattern of heights in the area, particularly given the heights of buildings to the east of the subject site along the east-west open space corridor (and further from the light rail station than the subject site) are generally 10-11 storeys (i.e. 8-10 Shirley Street, 12 Shirley Street and the Janell Crescent development).
- The height non-compliance in part arises from the sloping topography of the site, with the proposal seeking to concentrate built form towards Shirley Street and avoid the dipping portions of the site to the east and south east.
- The site has an irregular shape. The proposed development footprint responds to the irregular topography of the site by concentrating the tower form towards Shirley Street and away from the rear boundary. This pushes the building form up. The proposed height non-compliance allows for a built form that responds to the particular context of the site as well as the on-site constraints. A lower, squatter building form could be achieved that complied with setback controls, but it would be a poorer design and planning outcome.
- The additional density proposed which results in height non-compliances increases housing and activity on a site immediately adjacent to a large open space corridor. Co-locating higher densities and open spaces achieves a more sustainable urban structure.
- The proposed development achieves increased densities with greater height while maintaining high quality open spaces on the site and minimising adverse impacts on surrounding sites.

3. The Public Interest

The site is zoned R4 – High Density Residential Zone. The zone objectives are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage high density residential development in locations that are close to population centres and public transport routes.*

The proposal is consistent with the objectives for development within the zone as explained below.

3.1.1. Zone Objective 1

- *To provide for the housing needs of the community within a high density residential environment.*

The proposed development satisfies Objective 1 of the zone despite the height non-compliance for the following reasons:

- The proposed development provides high amenity, high density development within almost immediate proximity of public transport.
- The site is within an urban renewal precinct and optimally located to contribute to sustainable transport. The height limit is not commensurate with site capacity for contributing to housing that has optimal access to public transport, goods, services and open space.
- The proposed development provides a mix of housing that responds to demand and considers the unit sizes delivered in other nearby buildings. In this regard, the proposal provides a mix of 1, 2, 3 and 4 bedroom units.
- Adaptable housing and liveable housing (to a silver level of service) are provided.
- Residential car parking which meets the RMS's sub-regional rates is provided on site.
- Common open space is achieved on site with a high quality, high amenity landscape outcome.
- The increased height allows for additional dwellings to be located on a site with excellent access not only to public transport, but goods and services and immediate access to public open space.
- The proposed non-compliance arises in part to provide a high quality and fully accessible rooftop communal open space which is a crucial amenity for future residents of the building.

3.1.2. Zone Objective 2

- *To provide a variety of housing types within a high density residential environment.*

The proposed development satisfies Objective 2 of the zone despite the height non-compliance for the following reasons:

- The site is only a short walk to the light rail station (approximately 3 minutes). It is also immediately adjoining the east-west open space link and very near to the key sites at the light rail station and to the west of the light rail station. It is optimally located for high density development that fully meets its potential, of which the proposed height non-compliance is integral to delivering.
- The proposal has a density which is compatible with the adjoining sites, representing a transition from the 4:1 FSR area to the south, southwest and west the 1.99:1 FSR area to the north, north east and the 2.3:1 FSR to the northeast and east. The proposed height of the

building allows for this higher density to be achieved that is more consistent with the site's location and context.

- The proposal provides 1, 2, 3 and 4 bedroom units, adding to the diversity of dwelling types in Carlingford.

3.1.3. Zone Objective 3

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development satisfies Objective 3 of the zone despite the height non-compliance for the following reasons:

- The site is in very close proximity to the light rail station. It also has a long frontage to the east-west public open space network that forms a spine within the precinct, making it ideal for mixed use development that addresses the park and provides non-residential space that caters to meeting the day-to-day needs of the local residents. The proposed childcare centre will enhance amenity and convenience for local residents living in the immediate vicinity of the site. The site is optimally located to provide a childcare centre that is easily accessed by pedestrians and users of public transport.
- The proposed non-residential space is optimally located with good visibility from Shirley Street and the Public Open Space.
- The proposed development provides employment generating space within a short walking distance of the light rail station and bus stops.
- The proposed non-residential floor space is flexible and use can change over time to meet demand.
- The ceiling height of the non-residential space is generous, providing a ceiling height suited to non-residential floor space that can help to create a vibrant, functional high density precinct.

The proposed non-residential floor space addresses the street and the public domain. While it does not provide a fully active frontage that may be achieved in a retail centre, the childcare centre has a clear and legible entry from the public domain with large windows and connection to the public open space, providing a degree of activation suitable to the site's position within a residential zone and along a pedestrian link. This is a significant improvement to other sites in the centre which while providing non-residential floor space, achieve very limited public domain activation. The proposed development achieves a superior outcome in comparison to these developments.

- The proposed development is located in a walkable location with the non-residential floor space being easily accessible without the use of a private motor vehicle, close to public transport and within easy walking distance of numerous apartments. The quantum of non-residential floor space is in keeping with its character.
- The height non-compliance is in part arising from the increase ceiling heights sought for the proposed non-residential floor space within the building podium.
- The proposed development provides secure bicycle parking to encourage cycling.

3.1.4. Zone Objective 4

- *To encourage high density residential development in locations that are close to population centres and public transport routes.*

The proposed development satisfies Objective 4 of the zone despite the height non-compliance for the following reasons:

- As described above the site is one of only a handful of site close to the new light rail that is ready for redevelopment. The proposed height non-compliance allows for a density of development that adequately responds to its strategic location while at the same time protecting the amenity of surrounding sites and public open spaces. The proposed building density is commensurate with the site's location close to public transport routes. A lower building would result in a lower density and an underutilisation of the site.
- The proposal has responded to the particulars of the site and its context, where site setbacks are much greater in some areas than required by the DCP and ADG. The additional setbacks and curved form of the tower push the building up in height. This is a better planning outcome than a lower squatter building with small setbacks.

All in all, the proposed development meets each of the objectives of the R4 zone. The height non-compliance contributes to the satisfying the objectives.

4. Clause 4.6(4)(b) and (5) Concurrence of the Planning Secretary

We have assumed that the consent authority has delegated authority from the Secretary to concur to this request but will defer to the consent authority (The Sydney District Planning Panel) regarding whether concurrence of the Secretary is necessary in this case, given the extent of non-compliance.

5. Conclusion

The proposed variation from the LEP HOB of 27 m is justified as the proposed development meets the objectives of the height control in Clause 4.3 and the requirements of Clause 4.6. Further, the proposed development meets the objectives of the zone notwithstanding the non-compliance.

The height exceedance is directly related to the following factors and site constraints:

- irregular and sloping topography of the site;
- increased setbacks to the front boundary;
- irregular shape of the site;
- site's close proximity to the new light rail station
- site being overlooked in master plan due to it being strata titled, and whereby master plan did not consider its potential for uplift given its proximity to rail transport and open space;
- site's adjacency to key sites with significantly greater height and density than what is set out

for the subject site;

- site's significant frontage to public open space;
- provision of additional floor space commensurate with the site's particular level of public transport accessibility and access to public open space;
- concentrating built form at the western end of the site, resulting in large common open spaces at ground level;
- provision of a highly articulated built form and a bulk and scale compatible with the site's transitional location while allowing for high levels of amenity for the proposed apartments;
- achievement of a built form that is fully compatible with its particular context being in a transitional location within the southern precinct of Carlingford;
- provision of non-residential floor space with increased ceiling heights;
- provision of greater floor-to-floor heights than what was typical at time that planning controls were formulated; and
- provision of accessible roof top common open space with lift access.

With multiple site-specific reasons, the height non-compliances are reasonable in this case.

The exceedance results in a building that is fully compatible with the site's built form context while delivering housing and supporting non-residential floor space commensurate with the sites' strategic location within the Carlingford Precinct.

For these reasons, the proposed non-compliance accords with well-considered development overcoming the unique constraints of the site and relating the development to its immediate site context. The variation does not result in any unacceptable level of environmental impact; rather the variation is preferable to a development which was to fully comply with the LEP height limit.

The consent authority should be satisfied that the request is justified.

Clause 4.6 Variation

Floor Space Ratio

Clause 4.4 – FSR – Parramatta (Form The Hills) Local Environmental Plan 2012

Proposed Mixed Use Development
11-17 Shirley Street, Carlingford NSW

Project 12-087
September 2022
Revision A

Prepared by Dickson Rothschild



REV	DESCRIPTION	DATE	AUTHOR	CHECK
A	For DA Lodgement	5/08/2022	KM	ND

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1. Introduction

1.1. Overview

This is a formal written request that has been prepared in accordance with Clause 4.6 of the Parramatta *(Former The Hills) Local Environmental Plan 2012 (the LEP)* to justify a variation to the Floor Space Ratio development standard imposed by clause 4.4(2) of the LEP sought in the subject application.

The proposal seeks consent for a mixed use development at 11-17 Shirley Street, Carlingford. The proposed development is 12 storeys and includes landscaped rooftop gardens with lift and stair access.

1.1.1. The standard to be varied – Clause 4.4 FSR

Clause 4.4 of the LEP and the associated map prescribes a maximum FSR of 1.99:1 for the site.

1.1.2. Nature and extent of the variation

The proposed development seeks a variation to the FSR control. The proposed FSR is 3.16:1 (GFA = 9,922 m².) The variation is 58.7%.

1.2. Clause 4.6 framework and relevant case law

The proposal seeks a variation to the building height control in clause 4.4 of the *Parramatta (Former The Hills) Local Environmental Plan 2012*. The objectives of clause 4.4 are:

- (a) to ensure development is compatible with the bulk, scale and character of existing and future surrounding development,*
- (b) to provide for a built form that is compatible with the role of town and major centres.*

The site is zoned R4 General Residential with proposed shoptop housing permitted with consent. The R4 zone objectives are:

- To provide for the housing needs of the community within a high density residential environment.*
- To provide a variety of housing types within a high density residential environment.*
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- To encourage high density residential development in locations that are close to population centres and public transport routes.*

Clause 4.6 of the LEP states:

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 C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 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.

(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), (cb) (Repealed)*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the Development Application's proposed breach of the height of building development standard. This request has been prepared having regard to the latest authority on Clause 4.6, contained in the following guideline judgments:

- *Wehbe v Pittwater Council* [2007] NSWLEC 827
- *Initial Action Pty Ltd v Woollahra Municipal Council* (2018) 236 LGERA 256; [2018] NSWLEC 118
- *RebelMH Neutral Bay Pty Ltd v North Sydney Council* [2019] NSWCA 130

In summary, the principles arising from the above matters are:

- a. In as far as they are relevant, there are five methods of establishing that compliance is unreasonable or unnecessary identified by Preston J in *Wehbe* that remain relevant. However, in order to satisfy the unreasonable and unnecessary test in Clause 4.6(3)(a), you need something more than Method 1 in *Wehbe*, because that test is now encompassed in Clause 4.6(4)(a)(ii) where consistency with the objectives of the standard is a mandatory precondition.
- b. Preston CJ in *Initial Action* held (at paragraph 15) that for there to be power to grant development consent for a development that contravenes a development standard, cl 4.6(4)(a) requires that the Court, in exercising the functions of the consent authority, be satisfied that the written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a) and cl 4.6(4)(a)(i)) and adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b) and cl 4.6(4)(a)(i)). The Court must also be satisfied that the proposed development will be consistent with the objectives of the zone and with the objectives of the standard in question, which is the measure by which the development is said to be in the public interest (cl 4.6(4)(a)(ii)).

- c. At paragraphs 23 and 24 in *Initial Action*, Preston CJ held that with respect to “environmental planning” grounds, although not defined, the grounds should relate to the subject matter, scope and purpose of the EP&A Act, including the objects in s. 1.3 of the Act. Further, in order that the environmental planning grounds proffered in the written request are “sufficient”, firstly the focus should be on the aspect or element of the development that contravenes the development standard, rather than the development as a whole and why the contravention is justified and secondly, the environmental planning grounds must justify the contravention of the development standard, not just promote the benefits of carrying out the development as a whole.

In *RebelMH* the Court, in exercising the functions of the consent authority, must “in fact” be satisfied of the above matters. The satisfaction that compliance is “unreasonable or unnecessary” and that there are “sufficient environmental planning grounds” to justify the contravention must be reached only by reference to the cl 4.6 request. The evidence in the proceedings cannot supplement what is in the request, although the evidence may assist in understanding the request and in considering its adequacy. On the other hand, the satisfaction that the proposed development is consistent with the relevant objectives, and therefore in the public interest, can be reached by considering the evidence before the Court and is not limited to what is contained in the cl 4.6 request.

2. Grounds for Clause 4.6 Variation

Justification in accordance with the five grounds established in *Wehbe v Pittwater Council (2007)* is set out below.

3.1 Compliance with the standard is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

The principle set out in *Wehbe v Pittwater Council (2007)* (Wehbe) provides an accepted method for justifying that compliance with the development standard is unreasonable or unnecessary. This request relies on method 1 in Wehbe which requires an applicant to demonstrate that the objectives of the relevant development standard will be achieved, despite the non-compliance with the numerical standard.

Compliance with the FSR control is unreasonable and unnecessary in the circumstances of this proposal as the objectives of the development standard (FSR) are achieved, notwithstanding the non-compliance with the control. The Development Application achieves the objectives of the development standard contained at clause 4.4 of the LEP, as outlined below. Further, the FSR non-compliance itself is related to achieving a better planning outcome than what would otherwise be achieved by a building that strictly complied with the FSR limit. This is also discussed below.

2.1.1. Floor Space Ratio - Objective (a)

(a) to ensure development is compatible with the bulk, scale and character of existing and future surrounding development,

The development is compatible with the bulk, scale and character of existing and future surrounding development despite the non-compliance for the following reasons:

- The site is located in the core of the R4 High Density zone and as such is planned for future high-density residential development. The site is located in a higher density portion of the Carlingford precinct that has an increased building height and FSR controls. As illustrated in the Figure below despite being located in an R4 High Density setting, the site is surrounded by RE1 Public Recreation land as shown in the figure below (subject site identified by yellow star) and near to B2 and R1 zoning as well. To the south west of the site across on the other side of the site is B2 zoned land being the local centre core of the precinct. On the light rail station is a 21 storey building on a site with an FSR standard of 4:1. Accordingly, the streetscape and planned character of the area is a high density residential and mixed use precinct with a high level of public transport access. The development, notwithstanding the height non-compliance, is commensurate with the context.

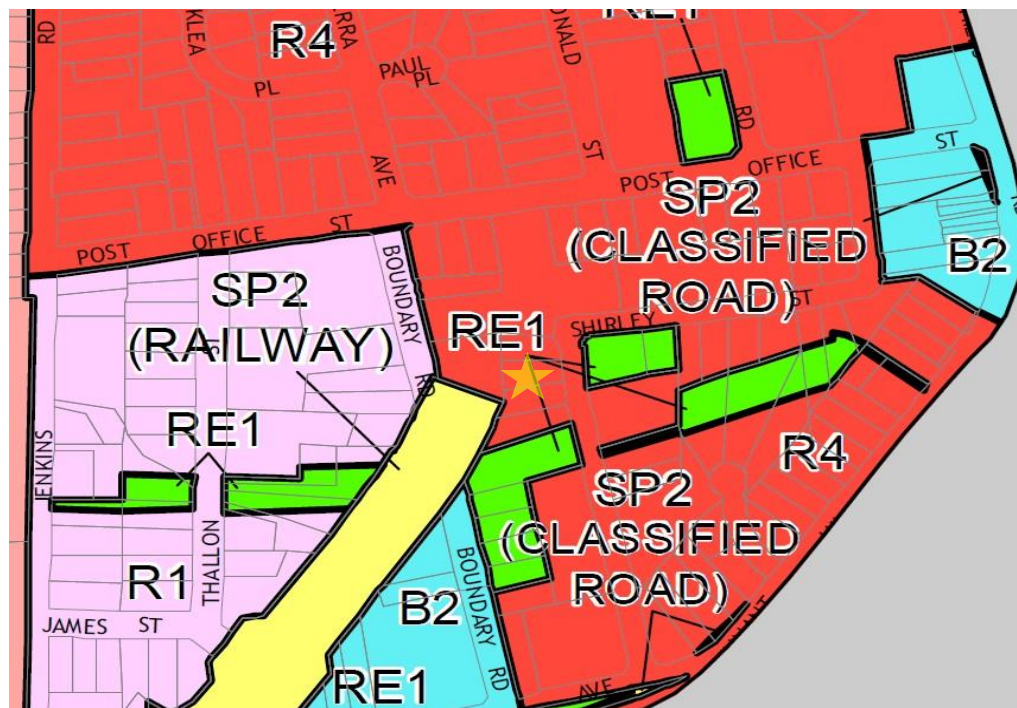


Figure 1: The Hills LEP 2012 Land Zoning Map (LZN_025)

- The development is located within very close proximity of the light rail station and immediately adjoining the existing east-west open space link. To the south east directly across from the public reserve adjoining the site is a significant 21 storey building with an FSR of 3.85:1 including the RE-2 zoned part of the site and 5.17:1 excluding the RE-2 zoned part of the site.



Figure 2: View from Shirley Street towards the east showing subject site interface with public reserve

- To the east of the site, the height limit increases and the land rises. New and consented development east of the subject site and further from the light rail station will be higher than what is proposed on the subject site. In particular, to the west of the site much further from the light rail station than the approved development is the approved development at the Janell Crescent Key Site (refer to the figure below, which shows the consented development, noting that Meriton currently has an application under assessment for a development on the site which varies from what is consented and which seeks increased bulk and scale from what is currently consented). The consented development has an FSR of 2.25:1 including the RE-1 zoned lands within the site and an FSR of 3:1 excluding the RE-1 zoned lands on the site.



Figure 3: Janell Crescent Development photomontage from DA application drawing by Dyldam with subject site also identified

Further sites on the western side of Shirley Street (which are not key sites) have a base FSR standard of 2.3:1, greater than what is permitted on the subject site even though they are further from the light rail station than the subject site. The proposed density sits between the higher FSR standard at the light rail station of 4:1 and the lower FSR of 2.3:1 to

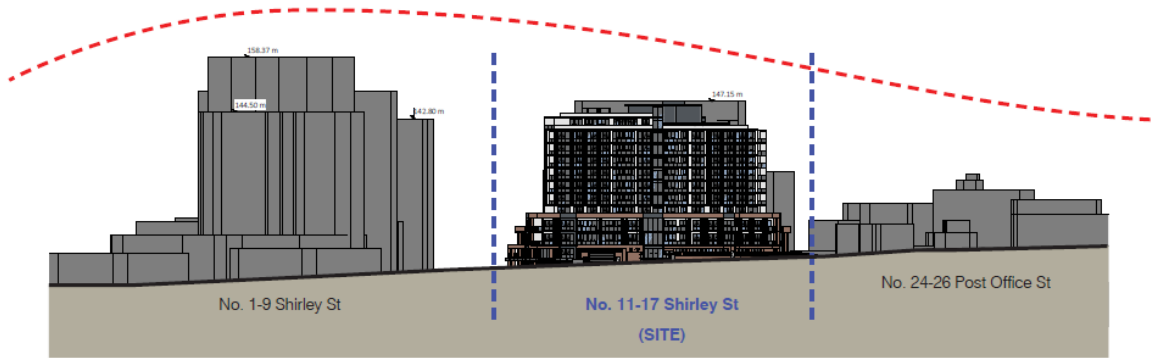
- The site is unique in its immediate setting. The site interfaces with open spaces on two sides.

Across Shirley Street to the east is a future public park. To the south of the site immediately adjoining the site boundary is an existing public reserve which forms part of the planned continuous east-west open space corridor through the precinct. The site is adjoined on the south east by the old railway corridor, part of which is envisaged as an extension of Boundary Road in the Carlingford Precinct Plan. As part of the light rail development a bicycle/shared path has been developed connecting the light rail to Boundary Road (Refer to the Figure below). Still, it forms an access corridor. Refer to the Figure below.



Figure 4: View from southern boundary of site looking towards light rail and 21 storey building (L. Zhang, 2022)

- The sites directly north of the subject site which are further from the light rail station and not on the east-west open space link are more limited in bulk and scale.
- The proposed development achieves compatibility with its multiple interfaces by achieving a transition to the lower bulk and scale areas.
- The proposed built form in its bulk and scale fits within the pattern of buildings considered from both north to south and east to west across the Carlingford Precinct south area (south of Post Office Road). The proposal provides a transition in both the north-south and east-west directions in terms of the bulk and scale of built form. The Urban Design Report by Dickson Rothschild provides a detailed analysis of the contextual fit of the proposal.
- Refer to the figures below.



Section along Shirley Street looking west

Figure 5: Excerpt, Sectional analysis, south to north, Urban Design Report, Dickson Rothschild, pg. 13

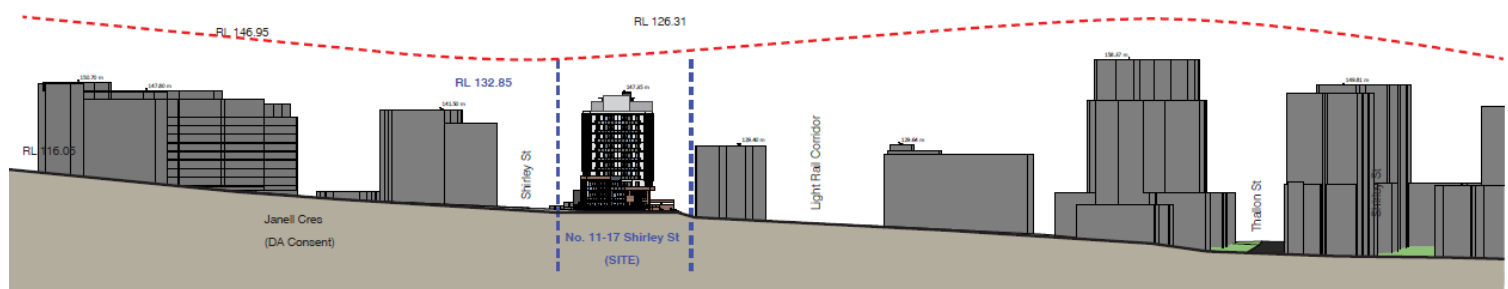


Figure 6: Excerpt, Sectional analysis, east to west, Urban Design Report, Dickson Rothschild, pg. 13

- The site context does not represent a uniform character of built form. Building types range for medium rise to high rise and from 4-21 storeys within the visual catchment of the site. Generally, the precinct is emerging as a high density precinct, but there is a variety of heights, density, built form, and character in the area. The proposal is compatible with this eclectic character and transitional setting. The FSR non-compliance does not result in incompatibility.
- The proposal limits building bulk and floor space close to the northern boundary of the site where the interface is with a lower scale existing building, meeting the objective. The proposed tower is setback from the podium to the northern boundary to provide visual relief to the north and achieve an effective transition to the north, thus achieving compatibility with the streetscape and context.
- The development provides a three to four storey podium which aligns with the street and public open space, creating a streetscape response compatible with the existing four storey buildings to the north and to the south across the public reserve. The proposed tower is setback from the podium to the northern boundary and southern boundary to provide visual relief, limit the impact of bulk and scale and achieve compatibility with the existing Shirley Street streetscape and context.
- The tower is setback above the proposed podium with a curved form, being distinct from the rectilinear, public domain defining podium. The curved tower relates in character to the curved form of the prominent 21 storey tower (1-7 Thallon Street) across the public reserve to the southwest. However, the proposed tower's bulk and scale is significantly less than the 21

storey tower, and the proposed bulk and scale achieves a transition to the buildings on the eastern side of Shirley Street (Janell Crescent, 8-10 Shirley Street and 12 Shirley Street, taking into consideration both approved and under construction buildings). Along the east-west public open space corridor the building maintains a general transition in bulk and scale from the 18-21 storey buildings at its western end and the 9-11 storey buildings at its eastern end, effectively achieving compatibility with the streetscape and context.

- The proposal also has an increased front setback to its southwestern half to protect significant trees which exist on site. The proposed siting of the building which responds to site context and on-site constraints limits the tower footprint, pushing the building up in scale while maintain an overall building bulk compatible with the immediate streetscape context.
- Each façade is well articulated, limiting the impact of bulk and scale.
- The nomination of Key Sites in the centre related to land holdings by the planning proposal component, the strategic location of the site, to the undergrounding of High Voltage Power Lines and providing that corridor as an east-west open space spine which also contributes to a pattern of heights and densities that see key sites peppered along the east-west open space link (the open space link being where the HV Power Lines were previously located). The densities of these sites in relation to the provision of open space informs the density setting of the subject site. 1-7 Thallon Street and 2-14 Thallon Street to the west have FSRs much larger than 4:1 FSR standard if the RE-1 zoned parts of those sites are disregarded. The Janell Crescent Site has an FSR of 3:1 excluding the RE-1 zoned parts of the site, with this site being notably further from the light rail station than the subject site. Refer to the table and figure below:

Site No.	Height	FSR	FSR (excl. open space provision)
No. 1-7 Thallon St [=====]	up to 21st	2.85:1	5.17:1
No. 2-14 Thallon St [=====]	up to 18st (RL 146.95m)	3.86:1	4.44:1
No. 19-21 Thallon St [=====]	9st (30.54m to lift overrun; 29m to roof top)	1.99:1	
No. 16-24 Thallon St [=====]	7-9st (RL120.30 to roof top; RL121.55 to lift overrun)	1.99:1	
No. 8-10 Shirley St [=====]	10st (RL136.75 to roof top; RL137.90 to lift overrun)	2.3:1	
No. 12 Shirley St [=====]	10-11st (RL140.3 to roof top; RL141.42 to lift overrun)	2.3:1	
No. 263 Pennant Hills Rd	9-11st (various RL levels up to RL155.9)	2.26:1	3.0:1



Building height study showing the existing and proposed developments within the area.

Figure 7: FSR analysis plan, Dickson Rothschild, Urban Design Report, pg. 7

The proposed FSR and resulting bulk and scale fits within the context of densities within the precinct particularly since the site has a significant frontage to the east-west open space link. The proposed FSR sits between the much higher FSRs at Thallon Street and the slightly lower FSRs east of Shirley Street.

The site is fully compatible with the pattern of development density proximate to the site.

- The proposed built form responds to the particulars of each of its site interfaces and provides adequate building separation, landscape and open space areas to fit within its immediate built form context.
- Each façade is well articulated, limiting the impact of bulk and scale.
- The proposal is consistent with the desired future character statement for the Carlingford Southern Precinct as set out in the Hills DCP – Part D, Section 12, Clause 3.3. The proposal achieves the desired street-oriented village built form and character, using a podium/tower building typology to achieve a human scale within the streetscape.
- The site's landscape character of the site is not diminished by the floor space and bulk and scale proposed. Sufficient deep soil landscape is provided on site, consistent with DCP standards. On structure planting is proposed to soften built form and enhance the landscape character of the site. The proposed balance of built form and landscape is compatible with the character and site context.

2.1.2. FSR - Objective (b)

(b) to provide for a built form that is compatible with the role of town and major centres.

The development satisfies the objective notwithstanding the non-compliance for the following reasons:

- The role of Carlingford is as a Local Centre under the LSPS, District Plan and Region Plan. The role is as an urban renewal precinct with increased densities within walking distance of the new light rail. The proposal is fully consistent with this role. The site's very close proximity (approximately a 3min walk) to the light rail station and core of Carlingford centre makes it ideal for the built form and density proposed.
- At the time that the planning controls for the site were formulated the state government had not earmarked Carlingford precinct as an urban renewal area. Also, since that time the GPOP has arisen and the subject site is included in this planning area.
- Development of the site to a lower FSR would not represent a full utilisation of the site's potential for delivering housing in an urban renewal precinct with new public transport infrastructure. The site is uniquely positioned adjacent to the rail corridor. An FSR of 1.99:1 would be an underutilisation of a site in an optimal location within a strategic planning area.
- The proposed development achieves a transition in built form between the higher, bulkier buildings to the south and west and the lower, less bulky buildings to the north and east. This is consistent with the general urban design principles set out in the Carlingford Precinct Plan which has two key built form/urban design elements:
 - To transition in built form from the light rail (at the time of the precinct plan being formulated it was a heavy rail) where densities and heights are greatest towards the rail hub and reduced at the precinct periphery, particularly towards the north where densities are lower.
 - To utilise Key Site Controls and increased densities adjoining the RE-2 zoned land along an east-west spine (a corridor that adjoins the subject site's southern boundary).

Therefore, the proposal achieves consistency with the overarching objectives of the master plan for the precinct.

2.2. Sufficient Planning Grounds for Justifying the Non-Compliance (Clause 4.6(3)(b))

The strength of the relevant grounds ought to be a balancing factor when assessing the reasonableness of the variation to a standard. This is because the word "sufficient" is included in clause 4.6(3)(b). Environmental planning grounds will be "sufficient" having regard to the circumstances of each case such that matters will have different weight in different circumstances.

A large breach with many impacts must have weighty and strong environmental planning grounds. A relatively minor breach without real amenity impacts, such as that proposed in this application, will require a different weighing of factors and therefore a different approach to what may constitute that which is "sufficient" (see Initial Action at paragraphs 23 and 24).

There are sufficient environmental planning grounds to justify contravening the development standard due to the following:

- The breach of the FSR control promotes the orderly and economic development of the land (object (c) of the *Environmental Planning and Assessment Act 1979*). The additional floor space

allows for an infill development in a precinct that is an urban renewal area with high public transport accessibility and which responds to the site's unique transitional location between the key sites to the south, south west and west and the lower scale development to the north, north east and east.

- The proposed development meets the objectives of Clause 4.4 and the objectives of the R4 High Density Residential Zone.
- The strategic location of the site very near the light rail station (a 3 min walk) means that the site is highly suited to a development with a density and scale consistent with the principles of Transit Orientated Development (TOD). The additional floor space allows for a density on the site which is suitable for the site because of its close proximity to public transport and its location within the core of an identified Urban Renewal precinct as set out in the Region Plan and District Plans. This reduces demand for development of more sensitive land such as land at the urban fringe, and it serves to better satisfy object (a) (b) and (c) of the *Environmental Planning and Assessment Act 1979*.
- The additional density proposed also increases housing and activity on a site immediately adjacent to a large open space corridor. Co-locating higher densities and open spaces achieves a more sustainable urban structure.
- The proposed development achieves increased densities while maintaining high quality open spaces on the site and minimising adverse impacts on surrounding sites.
- The additional floor space is achieved without adversely impacting surrounding sites and ensuring that the subject site and surrounding sites maintain reasonable privacy and solar access.
- The proposed density on the site can be achieved without give rise to adverse impacts on the function of key infrastructure, namely the local road network. The report by TTPP has analysed the proposed development in its existing and future context and determined that the proposed development density and intensity shall not reduce the level of service of key road intersections and that the proposal can be absorbed into the local system. This takes into account future developments in the area to determine a reasonable future scenario with increased traffic on the roads.
- The proposed FSR breach gives rise to a building which better meets the objectives of the zone than a building which complied with the standard. In particular, this is maximising housing in close proximity of the light rail, providing non-residential floor space which addresses the public domain to meet the day to day needs of the community and providing conveniently located parking for non-residential uses.
- The non-compliance maintains a suitable transition in bulk and scale from the south to the north and from west to east.
- The proposal is considered orderly and economic development of the land and there is a public benefit in developing the site to its capacity including the provision of retail space and residential housing while maintaining a high quality streetscape.

3. The Public Interest

The site is zoned R4 – High Density Residential Zone. The zone objectives are:

- *To provide for the housing needs of the community within a high density residential environment.*
- *To provide a variety of housing types within a high density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage high density residential development in locations that are close to population centres and public transport routes.*

The proposal is consistent with the objectives for development within the zone as explained below.

3.1.1. Zone Objective 1

- *To provide for the housing needs of the community within a high density residential environment.*

The proposed development satisfies Objective 1 of the zone despite the LEP non-compliance for the following reasons:

- The proposed development provides high amenity, high density development within almost immediate proximity of public transport.
- The proposal's additional floor space locates additional housing on a site optimally located for increased densities within the core of an urban renewal precinct that has strategic importance within the LSPS, District Plan and Region Plan.
- The proposed development provides a mix of housing that responds to demand and considers the unit sizes delivered in other nearby buildings. In this regard, the proposal provides a mix of 1, 2, 3 and 4 bedroom units.
- Adaptable housing and liveable housing (to a silver level of service) is provided.
- Residential car parking which meets the RMS's sub-regional rates is provided on site.
- The increased floor space allows for additional dwellings to be located on a site with excellent access not only to public transport, but goods and services and immediate access to public open space.

3.1.2. Zone Objective 2

- *To provide a variety of housing types within a high density residential environment.*

The proposed development satisfies Objective 2 of the zone despite the LEP non-compliance for the following reasons:

- The site is only a short walk to the light rail station. It is also immediately adjoining the east-west open space link and the key sites at the light rail station and to the west of the light rail station. It is optimally located for high density development, of which the proposed FSR non-compliance is integral to delivering.
- The proposal has a density which is compatible with the adjoining sites, representing a

transition from the 4:1 FSR area to the south, southwest and west and the 1.99:1 FSR area to the north, the 2.3:1 FSR area to the north east and east and the Janell Crescent site to the east which has an FSR of 3:1. The proposed FSR contributes to the variety of housing and density while achieving compatibility with its context.

- Adaptable housing and liveable housing (to a silver level of service) is provided.
- The proposal provides 1, 2, 3 and 4 bedroom units, adding to the diversity of dwelling types in Carlingford, noting many recent developments have delivered smaller sized units. The proposed density adds to the diversity of housing types and densities in the area.

3.1.3. Zone Objective 3

- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed development satisfies Objective 3 of the zone despite the LEP non-compliance for the following reasons:

- The site is in very close proximity to the light rail station. It also has a long frontage to the east-west public open space network that forms a spine within the precinct, making it ideal for mixed use development that activates the park and provides non-residential space that caters to meeting the day-to-day needs of the local residents. The proposed childcare centre will enhance amenity and convenience for local residents living in the immediate vicinity of the site. The additional floor space provides a reasonable balance of residential and non-residential floor space that is capable of being supported on the site.
- The proposed non-residential space is optimally located with good visibility from Shirley Street and the Public Open Space.
- The proposed development provides employment generating space within a short walking distance of the light rail station and bus stops.
- The proposed non-residential floor space is flexible and use can change over time to meet demand.
- The proposed non-residential floor space addresses the street and the public domain, providing a level of activation compatible with site context. This is a significant improvement to the key sites along the corridor which while in some cases providing non-residential floor space achieve quite limited public domain activation. The proposed development achieves a superior outcome in comparison to these other sites.
- The proposed development is located in a walkable location with the non-residential floor space being easily accessible without the use of a private motor vehicle, close to public transport and within easy walking distance of numerous apartments. The quantum of non-residential floor space is in keeping with its character to cater to the immediate population of a size to accommodate a reasonable and manageable number of children.
- The proposed development provides secure bicycle parking to encourage cycling.

3.1.4. Zone Objective 4

- *To encourage high density residential development in locations that are close to population centres and public transport routes.*

The proposed development satisfies Objective 4 of the zone despite the LEP non-compliance for the following reasons:

- As described above the site is one of only a handful of site close to the new light rail that is ready for redevelopment. The proposed height non-compliance allows for a density of development that adequately responds to its strategic location while at the same time protecting the amenity of surrounding sites and public open spaces. The proposed building density is commensurate with the site's location close to public transport routes. A lower building would result in a lower density and an underutilisation of the site.
- The proposal has responded to the particulars of the site and its context, where site setbacks are much greater in some areas than required by the DCP and ADG. The subject site is capable of supporting the proposed increase in density while achieving good amenity and not giving rise to unacceptable adverse impacts on surrounding land. The proposal provides sufficient parking on site while not changing the level of service of the local road network and key intersections.
- The additional floor space proposed on the site does not give rise to unreasonable adverse amenity impacts in regard to visual, privacy and overshadowing, and the amenity of the nearby residential areas is protected.

All in all, the proposed development meets each of the objectives of the R4 zone. The FSR non-compliance contributes to the satisfying the objectives.

4. Clause 4.6(4)(b) and (5) Concurrence of the Planning Secretary

We have assumed that the consent authority has delegated authority from the Secretary to concur to this request, but will defer to the consent authority (The Sydney District Planning Panel) regarding whether concurrence of the Secretary is necessary in this case, given the extent of non-compliance.

5. Conclusion

The proposed variation from the LEP FSR of 1.99:1 m is justified as the proposed development meets the objectives of the FSR control in Clause 4.4 and the requirements of Clause 4.6. Further, the proposed development meets the objectives of the zone notwithstanding the non-compliance.

The FSR exceedance is directly related to the following factors and site constraints:

- site's close proximity to the new light rail station;
- site's proximity of the site to sites afforded greater density than what is set out for the subject site even though those sites are further from the light rail station;
- The subject site sitting between two high FSR zones east and west of the site;
- site's significant frontage to public open space;

- provision of additional floor space commensurate with the site's particular level of public transport accessibility and access to public open space;
- provision of a highly articulated built form and a bulk and scale compatible with the site's transitional location and allowing for high levels of amenity for the proposed apartments even with the FSR exceedance arising;
- achievement of a built form that is fully compatible with its particular context being in a transitional location within the southern precinct of Carlingford; and
- provision of non-residential floor space well located with high visibility and activation of the public domain.

With multiple site-specific reasons, the FSR non-compliance is reasonable in this case.

The exceedance results in a building that is fully compatible with the site's built form context while delivering housing and supporting non-residential floor space commensurate with the sites' strategic location within the Carlingford Precinct.

For these reasons, the proposed non-compliance accords with well-considered development overcoming the unique constraints of the site and relating the development to its immediate site context. The variation does not result in any unacceptable level of environmental impact; rather the variation is preferable to a development which was to fully comply with the LEP FSR limit.

The consent authority should be satisfied that the request is justified.

**ATTACHMENT C - Design Excellence Advisory Panel
Recommendations 24 November 2022**

DESIGN EXCELLENCE ADVISORY PANEL RECOMMENDATIONS

City of Parramatta



Address 11-17 Shirley St CARLINGFORD
Date 24th November 2022

Application Summary

Application Number	DA/843/2022
Assessing Officer	Denise Fernandez
Applicant/Proponent	Nigel Dickson – Dickson Rothschild
Architect and Registration Number	Roger Nigel Dickson - #5364
Urban Designer	
Landscape Architect	
Planner	
Others	Liz Zhang (Dickson Rothschild), Alan Vidler (Dickson Rothschild), Hannah Phan (Dickson Rothschild), Fady (Client?)

DEAP Members	Jon Johannsen, David Logan, Oi Choong
Chair	Jon Johannsen
Other Persons in attendance	Denise Fernandez (Parramatta Council), Sara Smith (Parramatta Council), Caitlin Summers (Parramatta Council)
Apologies	
Item No	2 of 2
DEAP Meeting Number	1 st Referral at DA

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 of the principles under SEPP 65 does not necessarily imply that the Panel considers the particular matter has been satisfactorily resolved.

Proposal

The proposal consists of:

- Construction of a 12 storey mixed use development containing 87 residential units and a future 76 place childcare centre.
- 3 levels of basement parking for 138 car spaces
- The residential unit mix comprises of 2 x 1 bedroom units, 41 x 2 bedroom units, 43 x 3 bedroom units and 1 x 4 bedroom unit.
- The future child care centre comprises a floor area of 551m².
- Communal open space is provided on the ground floor, Level 10 and roof top with a total area of 787m².
- Perimeter landscaping

Panel Comments

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

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

Overview

The Panel noted the detailed site analysis provided for this DA in this evolving higher density precinct, in a location well-serviced by public transport being within 200m of the imminent light rail station and nearby bus stops, close to schools and retail, and an apparent legacy of open space in the vicinity.

The Applicant referenced the previous DA 2013 with modifications under The Hills Shire Council that was refused (subsequently appealed and approved in the LEC), and the view that current controls under THLEP 2012 are relevant but dated. Analysis by the Applicant showed heights within the area are varied, from 57m height limit near light rail station down to 33m for sites to the east while the DA proposal site has a height limit of 27m.

On the premise that the area is moving towards larger footprint buildings and the context is changing from low-scale to high-scale buildings, the Applicant has proposed that the site in this location should make an 'entry' statement for the light rail precinct and thereby justify greater height and density. The Panel does not support this view and given the significant departures from current planning controls and Parramatta Council's Local Strategic Planning Statement and local Housing Strategy, a Pre-DA process would have been beneficial to review options for appropriate built form given what had been previously approved and what was now envisaged.

The DA scheme must be assessed against the current planning controls and design excellence provisions under the ADG, not what has been proposed or approved in the area. The Panel makes the following assessment and recommendations that must be addressed in a revised proposal:

1. Context and Neighbourhood Character

This site offers much potential in its proximity to transport and services, and relationship to the adjacent open spaces, and the current DA proposal does not respond to these opportunities due to:

- How the building relates to the surrounding open space, views and amenity,
- Most of the perimeter podium apartments and the childcare centre are elevated above the existing ground line limiting scope for street activation, and complementary interfaces with adjacent sites,
- Concerns with integration of the childcare centre, operational planning and relationship to adjacent units with possible amenity conflicts,
- Limited opportunities for landscape integration with adjacent landscape settings and open spaces
- Limited and poorly defined access to the public reserve adjacent and nearby site for a light rail station.

Recommendation

As the DA application is intending through a VPA to make open space improvements to the area between the subject site and the light rail station, there must be improved ground plane and streetscape resolution to benefit the public domain in this emerging precinct through:

- A podium that better relates to the site context and levels,
- Built form that resolves impacts from overshadowing of public spaces, streets, footpaths and amenity of adjoining development,
- Reconfiguration of garbage and driveway facilities along the street frontage to minimise footpath crossings,
- Ground floor apartments with individual entries from the street to improve activation (alluded to by the applicant but not shown on the drawings.)
- Landscaping improvements that can utilise increased deep soil provisions and provide more generous tree canopy.

2. **Scale and Built Form**

The Applicant indicated that their DA proposal for a consolidated podium and single tower was to optimise solar access to eastern and western sides and to resolve perceived downsides to the originally approved DA with two towers on a discontinuous podium.

The Panel noted that based on this design many of the planning controls and standards are not achieved with building footprint coverage, height and FSR all exceeded. Compliance with the relevant and current planning controls is considered critical given the precedent that could be set by this development, and the following issues are also of concern:

- While the podium as a base can be supported in terms of bringing down the scale, this proposal with minimal street setback to the podium creates an excessive massing and scale.
- The built form would be more appropriate for a town centre or denser urban setting, does not provide sufficient articulation and is not consistent with nearby apartment buildings and the extent of greenery around them.
- The podium façade to Shirley Street is impacted by the entry to the childcare centre, the substation, carpark driveway, waste collection dock, building services and the elevated building entry.
- A lack of perimeter cross sections makes it difficult to assess level changes and impacts to the surrounding context from unit layouts and retaining walls.
- Lower levels in the podium have 10-12 units per floor resulting in long access corridors to units, and typical floors in the tower are 8 units with south facing units having long convoluted internal circulation via kitchens to reach living areas.
- Concentration of multiple entry doors at the ends of corridors further diminishes the quality of the common access space and residential amenity.
- Some units having poor layout configuration with dining tables within circulation areas and inset balconies creating awkward access and use.
- While understood as a viable part of the proposal, planning of the Childcare facility is lacking sufficient detail to fully review how it will interface with the units above and surrounding open spaces.
- The entry is directly adjacent the substation, and this would be better located away from childcare centre area to also provide more space for pram parking and social interaction around the reception lobby.
- Some of the above issues and those raised in following points may be resolved if the development reverted to a two tower form, as per the originally approved DA.

3. **Density**

With the density of this development, a better mix of different size units should be considered for a broader cross-section of community. As the building doesn't have an affordable housing component, increasing the number of 1 bedroom units could make them more accessible to first home unit buyers who can't afford a larger unit.

4. **Sustainability**

Increasing impacts from climate change and energy costs requires greater consideration of ESD provisions and building electrification to remove gas appliances. The Panel recommends the following issues are addressed:

- The western façade has a lot of glazing and amenity to living rooms and bedrooms is a real issue as they will be significantly impacted by solar/heat load in summer unless they are screened or have effective louvres or shading devices for sun control.
- Cross ventilation to units is not clearly explained, and ceiling fans should be shown for bedroom and living areas to assist natural air flow.
- P/V solar panels on roof should be provided to power communal spaces and could be incorporated into a pergola system on the roof terrace.
- Allow for rainwater capture to supply irrigation to landscaped areas.
- Provide 100% EV charging in the basement.

5. **Landscape**

A comprehensive set of landscape plans has been prepared. However, taking into consideration the unique location, Carlingford's agricultural history and the verdant setting of the adjacent developments, the site offers extensive landscape opportunities which have not been realised in this scheme. Instead of actively engaging with the building, the landscaping appears to be relegated to 'left over' spaces around the perimeter. The opportunity to create a landscaped podium and 'green façade' more in character with the precinct has been missed.

Direct ground floor access to communal open spaces is compromised by level changes. There is also limited deep soil for larger canopy trees due to the extent of the basement. The roof gardens are relatively generous in size, but the geometric designs appear to be influenced by 'pattern making', thereby reducing the amenity of the residents.

As mentioned in Items 1 and 2, the limited relationship with the adjacent public open space corridor has also compromised opportunities to enhance access, amenity and environmental benefits for the scheme.

The Panel recommends the following in relation to the landscape:

- a) Engage with the architect to:
 - i) successfully integrate landscaping and built form across the site
 - ii) improve access, amenity and the relationship with the adjacent public open space
 - iii) improve on-grade access to landscaped outdoor terraces and the ground plane where possible
 - iv) create a landscaped podium and 'green façade' more in character with the precinct
 - v) reconfigure the basement to improve the quantum of deep soil and increase tree canopy
 - vi) re-dress the streetscape and entry experiences to reduce the impact of levels, services (substation) and paving, including

enhancing the access to the Child Care centre as a short term gathering space for parents

- b) Enhance the design of the roof gardens to improve the amenity for a range of age groups and uses - such as places for meeting and engaging, BBQ and protected seating areas, informal play facilities for young children (not necessarily play equipment), communal planter boxes, exercise platforms etc. Consider also wind and sun protection.
- c) The podium roof incorporates wide terraces with pebble ballast finishes. The roof should be landscaped to improve the outlook from the adjacent units and above.
- d) Provide more detail cross sections, levels and retaining wall heights on landscape plans to show how the site terracing is resolved.

6. **Amenity**

Access to the future light rail is proposed from the lobby, through the outdoor common open space and then out to the reserve at the western boundary, but without equitable access and a clearly legible path to encourage resident use.

Interior apartment amenity:

- Corridors are longer than expected under ADG guidelines.
- Units on the south end of typical floors have convoluted internal access with 'bowling alley' corridors.
- Potential conflicts with so many unit entry doors so close to one another.

7. **Safety**

The extent of vehicle and waste collection crossover to the footpath diminishes the pedestrian amenity and safety, and a revised layout is needed.

Consideration of the Childcare Centre requirements to avoid privacy issues from units above.

8. **Housing Diversity and Social Interaction**

Main entrance off the street is generous but should include bump space for social interaction of residents, and with consideration of mail/parcel boxes and such services integrated into lobby entry.

With limited common open space at ground level there needs to be greater allowance for the roof level terrace to cater to mixed groups.




9. **Aesthetics**

As noted above the desired future character for this proposal should not be based on previous DA approvals and aim to set a higher standard as a precedent for new developments in this precinct.

Building services (e.g., downpipes, a/c condensers) must be shown to ensure aesthetics are not impacted, and detailed cross sections of façade at 1:20 should be provided.

- 10 The Panel is of the opinion the development has not achieved design excellence on a number of key criteria and should be re-designed to meet relevant planning controls, attain better designed apartments, improve on the amenity of the future residents and integrate more sympathetically with the surrounding context and precinct.

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 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 in its current form with caveats that require further consideration.</p> <p>The Panel advises that this is a reasonably well considered and presented scheme and that the architectural, urban design and landscape quality are of a reasonable standard.</p>	<p>Once the applicant and design team have addressed the issues outlined, the panel looks forward to reviewing the next iteration</p>
<p>Red</p> 	<p>The Parramatta Design Excellence Advisory Panel (The Panel) does not support the proposal in its current form. The Panel advises that there are a number of significant issues with the proposal.</p>	<p>The Panel recommends that the applicant/proponent contact the Council to discuss.</p>