

Report to Sydney Central City Planning Panel

Panel Reference	PPSSCC-402
DA Number	DA/845/2022
LGA	City of Parramatta Council
Proposed Development	Demolition of existing buildings, tree removal and construction of a 12 storey mixed use building comprising retail and restaurant on the ground floor, 91 apartments above and 4 levels of basement parking for 134 vehicles. The proposal is a Nominated Integrated development pursuant to the Water Management Act 2000. The application will be determined by the Sydney Central City Planning Panel.
Street Address	9-11 Thallon Street, CARLINGFORD NSW 2118 CP, 1, 2, 3, 4, 5, 6, 7, 8 and 9 of SP 37411
Applicant Owners	D.R Design (NSW) Pty Ltd The Owners Strata Plan No. 37411, E W Chong, H Zhao, K Y Mak, W P Kam, R C Wong, S S Wong, H H Bagheri, A Farvili, P A Clydesdale, W N H Cheng, Y Zheng, X Yue and J Wang
Date of Lodgement	28 October 2022
Number of Submissions	6 submissions (6 x households)
Regional Development Criteria	General Development >\$30 million
List of All Relevant s4.15 Matters	<ul style="list-style-type: none"> 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 (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	Attachment 1 – External Plans Attachment 2 – Internal Floor Plans Attachment 3 – Clause 4.6 Variation Request – HOB Attachment 4 – Clause 4.6 Variation Request – FSR
Clause 4.6 Requests	Parramatta (Former The Hills) Local Environmental Plan 2012 <ul style="list-style-type: none"> Clause 4.3 – Height of Buildings Clause 4.4 – Floor Space Ratio
Recommendation	Refusal
Report by	Paul Sartor, Senior Development Assessment Officer

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? **No**

Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No**

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

1. Executive Summary

This report considers a proposal for the development of land at 9-11 Thallon St, Carlingford, for the demolition of existing buildings, tree removal and construction of a 12-storey mixed use building comprising retail and restaurant on the ground floor, 91 apartments above and 4 levels of basement parking for 134 vehicles. The application has also been submitted with a letter of offer to enter into a VPA with Council for a monetary value in excess of the 7.12 contribution fees.

The proposal has been submitted with two clause 4.6 requests for variations to both height and FSR for the site beyond the mapped controls in the Parramatta (former The Hills) LEP 2012 (PFTHLEP 2012). The variation to clause 4.3 for building height is up to 12.7m or a 45.6% exceedance to the mapped maximum height of 28m under PFTHLEP 2012. The FSR variation proposed is for 52% to the 1.99:1 FSR (an additional 3318sq.m which equates to a FSR of 3:03:1).

These variations are considered to be excessive and contrary to the local strategic documents guiding the redevelopment of the Carlingford Precinct. These reasons are explored further below in the assessment.

Futhermore, the assessment has found a number of non-compliances with the relevant environmental planning instruments, a number of which are due to the excessive FSR and height proposed. This includes non compliant setbacks with the Hills DCP and ADG non compliances among other issues. It is also noted that general terms of approval have not been granted by Water NSW,

Subsequently, the application is recommended for refusal for the reasons outlined in the recommendation section of this report.

2. Key Issues

SEPP65 & Apartment Design Guide

- **Design Principles** - Most of the design principles are not met.
- **3B-2 Overshadowing** - The proposal does not demonstrate the impacts that the extra height and FSR may have on the adjoining 2 Thallon St and 1 Thallon St between 9am and 1pm of the winter's solstice.
- **3E: Deep Soil** – The proposed basement extends beyond the building footprint reducing deep soil opportunities.
- **4A Daylight and Solar Access** - Max 15% apartments receiving no direct sunlight 9am & 3pm mid-winter (<14) this is not demonstrated

SEPP BASIX 2004

- The submitted plans do not demonstrate that the proposed development complies with the commitments in the BASIX certificate.

Parramatta (Former The Hills) Local Environmental Plan 2012

- **R4 High Density Residential Zone Objectives** – inconsistent with the zoning objectives.
- **4.3 Height of Buildings** - Relies on Clause 4.6 variation of 12.7m or 45.6%
- **4.4 Floor Space Ratio** – Relies on Clause 4.6 variation of 3318 or 52%
- **4.6 Exception to Development Standards** – Clause 4.6 variations not supported.

The Hills Development Control Plan 2012

Part D Section 12 – Carlingford Precinct

- **Desired Future Character and Structure Plan** – Inconsistency with Part D Section 12 Carlingford Precinct
- **4.1 Floor Space Ratio** – Does not comply with the objectives or mapped FSR controls
- **4.2 Building Height** - Does not comply with the objectives or mapped height controls
- **4.7 Setbacks** – Proposal has reduced setback to the Thallon St reserve. 3m proposed when 4.5m-6m is required.
- **4.13 Solar Access** – Proposal does not demonstrate that adjoining residential buildings and the major part of their landscape at 2 Thallon and 1 Thallon St receive at least 4 hours of sunlight between 9am and 3pm on 21 June
- **4.19 Stormwater Management** – Councils Engineers have concerns with regards to the WSUD chamber and overall OSD layout
- **4.29 Facades** - The proposed façade does not define a base, middle and top related to the overall proportion of the building, especially due to the variations proposed.
- **4.33 Ecologically Sustainable Development and 4.34 BASIX** - The submitted plans do not demonstrate the proposed development complies with the ESD requirements and BASIX commitments
- **4.35 Access, Safety and Security** – The proposal does not comply with AS 1428.2 as there is no clear intuitive path of travel from the ground floor accessible carparking space to the restaurant /retail areas and there is no accessible path of travel from the ground floor lifts to the garbage room.
- **4.32 Site Facilities** – Unclear waste management that does not comply with Council specifications for waste collection.

Part C Section 1 – Parking

- The proposal does not comply with the required restaurant parking rates. 33 spaces are required and 6 are provided, this is a shortfall of 27 spaces.
- The proposal also does not provide the required two loading dock spaces

3. Site location, description, and related applications

3.1 Site Location and description

The land subject to this application (9-11 Thallon St, Carlingford, SP37411) is irregular in shape and has an area of 3173sq.m, it currently contains a circa 1980's double storey terrace townhome development which is strata titled, the site is well vegetated at the front and rear with a number of mature trees.

The area surrounding this site is undergoing an urban transformation as per the Hills Shire Councils LEP controls and Carlingford Precinct DCP and has a mixture of existing low density residential development and new RFB and mixed-use buildings. This planning framework was largely based on the new light rail stop located at the end of the street. The site immediately adjoins the Thallon St Reserve to the west and a mix of new apartment buildings to the east and west and established walk up residential flat buildings at 13-17 Thallon St to the north. Beyond this to the south are two DCP identified key sites with apartment buildings up to 21 storeys at 5 Thallon St. and 2-14 Thallon St.

The Carlingford Light Rail station is located at the end of the street, this is due to open in 2024.

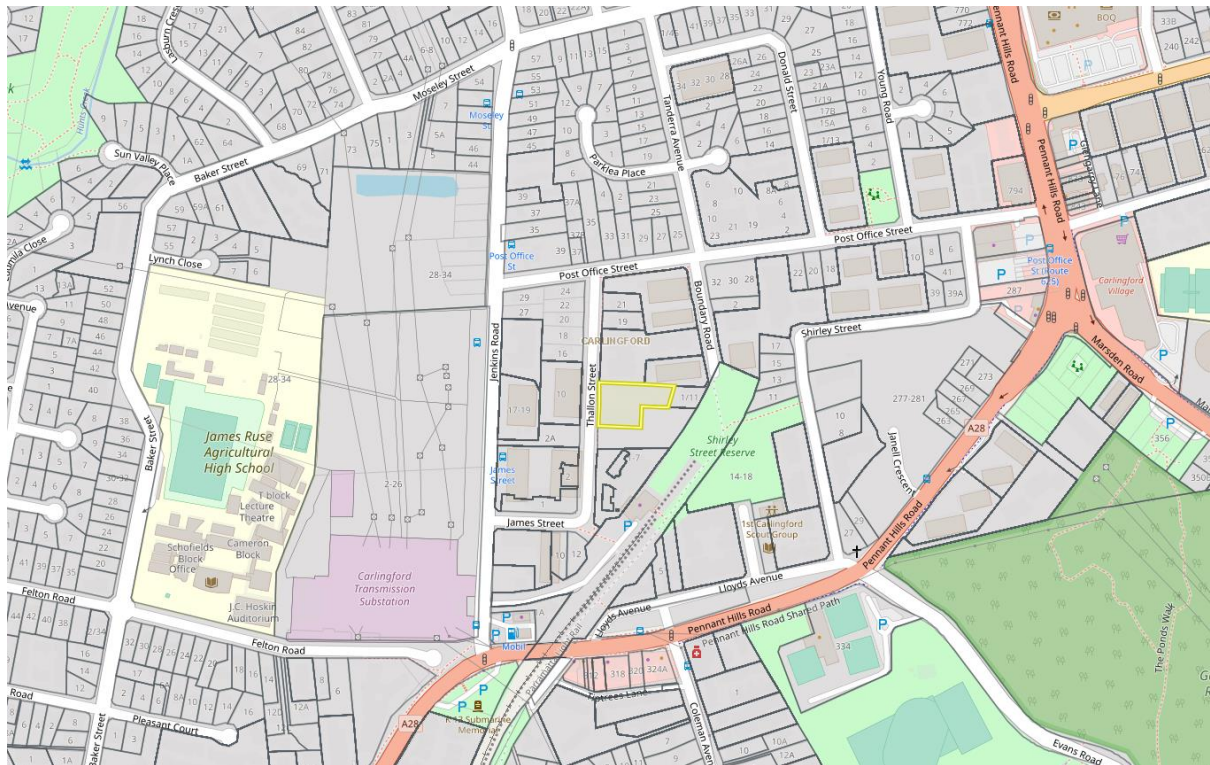


Figure 1 - Site location map, subject site in yellow



Figure 2 - Aerial map, subject site in yellow



Figure 3 - Subject site when viewed from Thallon St



Figure 4 - Subject site when looking from Thallon St along reserve



Figure 5 - Subject site looking from Thallon St

The site is approximately 150m from the Carlingford Light Rail station

No development applications have been lodged for this site previously, a pre planning proposal discussion for the increase in height and FSR was held early last year, which was not supported.

4. The Proposal

The proposal seeks approval for the demolition of the existing structures and removal of fifty trees on the site and construction of a 12-storey mixed use development. The proposal has the following key characteristics and benefits:

- 91 residential apartments, consisting of 43 two-bedroom units, 37 three-bedroom units and 11 four-bedroom units
- A small retail tenancy at ground level facing Thallon Street and the Public Open Space (green link) to the south
- A food and drink premises (restaurant) at ground level adjoining the Public Open Space green link to the south
- Two full levels and two half levels of basement car parking for residents and visitors designed in accordance with the relevant guidelines.
- A communal open space at the rear of the site with a pool and other amenities
- A landscaped rooftop communal open space at Level 12

The proposal is accompanied by a Voluntary Planning Agreement offer as set out under Cl. 7.4 of the EP&A Act 1979. The offer is for a monetary contribution in addition to the standard Section 7.11 of the Act Contributions.



Figure 6 - Proposed 3D photomontage from Thallon St



Figure 7 - Proposed facade view



Figure 8 - Proposed northern facade

4.1 Application Assessment History

The applicant has advised that a pre-lodgement meeting was held with Council's strategic planners on 10 March 2022 for a planning proposal for an 18-storey mixed use development with a FSR of 5.3:1. Council provided advice that it could not support a departure to the height and FSR under PFTHLEP 2012. Council also advised that a development departure would be inconsistent with Council's Local Strategic Planning Statement and Local Housing Strategy.

The current development 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 was sent on 11 January 2023,

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 should this not be forthcoming, the Panel will determine the development as submitted at or prior to 250 days.

At the time of writing this report Council has not received a response from the applicant. A deemed refusal was lodged with the LEC on the 27th April 2023.

5. Referrals

The following referrals were undertaken during the assessment process:

5.1 Design Excellence Advisory Panel

Council's Design Excellence Advisory Panel (DEAP) considered the application at a meeting on 8 December 2022. While no changes have been made by the applicant following the meeting, the following table summarises the DEAPs key concerns under the nine SEPP65 design principles. These are: Context and Neighbourhood Character, Scale and Built Form, Density, Sustainability, Landscape, Amenity, Safety, Housing Diversity and Social Interaction, and Aesthetics.

DEAP Comments	Council Response
<p>Context and Neighbourhood Character</p> <p>With proximity to transport and services, and relationship to the adjacent open spaces, the site has great potential, However, the current DA proposal does not respond to these opportunities including :</p> <ul style="list-style-type: none"> ○ How the building relates to the perimeter edges and open spaces, with issues for cross views and amenity due to overshadowing, ○ Most of the podium apartments and the ground level commercial space provide limited scope for street activation, and have poor interfaces with adjacent sites, ○ Concerns with integration of the proposed retail and likely amenity conflicts along southern edge of the site facing the green spine, ○ Limited opportunities for landscape integration with adjacent landscape settings and open spaces, ○ Poorly resolved access to the public reserve adjacent. <p>Recommendation</p> <p>There must be an improved ground plane configuration and streetscape resolution to benefit the public domain in this emerging precinct through:</p> <ul style="list-style-type: none"> ○ A podium that does not include commercial space and can better capitalise on the site context and levels relative to public domain, ○ Subject to resolution of the ground floor layout, inclusion of a small café on the corner of Thallon Street 	<p>Council officers support the DEAPs view that a more activated mixed use street frontage be provided to both Thallon St Reserve and Thallon St, while protecting the mature trees along Thallon St. Whilst compliant uses, the placement of retail and restaurant should be considered in the context of activating all public spaces.</p>

<p>adjacent the park could be supported,</p> <ul style="list-style-type: none"> ○ Built form that resolves impacts from overshadowing of public spaces, streets, footpaths and amenity of adjoining development, ○ Reconfiguration of front setback to minimise the impacts of services along the street frontage (including driveway, garbage and service facilities) to improve street character, ○ Ground floor apartments with individual street entries to improve activation and unit amenity, ○ Landscaping improvements that can integrate deep soil provisions with more generous tree canopy and relationship to public open spaces. 	
<p>Scale and Built Form</p> <p>The Applicant indicated that their DA proposal for an expressed tower envelope above the podium was to optimise solar access to units and to allow compact floor plans while following a pattern along Thallon Street of minimal setbacks for towers above a podium.</p> <p>The Panel noted that this design contravened many of the planning controls and standards related to building footprint coverage, height and FSR. Compliance with the relevant current planning controls is considered critical given the precedent that would be set by this development. The following issues are also of concern:</p> <ul style="list-style-type: none"> ○ The overall built form has a minimal setback from the podium to the tower that creates an excessive massing and scale along the street, ○ Building form does not provide sufficient articulation and limits scope for generous perimeter landscaping and urban tree canopy, ○ The podium façade to Thallon Street (incorrectly noted on plans as Bligh Street) is impacted by the entry to the basement carpark, substation, waste collection bay, building services and the compressed building entry, ○ A lack of perimeter cross sections makes it difficult to assess level 	<p>Council supports the DEAP view that the proposal should be compliant with the planning controls for height and FSR. Any amendment to the setbacks for the increase in bulk and scale of the tower would set a negative precedence for Carlingford and impact the overall planning for the Carlingford precinct.</p>

<p>changes and unit layouts relative to the surrounding context,</p> <ul style="list-style-type: none"> ○ Southern units having long convoluted internal circulation via kitchens to reach living areas, and many units have bedroom doors opening directly off living areas and kitchens, ○ A deep slot for natural light and ventilation to lift lobbies of typical floors will present as a deep, dark canyon that is always in shade, ○ Some units having poor layout configuration with circulation areas through kitchens, and primary balconies off bedrooms creating possible conflicts for amenity and use. <p>Recommendation</p> <p>Redesign of the podium and tower above would help address many of these issues while enabling a DA that is compliant with the planning controls and better able to achieve the expected design excellence.</p> <p>A reworking of upper floor plans may enable the ground floor lobby opening to be repeated above with improved natural light and cross ventilation.</p>	
<p>Density</p> <p>The density proposed in this development results from an FSR expectation that exceeds that permissible GFA by over 50%. However, density compliance would enable a more slender tower form to be achieved.</p> <p>A better mix of different size units should be considered to enable a broader cross-section of community to have market access. As the building doesn't have an affordable housing component, providing some 1-bedroom units could make them more accessible to first home unit buyers who can't afford a larger unit.</p>	<p>Council agrees that an improved unit mix is required to allow a greater cross section of the community to access the apartments in Carlingford inline with the apartment mix controls within the ADG</p>
<p>Sustainability</p> <p>Increasing impacts from climate change and energy costs requires greater consideration of ESD provisions and full building electrification to remove gas appliances. The Panel recommends the following issues are addressed:</p>	<p>The recommendation is supported, the proposal is being reviewed by Councils ESD advisor and issues remain outstanding for compliance with SEPP (BASIX) 2004.</p>

<ul style="list-style-type: none"> ○ The northern and western façades have extensive glazing to living rooms and bedrooms that will be significantly impacted by solar/heat load in summer; this glazing must be screened with effective louvres or shading devices for sun control, ○ Cross ventilation to units is not clearly explained, and appears to rely on some bedroom awning windows that have limited openings, ○ Ceiling fans should be shown for bedroom and living areas as a lower energy option to assist natural air flow, ○ P/V solar panels on roof are shown, and should be augmented for power to communal spaces, and incorporated into pergolas on the roof terrace. ○ Allow for rainwater capture to supply irrigation to landscaped areas. ○ Indicate EV charging points in the basement carpark. 	
<p>Landscape</p> <p>The Panel recommends a re- consideration of the landscape approach in order to capitalise on the park setting and the site's pivotal location on Thallon Street.</p> <ul style="list-style-type: none"> ○ The landscape design should not only enhance the building setting but respond to the site's unique location, Carlingford's agricultural history and proximity to a heritage listed item, the Carlingford Stock Feeds on 1 Thallon Street. ○ The landscape design should be re-imagined as a beautiful setting for a 'building in a park' - actively engaging with the adjacent park in relation to levels and amenities, and using the ' borrowed' landscape to enhance visual continuity, outlook and environmental links. ○ Careful consideration should be given to the design of more sympathetic perimeter fencing. Hedges with open railings rather than solid fences are preferred in this instance. 	<p>Council supports the DEAPs recommendations that greater interaction between the park and the subject site and restaurant should be provided.</p>

<ul style="list-style-type: none"> ○ As highlighted in the above built form comments, the opportunities for more planted balconies, climbers and planters around the podium should be explored. ○ The retention of the trees at entry forecourt is supported. The amenity and landscape character of the forecourt could be substantially improved by introducing additional planting (shrubs and additional trees) and seating areas around the trees, creating a green 'oasis ' and extension to the parkland. The reduction in paving would also improve the chances for tree survival. ○ The design of the building forecourt should also anticipate the relationship of pedestrian desire lines from Thallon Street and links to primary pathways in the park. Ideally this interface should be designed in concert with Council ○ The potential for maximising the landscape setting and amenity of the ground floor communal open space and pool area has not been realised. ○ The design of the northern boundary setback area should be contiguous and integral to the overall landscape setting of the pool area. There should be pathways for circulation and maintenance requirements, and a clearer definition between what is private and public open space. ○ There is opportunity to introduce more perimeter tree planting in the deep soil areas and softer lawn surfaces to make the precinct more welcoming for socialising and relaxation. Given the location and future community, a communal garden area could be an appropriate addition. ○ As this landscape setting will be overlooked by residents including those from adjacent buildings, consideration should be given to the layout and appropriate screening from all directions. 	
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<ul style="list-style-type: none"> ○ The 4 quarter layout of the roof garden provides opportunities to create a number of different 'place' characters and functions, responding to amenity (bbq areas, sitting areas etc) and building orientation. 	
<p>Amenity</p> <p>Access to the main entry lobby from the forecourt is based on assumed ground floor retail spaces, which are not supported. An alternative layout should be considered based on the possible inclusion of ground floor units and associated amenity.</p> <p>Interior apartment amenity:</p> <ul style="list-style-type: none"> ○ Unit corridors should not be through kitchen areas. ○ Units on typical floors with bedroom doors directly off living or kitchen areas must be reconfigured. ○ Potential conflicts with unit balconies adjacent bedrooms or vertical recesses creating visual and/or acoustic issues must be addressed. 	Noted
<p>Safety</p> <p>The suggestion of the ground level retail as a potential community meeting place does not meet zoning controls.</p> <p>Alternatives for site activation and perimeter surveillance of the public domain could include units with direct access or a community room for multiple uses.</p>	Noted above and agreed
<p>Housing Diversity and Social Interaction</p> <p>The main entrance off the street is generous but should include social bump space for social interaction of residents around adjacent mail/parcel boxes and such services integrated into lobby entry.</p> <p>As noted above, in the absence of an affordable housing component, the provision of some 1 bedroom units should be considered.</p>	Noted and agreed
<p>Aesthetics</p> <p>As noted above, the desired future character for this proposal should not be based on completed</p>	These are all matters that could be revised in amended plans

<p>buildings or previous DA approvals, but should aim to set a higher standard as a precedent for new developments in this precinct.</p> <p>Further consideration of the building facades should include:</p> <ul style="list-style-type: none"> ○ greater setback separation of tower from the podium to reduce street wall effect, ○ use of weather control screens or louvres to add articulation as well as protection, ○ replacement of rendered and painted surfaces with more durable and maintenance free finishes, ○ 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. 	
<p>The Panel is of the opinion that the development has not achieved design excellence against a number of key criteria. The DA 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.</p>	<p>Noted and agreed.</p>

5.2 External Referrals

REFERRAL BODY	STATUS
WATER NSW (CONCURRENCE)	<p>A RFI was issued by Water NSW on 8 November 2022 requesting an amended Geotechnical report that addresses the dewatering system proposed.</p> <p>No General Terms of Approval have been provided by Water NSW as required under the Water Management Act 2000 due to the location of the basement and likely interference with groundwater. This is a recommended reason for refusal.</p>
TFNSW (PARRAMATTA LIGHT RAIL)	<p>No impacts anticipated. No comments or conditions</p>
ENDEAVOUR ENERGY	<p>No issues raised, recommended a condition regarding Network connection if approval was sought.</p>
SYDNEY WATER	<p>Supported the proposal, provided standard conditions requiring a section 73 certificate to be obtained, building plan approval and out of scope building plan approval if approval was sought.</p>

5.3 Internal Referrals

REFERRAL BODY	STATUS
LANDSCAPING	Supported the proposed tree removal subject to standard conditions if approval was sought
HERITAGE	The proposal will not have any impacts on the adjoining heritage item and is supported subject to standard conditions if approval was sought
TRAFFIC	<p>The proposal is not supported for the following reasons:</p> <ul style="list-style-type: none"> Based on Table 1 of Part C Section 1 (Parking) of the Hills DCP 2011, a minimum of 33 spaces are required and 6 are provided. For a restaurant of this size, this is a shortfall of 27 spaces. In addition to this the aisle width behind parking spaces 78, 80 and 82-85 on basement 3, as shown on Basement 3 Plan (Drawing No. DA-0-202 – Revision G), is 6m which is non-compliance. It is noted that based on Clause 2.4.2 (d) of the Australian Standard AS 2890.1:2004, the aisle width at this location is to be minimum 6.1m. As per THDCP the total floor area of the proposed retail space and restaurant has a total of 288m² which is less than 465m². As a result, the proposed development is required to provide minimum two loading bays. The driveway splay should also extend 2m from the driveway edge along the front boundary and 2.5m from the boundary along the driveway in accordance with Figure 3.3 of AS2890.1 to give clear sight lines of pedestrians from vehicles exiting the site.
ACCESSIBILITY	<p>Not supported and requested that the following details are provided in an amended access report:</p> <ul style="list-style-type: none"> There is no clear intuitive path of travel from the ground floor accessible carparking space to the restaurant /retail areas. There is no accessible path of travel from the ground floor lifts to the garbage room.
PUBLIC DOMAIN	<p>Detailed plans of the public domain along Thallon St and where the proposal interfaces with the reserve were requested to be provided at DA stage, as per the Parramatta Public Domain Guidelines 2017.</p> <p>These have not been provided.</p>

ENVIRONMENTAL HEALTH (ACOUSTIC)	Council's Environmental Health Officer has reviewed the submitted acoustic report and supports the application subject to the imposition of appropriate conditions, if approval was sought.
ENVIRONMENTAL HEALTH (WASTE)	Council's Waste Officer reviewed the proposal and 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.
ENVIRONMENTAL HEALTH (CONTAMINATION)	<p>The provided Statement of Environmental Effects and a site history assessment show that the proposal has no history of contamination and has been used for residential purposes for a number of years.</p> <p>Council records also do not note any potential contamination. The proposal is therefore acceptable in this regard.</p>
WASTE MANAGEMENT	<p>Not supported.</p> <p>The development proposes the use of chutes for both general waste and recycling. Council does not support the use of chutes for recyclables. Rather a recycling bin needs to be located adjacent to each garbage chute point and is to be swapped out when full by the Building Manager or their authorised representative.</p> <p>Council requires that a concrete path exists between bin room/collection point to where the bins will be wheeled to at the curb for waste removal.</p> <p>The commercial premises will require private waste collection. The application is to submit a Waste Management Plan as part of their DA submission.</p>
ENGINEERING	<p>Not supported for the following reasons:</p> <ul style="list-style-type: none"> • The OSD location does not allow for capture of surface flows in the event of pit and pipe failure. In this regard, the OSD shall be relocated to the front setback. • The proposed development is within the Ex-Hills Shire Council and as such, the OSD parameters required are SSR 470m³/ha and PSD 80l/s/ha as per City of Parramatta's Engineering Guidelines • The OSD/WSUD configuration does not achieve the required functionality.
ESD (CHE WALL)	<p>Council's ESD advisor has reviewed the BASIX certification and has identified several issues that should be corrected to satisfy BASIX certification requirements and to ensure compliance with SEPP BASIX 2004:</p> <ul style="list-style-type: none"> • The NatHERS Exposure category for many apartments is set too high, which overstates natural ventilation. The open and/or exposed categories are not considered

	<p>appropriate for the majority of floors for a building of this height in a suburban context. Additionally, a lower exposure category should be used when a neighbouring obstruction shields apartments from the wind.</p> <ul style="list-style-type: none"> • The areas allowed for natural ventilation openable areas are inconsistent with the NatHERS requirements: • All operable windows with opening restrictors for fall protection should be modelled with 10% opening for NatHERS certification, unless alternative fall protection is specified on the drawings. • Apartment entrance doors to a corridor are not to be included in class 2 buildings. • The SHGC specified for glazing on the stamped plans is inconsistent to the SHGC required by the NatHERS certificates. Awning windows and fixed panes are certified with a common SHGC for both components but have different a specification for each. Examples include units 404, 504, ... , 1004, 1104. • An allowance should be made for downlight ceiling penetrations.
VPA	<p>The applicant was informed in the RFI letter sent January 11 that the formal VPA offer has to be completed in accordance with the City of Parramatta Planning Agreements Policy and negotiations be held with Councils Property Development Unit.</p> <p>This standard format offer has not been submitted and no negotiations have been held accordingly the VPA offer ?? has not been accepted in its current form.</p>

6. Environmental Planning and Assessment Act 1979

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

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

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

6.2 Section 4.15(1): Evaluation

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

Table 5: Matters for consideration

Provision	Comment
Section 4.15(1)(a)(i) - Environmental planning instruments	Refer to section 7 below
Section 4.15(1)(a)(ii) - Draft planning instruments	No draft EPIs applicable
Section 4.15(1)(a)(iii) - Development control plans	Refer to section 8 below

Provision	Comment
Section 4.15(1)(a)(iia) - Planning agreements	Refer to section 9 below
Section 4.15(1)(a)(iv) - The Regulations	Refer to section 10 below
Section 4.15(1)(b) - Likely impacts	Refer to section 11 below
Section 4.15(1)(c) - Site suitability	Refer to section 12 below
Section 4.15(1)(d) - Submissions	Refer section 13 below
Section 4.15(1)(e) - The public interest	Refer to section 14 below

6.3 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 not issued their General Terms of Approval, and this is sought as a reason for refusal of the application.

7. Environmental Planning Instruments

7.1 Overview

The instruments applicable to this application comprise:

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

Compliance is addressed below:

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

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

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

7.2.1 Design Quality Principles

Part 4 of the Policy introduces 9 design quality principles. These principles do not generate design solutions but provide a guide to achieving good design and the means of evaluating

the merits of proposed solutions. A response to those design principles, prepared by the project architect, supports the application as required by the Environmental Planning and Assessment Regulation.

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

Principle	Comment
Context and neighbourhood character	The proposal does address the Open Space to the Thallon St Reserve south of the property via the ground floor commercial space. However, the streetscape could be addressed further via better activation to Thallon St from the restaurant usage in the large open space near the maintained mature trees.
Built form and scale	The bulk, scale and height of the development is not in-keeping with the desired future character of this lot and the future character envisaged by the LEP and DCP for the Carlingford Precinct.
Density	The density proposed is in excess of the LEP floor space ratio controls and what is projected within Council's strategic planning documents.
Sustainability	A review of the submitted BASIX certificate has identified issues that require 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	<p>The development does demonstrate compliance in some ways with good landscaping principles and has retained the mature trees in the front setback to provide a consistent landscaped street frontage along Thallon St. It could provide better activation to the reserve from the restaurant and by connecting with the future footpaths that will be constructed in the reserve.</p> <p>Deep soil is also limited by the basement which extends beyond the building footprint. While deep soil is numerically compliant, it could be maximised by complying with the ADG requirement to contain basements within the footprint of the building.</p>
Amenity	Some internal amenity issues have been identified by the DEAP which have not been resolved. The apartments generally comply with the ADG requirements as detailed below. However, due to the FSR and height proposed there are variations proposed to the built form which are not supported which may have amenity impacts to the adjoining residents as well as the amenity of the proposed apartments by way of solar access or cross ventilation.
Safety	The proposal generally complies with the CPTED principles. Greater activation of the Thallon St reserve will assist in reducing anti-social behaviour.
Housing diversity and social interaction	<p>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.</p> <p>The development has sufficient communal open space for social interaction.</p>
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

Principle	Comment
	of the area. The design has been reviewed and is not supported by the Parramatta Design Excellence Advisory Panel.

7.2.2 Apartment Design Guide (ADG)

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

Standard	Requirement	Proposal	Compliance
Part 3			
3B-1: Orientation	The building is orientated to the street and has direct access from the street. Activation is also provided to the open space to the south. Setbacks are addressed as per the Carlingford Precinct DCP and building separation requirements in 3F of the ADG.		
3B-2: Overshadowing	The proposal does not demonstrate the impacts that the extra height and FSR may have on the adjoining 2 Thallon St and 1 Thallon St between 9am and 1pm of the winters solstice.		
3C: Public Domain Interface	The proposal provides adequate access and planting to the front façade, the activation of this front plaza could be improved by the expansion of the restaurant usage instead of retail and outdoor seating in this space.		
3D: Communal & Public Open Space	Min. 25% of site area (793sqm)	1575sq.m	Yes
	Min. 50% direct sunlight to main COS > two (2) hours 9:00am & 3:00pm, June 21	>50% will receive 2 hours of sunlight in midwinter.	Yes
3E: Deep Soil	Min. 7% with min. dimensions of 6m (222sqm)	315sq.m	Yes
	Basement below building footprint	Basement extends beyond footprint at rear this is reducing deep soil opportunities	No
3F: Visual Privacy	4 storeys (up to 12m) <ul style="list-style-type: none"> 6m to habitable rooms/balconies 3m non habitable rooms 5-8 storeys (up to 25m) <ul style="list-style-type: none"> 9m to habitable rooms/balconies 4.5m to non habitable rooms 9 storeys and above (over 25m): <ul style="list-style-type: none"> 12m to habitable rooms/balconies 6m to habitable and non-habitable rooms 	North (to 13-17 Thallon St): Ground to L3 – 9m L4 – L12 – 12m East To 11 Boundary Rd: Ground to L12 – 37.3m	Yes (Setbacks to Thallon St Reseve have been assessed against the DCP controls)

Standard	Requirement	Proposal	Compliance
3G: Pedestrian Access and Entries	Clear pedestrian access is provided from Thallon St.		
3H: Vehicle Access	Vehicle access is proposed to be integrated with the building design from Thallon St and is considered to meet the other condition requirements.		
3J: Bicycle and car parking	<p>The site is <800m from Carlingford Light Rail stop, as such the applicable <i>minimum</i> car parking rate is the rate specified in the RMS Guide to Traffic Generating Development or the DCP, whichever is less. The RMS rates require 106 residential spaces and 18 visitor spaces, which is provided. Retail and restaurant parking is assessed as per The Hills DCP rates.</p> <p>Based on the Hills DCP 2012, bicycle parking is not required for residential and restaurant developments. In addition, total retail floor area is 60sq.m which is lower than 5,000sq.m required for bicycle parking. As a result, bicycle parking is not required, however, 42 bike spaces are provided.</p>		
Part 4			
4A: Daylight / Solar Access	Min. 2hr for 70% of apartments living & POS 9am & 3pm mid-winter (>64) Max 15% apartments receiving no direct sunlight 9am & 3pm mid-winter (<14)	Overall 71% or 65 units receive min 2 hours. The proposal does not demonstrate compliance with this control	Yes Not demonstrated
4B: Natural Ventilation	Min. 60% of apartments below 9 storeys naturally ventilated (>40)	Development achieves dual aspect ventilation to 62% of the apartments below 9 storeys (43 units)	Yes
4C: Ceiling heights	Ground: 4m Mixed use: 3.3m Habitable rooms 2.7m Non-habitable 2.4m	Floor to floor heights: Ground: 4.1m L1-11: 3.15m	Yes
4D: Apartment size & layout	1 bedroom 50m ² 2 bedroom (1 bath) 70m ² 2 bedroom (2 bath) 75m ² 3 bedroom 95m ²	Minimum unit sizes are achieved	Yes
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.	Complies	Yes
	Kitchens should not be located as part of the main circulation space in larger apartments (such as hallway or entry)	Complies	Yes
	Habitable room depths are limited to a maximum of 2.5 x ceiling height (7.25m).	Complies	Yes
	Open plan max habitable room depth is 8m from a window.	Complies	Yes

Standard	Requirement	Proposal	Compliance
	Master bedrooms 10m ² Other bedrooms 9m ² (excluding wardrobe space).	Complies	Yes
	Bedrooms have a minimum dimension of 3m.	Complies	Yes
	Living rooms or combined living/dining rooms have a minimum width of: - 3.6m (1 bed apartments) - 4m (2+ bed apartments)	Complies	Yes
4E: Private open space & balconies	1 Bedroom = 8m ² X 2m 2 Bedroom = 10m ² X 2m 3 Bedroom = 12m ² x 2.4m	All balconies meet minimum size requirements and minimum widths	Yes
4F: Common circulation & spaces	Max. apartments –off circulation core on single level: 8-12	9 units are sharing the circulation core on each level	Yes
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40	Two lifts proposed, 45.5 apartments/lift	No, but acceptable
	Corridors >12m length from lift core to be articulated.	Corridors are less than 12m	Yes
4G: Storage	1 bedroom 6m ² 2 bedroom 8m ² 3 bedroom 10m ² Min. 50% required in units	Storage is to be provided within apartments and the basement; appropriate conditions can be applied to ensure this is met. The plans indicate space within each to provide this storage.	Yes
4H: Acoustic Privacy	Acoustic privacy has been considered and the apartments are designed with the bedrooms and the living areas of the adjoining buildings separately.		
4J: Noise and pollution	There are no identified noise sources in the adjoining developments, the development has been designed to consider any noise or pollution impacts.		
4K: Apartment Mix	Apartment mix is as proposed: Studio – 0 units 1 bed – 0 units 2 bed – 43 units (47%) 3 bed – 37 units (41%) 4 bed – 11 units (12%) While technically compliant with the Hills DCP Unit Mix requirements, The proposal does not provide a diversity of housing for single people for 1 bed and studio apartments as per the ADG design guidance.		
4O: Landscape Design	The site provides numerically compliant deep soil and adequate landscaping and planting and retains some existing mature trees. Landscaping is not maximised given the extensive basement.		
4P: Planting on structures	Planting has been provided on the rooftop space this can be conditioned to meet the relevant planting requirements.		
4Q: Universal Design	20% Liveable Housing Guidelines Silver Level design features (>18)	This can be conditioned to comply with the requirement.	Yes
4T: Awnings and Signage	Awnings are proposed to the front entrances. It is not considered to be necessary to provide an awning to the public footway as this would impact the existing tree retention No signage is proposed.		

Standard	Requirement	Proposal	Compliance
4U: <i>Energy Efficiency</i>	The proposal does not demonstrate compliance with BASIX as detailed in the SEPP BASIX assessment		
4V: <i>Water management</i>	The proposed OSD tanks does not meet the City of Parramatta Engineering requirements for sizing		
4W: <i>Waste management</i>	A waste management plan has been prepared by a qualified consultant demonstrating the location and design of the waste holding room and bulk waste storage area for Council collection is acceptable. There remains outstanding requirements for the waste collection		

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

The purpose of this Policy to reduce household electricity and water use by setting minimum sustainability targets for new and renovated homes. Evidence of compliance is to be demonstrated through the provision of a Certificate. This BASIX and NATHERS Certificate has been reviewed and the requirements within these Certificates are not considered to align with the materials proposed within the architectural plans. These changes were requested from the applicant and no changes have been made. The proposal remains to be non-compliant.

7.4 State Environmental Planning Policy (Resilience and Hazards) 2021

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

The site has been zoned for residential purposes for many years with the existing development on the site being multi-dwelling residential development. It is unlikely that the site is contaminated based on the site's land use history. The proposed development seeks to maintain a residential use on the site. The proposal is considered suitable for development and a Preliminary Site Investigation is not warranted in this case.

Council records also do not note any potential contamination.

7.5 State Environmental Planning Policy (Transport and Infrastructure) 2021

Electricity Easement

The proposal was sent to Endeavour Energy as the proposal is close to underground electricity assets in the adjoining Thallon St Reserve. Endeavour Energy had no objection to the proposal.

7.6 State Environmental Planning Policy (Planning Systems) 2021

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

7.7 State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 6 of this Policy, which applies to the whole of the Parramatta local government area, aims to establish a balance between promoting a prosperous working harbour, maintaining a healthy and sustainable waterway environment and promoting recreational access to the foreshore and waterways by establishing planning principles and controls for the catchment

as a whole.

The nature of this project and the location of the site are such that there are no specific controls which directly apply, except for the objective of improved water quality. That outcome would be achieved through the imposition of suitable conditions to address the collection and discharge of stormwater water during construction, and upon completion.

7.8 Parramatta 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.

7.9 Parramatta (Former The Hills) Local Environmental Plan 2012

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

Development Standard	Proposal	Compliance
2.3 Zoning		
Permissible uses within the R1 zone	The proposal is a mixed-use development comprising the following uses with the R1 General Residential zoned land: <ul style="list-style-type: none">• Shop Top Housing• Restaurant/Café	Yes
Zone Objectives		
R1 General Residential	The proposal is considered to be in keeping with the following objectives of the R1 General Residential zone: <ul style="list-style-type: none">• To provide for the housing needs of the community.• To provide for a variety of housing types and densities.• To enable other land uses that provide facilities or services to meet the day to day needs of residents.• To enable other land uses that support the adjoining or nearby commercial centres and protect the amenity of the adjoining or nearby residential areas.	Yes
4.1A Minimum lot sizes for dual occupancy, multi dwelling housing and residential flat buildings		

Development Standard	Proposal	Compliance
4000sq.m required, 3173sq.m proposed	As the proposal includes a restaurant and retail it is defined as shop top housing and not a residential flat building therefore the control would not apply	N/A
4.3 Height of Buildings		
28m	<p>The height of the building varies from 39.4m to 40.77m at the solar panels towards the front of the site (12.7m variation or 45.6%).</p> <p>A section 4.6 variation has been submitted to justify the increase in height, this is discussed further below.</p> <p>The applicant in their SEE has stated that the shade structures, planters and glass balustrades associated with the roof garden are considered an Architectural Roof Features as defined by LEP Clause 5.6 and disregarded in considering the maximum building height. This space cannot be considered an architectural roof feature as it does not comprise a decorative element on the uppermost portion of a building and it contains gross floor area and space which is capable of modification to include floor space area.</p>	No
4.4 Floor Space Ratio		
1.99:1 (6314sq.m)	<p>The applicant is seeking a FSR 3.03:1 or 9636sq.m, which is a variation of 3318sq.m or 52%.</p> <p>A section 4.6 variation for this has been applied for which is discussed further below.</p>	No
4.6 Exceptions to Development Standards		
	Requests have been submitted in relation to variations to both building height and floor space ratio standards.	
5.6 Architectural Roof Features		
	<p>The applicant has stated that the application includes a rooftop communal open space. The built form and landscape elements associated with the communal open space and green roof areas are considered to fall under the definition of Architectural Roof Features.</p> <p>This is not accepted as it does not comprise a decorative element on the uppermost portion of a building and it contains Gross floor area and space which is capable of modification to include floor space area (the toilets and awning) and these spaces have been included in the calculation of building height.</p> <p>It is noted that the roof feature has been included in the 4.6 variation to maximum building height.</p>	No
5.10 Heritage Conservation		
	<p>The site does not contain any heritage items and does not sit within a heritage conservation area.</p> <p>The site is located opposite a heritage item 'I46' Carlingford Stock Feeds. Additional overshadowing will occur between</p>	Yes

Development Standard	Proposal	Compliance
	1pm – 3pm due to the additional height, however this is considered to be acceptable given the absence of any controls requiring overshadowing to be limited.	

7.9.1 Clause 4.6 Variation Assessment Floor Space Ratio/Height

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

The subject application seeks to further increase the FSR and height standard as detailed below:

Clause	Clause 4.3 Height	Clause 4.4 FSR
Standard	27m	1.99:1 (6314sq.m)
Proposal	40.77m	3.03:1 (9636sq.m)
Variation	12.7m variation or 45.6%	3318sq.m or 52%.

The applicant has submitted two clause 4.6 request seeking to justify the non-compliance which are provided at Attachment 3.

Clause 4.6(1) – Objectives of Clause 4.6

The objectives of clause 4.6 of the PLEP 2011 are considered as follows:

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

Clause 4.6(2) – Operation of Clause 4.6

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

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

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

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

The applicant has submitted a written request justifying the variation to the height of building and FSR development standards. The applicant has provided justification for each of the variations sought and is summarised as follows (The full requests are included at **Attachment 3 and 4**)

Height

1. The majority of sites to the north have been redeveloped from low and medium density residential or are approved for development, creating a context to the north that is greater than what currently exists.

2. The proposed built form has a height of 12 storeys, fitting 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 provides a transition in both the north-south and east-west directions in terms of the scale of built form. The Urban Design Report provides a detailed analysis of the contextual fit of the proposal.
3. The proposed tower is concentrated on the western half of the site with a rear setback of over 35m from the rear boundary of the site. Built form is concentrated in this western location which is closer in its context to the 18 storey buildings to the west and south west and the 21 storey building to the south. 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 height.
4. The site is located directly across Thallon Street from a site (10 Thallon Street, a Key Site) which is afforded a building height standard of 57m and which comprises an 18 storey building with an 8 storey podium. The site is in the immediate streetscape context of this 18 storey building at 10 Thallon Street. The proposed height is compatible with the 18 storey building at 10 Thallon Street
5. The precinct plan included a low scale (approximately 4 storey) building at 1-7 Thallon Street immediately adjacent to the subject site (DA 943/2010/JP). This building was subsequently eliminated and the floor space shifted onto the tower at 1-7 Thallon Street, resulting in a building on the that site of 21 storeys under DA/495/2017. The removal of the four storey building just south of the subject site eliminated a significant constraint on the subject site. This four storey building would have been heavily impacted by shadow and visual impacts from a redevelopment of the subject site. It would also place a new, low scale building adjacent to the subject site which would influence the built form context of the site. Instead, in the location of the previously approved 4-storey building, public open space has been expanded and the built form context of the site to the south is that of the large 21 storey building at 1-7 Thallon Street separated by the public reserve.
6. 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.
7. The additional building height gives rise to a minimal impacts regarding overshadowing of adjoining properties. The adjoining buildings to the south, south west and west along Thallon Street maintain good solar access, consistent with SEPP 65.
8. 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 to this open space between 9am and 12pm. In the afternoon, the subject development will create small amount of additional shadow to this open space between 1-2 pm.
9. The Sun View diagrams (DA-0-906 to DA-0-909) suggest that the proposed development will have some impact on the lower level units of No. 1-7 Thallon Street from 9-3pm in mid-winter. A further study based on the internal floor layouts (on following page) suggests that there are 4 units to the north-west corner of the building on podium levels will be affected. However, these affected units are still able to receive sufficient solar access (3+ hours) during the day.
10. The built form is compatible with its context sitting in a transitional locations between the 18-21 storey buildings to the west, south west and south and the 7-9 storey buildings to the north.
11. The proposed built form minimises visual impacts on the adjoining 4 storey building directly to the north but maintaining a human scale, four storey podium to the northern boundary with the tower form setback above as well as generous upper levels setbacks of 9-12 m. A well-articulated façade is proposed which limits visual impacts to the north, north east and east.

12. The proposed development does not give rise to adverse visual impacts being compatible with the bulk and scale of the existing buildings to the south, south west and west which dominate the Thallon Street streetscape and the east-west public open space west of the light rail corridor. The proposed building has a bulk and scale that achieves a transition from the taller, denser buildings to the south, southwest and west and the lower scale building to the north, northeast and east.

FSR

1. The development is located within the core of the R1 zone and as such will be surrounded by future (proposed and approved) high density residential and mixed use development. In this regard the development, despite the non-compliance is compatible with the streetscape by providing a transition from the 18-21 storey buildings (with 8 storey podiums) on the west, southwest and south to the 7-9 storey buildings to the north, northeast and east. The Key Sites to the south and west of the site have an FSR standard of 4:1. The lower density sites to the north have an FSR of 1.99:1. The site's proposed FSR sites between these two FSR areas, providing an effective transition.
2. 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.
3. The proposed building is concentrated on the western half of the site with a rear setback of over 35m from the rear boundary of the site with structures being underground or associated with the proposed ground level Common Open Space. Built form is concentrated in this western location which is closer in its context to the 18 storey buildings to the west and south west and the 21 storey building to the south which have FSRs greater than what is proposed on the subject site.
4. The precinct plan that forms the DCP and informed the FSR standard for the site, took the view that the site would not be redeveloped due to its strata titling. Therefore, its strategic location within the precinct including its proximity to the rail station and open space spine were not considered when determining development potential. This led to the FSR pattern in the precinct being irregular with the 4:1 FSR area:
 - Being further from the light rail station than the subject site.
 - Extending northward past the subject site on the western side of Thallon Street.The nomination of Key Sites in the centre also related 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 have FSRs much larger than 4:1 FSR standard if the RE-1 zoned parts of those sites are disregarded

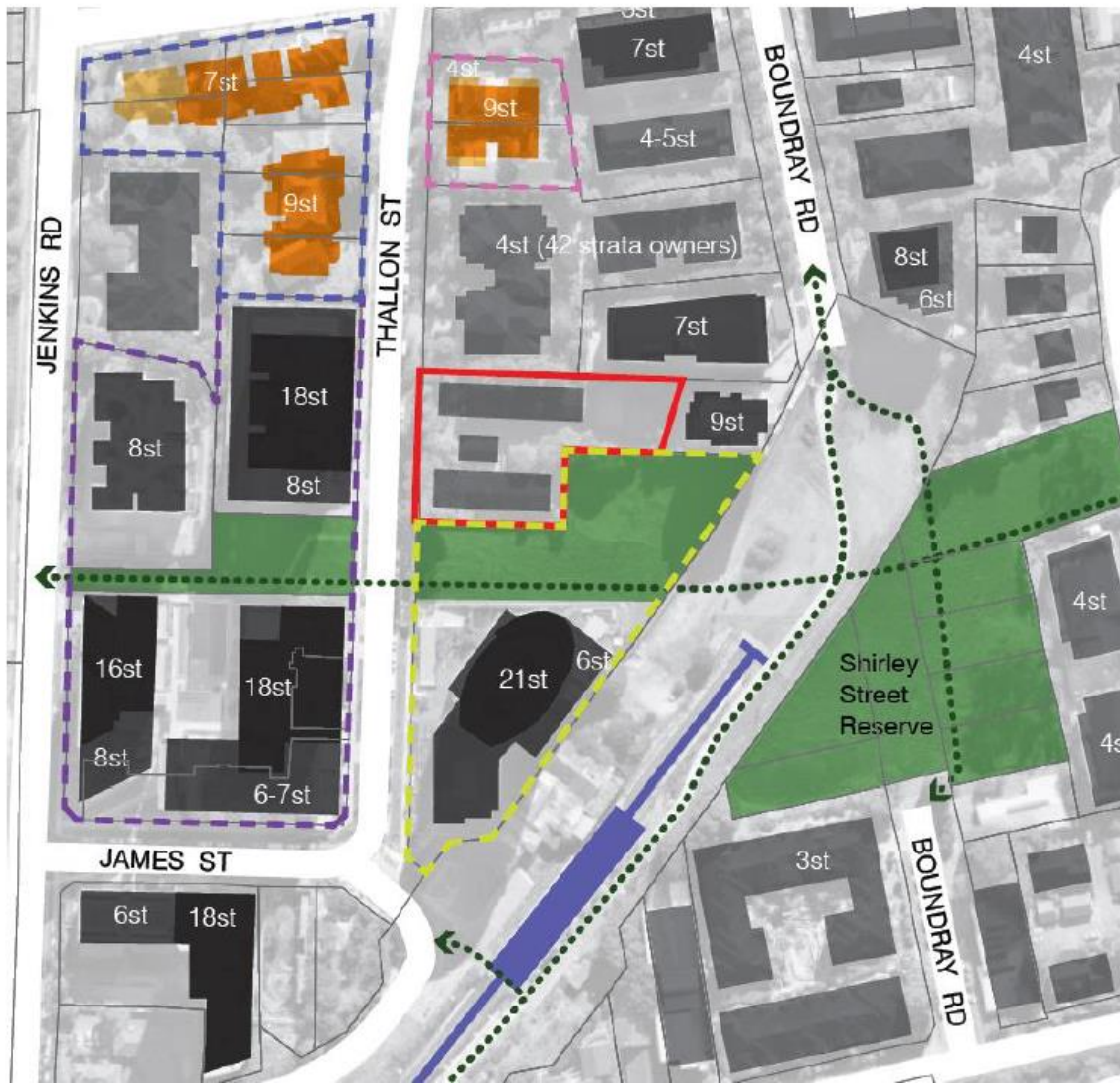


Figure 9 - Building location plan with approved storeys

5. The proposed tower is concentrated on the western part of the site, providing reasonable separation to the existing 7 and 9 storey towers to the east and north east of the subject site to limit the impact of bulk and scale and achieve compatibility. Building separation which is consistent with the separation between existing buildings is achieved to create a relationship between built form and open space compatible with what has emerged in the area to the east and north east of the site. The 12 storey building and its resulting bulk and scale transitions from the 18-21 storey buildings to the south, south west and west towards the 7-9 storey buildings to the east and northeast, achieving compatibility with the streetscape and site context.
6. The proposed development steps back at the south west corner, opening up the corner to the public open space to the south, protecting existing trees and reducing bulk and scale within the streetscape, achieving compatibility with the site context and streetscape. This corner is activated with a shop and restaurant fronting the street and the public open space, contributing to the vibrancy and character of the precinct in close proximity to the light rail station and the key east-west pedestrian link in the precinct. This non-residential floor space in a strategic location connected with the public domain is consistent with the desired character of the area. The non-residential floor space contributes to FSR on the site.
7. Each façade is well articulated, limiting the impact of bulk and scale.

8. 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.
9. 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 ADG and DCP standards. Large, significant trees are retained on the site, which have a significant positive impact on the streetscape. On structure planting is proposed to soften built form and enhance the landscape character of the site. A large communal open space is maintained at ground level with deep soil setbacks, contributing positively to the spatial relationship of the site to adjoining buildings to the north and east. The proposed balance of built form and landscape is compatible with the character and site context.
10. The site achieves full compatibility with its streetscape and context
11. 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 to the light rail station and core of Carlingford centre makes it ideal for the built form proposed.
12. As described under objective a) above, at the time of the precinct plan being developed it was considered the subject site had a very low susceptibility to change. However, the site is ready for redevelopment and its proximity to the light rail station and key sites at Thallon Street makes it ideal for increased densities. An FSR of 1.99:1 would be an underutilisation of a site in an optimal location within a strategic planning area.

a) 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.

Clause 4.4 Floor Space Ratio Objectives	Council Officer Assessment
(a) <i>to ensure development is compatible with the bulk, scale and character of existing and future surrounding development,</i>	The development has not demonstrated that it is compatible with the bulk and scale and character of existing and future surrounding development.

Clause 4.4 Floor Space Ratio Objectives	Council Officer Assessment
	<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. While the subject site is located near the Light Rail station the Carlingford Precinct identified this site to be on the border of the higher order key sites as the site transitions to a lower zoning towards the precinct's ridgeline at Pennant Hills Rd. - The applicant's Built Form Study is two dimensional and can be deceiving as it shows the general topography of the site as being generally flat and does not show the wider precinct topography as envisaged for the Carlingford Precinct. In addition, the applicants Height Plane Context Diagram incorrectly shows all key sites with a height limit of 57m as having the subject sites height limit and does not fairly show how the bulk in the precinct has been varied. - The applicants justification is largely based on the fact that other surrounding sites have been zoned with a higher FSR and height limit, this is not considered sufficient justification to support a variation of this extent and will lead to a precedence for future sites within the precinct. - The bulk and scale of the development is not in keeping with the surrounding development or that proposed due to its large building footprints and inadequate setbacks to the Thallon St Reserve (3m). - The proposal does not meet apartment solar access requirements 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, it has only shown what a compliant height may look like.
(b) to provide for a built form that is compatible with the role of town and major centres.	<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"> - Whilst the development is designed as a podium and tower, the proposal does not provide any podium setbacks to the Thallon St Reserve which exacerbates the bulk and scale of the proposal. - Despite the density proposed, the unit mix disproportionately favours 2 bedroom which further reduces housing options in this area. - The excessive bulk leads to a long blank void of about 3m with no windows on the southern elevation. This would be a poor outcome and be for this space and does not allow for a proper separation between apartments with windows to increase cross ventilation. - The increase in FSR means that the development does not meet the required parking supply under the Guide of Traffic Generating Development. The current parking is not maintained under the building footprint which reduces deep soil which is identified as a key component of RFBs in the Carlingford Precinct.

Clause 4.3 Height of building Objectives	Council Officer Assessment
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<p><i>(a) to ensure the height of buildings is compatible with that of adjoining development and the overall streetscape,</i></p>	<ul style="list-style-type: none"> - The Carlingford Precinct's topography slopes down west from the ridgeline of Pennant Hills Road (RL 133m) towards Hunt's Creek Reserve at RL88m. The nominated key sites of the DCP have building sites allowed at 57m which sit predominantly on the southern side of the green link and western side of Thallon St to prevent overshadowing and sit more within the depression of the topography. This aids in concealing the building heights in the skyline and horizon as it works with the existing topography. The proposed building height of this site would occupy the horizon from a distance as its sitting close to the ridgeline at a higher level. - While the application is surrounded by some key sites with 57m height limits, these applications have been considered with site specific DCPs to improve the site streetscape and impacts on the adjoining sites by limiting overshadowing by tower placement and floorplate size. - Given that a 27m height limit applies for most of the Carlingford Precinct the variation proposed can set a precedence for surrounding sites for future development and may lead to the argument that the standard has been abandoned and jeopardise the future planning of the precinct. No variations have been approved in this area to this extent.
<p><i>(b) to minimise the impact of overshadowing, visual impact, and loss of privacy on adjoining properties and open space areas.</i></p>	<ul style="list-style-type: none"> - The proposed development will have increased overshadowing on the development at 1 Thallon St. The applicant has claimed that this will only reduce the solar access and these units will still receive a minimum of 3 hours of solar access. This argument is insufficient and is not considered to meet the objective to 'minimise' the impacts - The application has also not considered how a compliant scheme with increased setbacks to the Southern elevation facing Thallon St Reserve might reduce the overshadowing impacts on both the reserve and 1 and 2 Thallon St. Any increase in overshadowing is considered an impact. A compliant setback would also reduce the visual impact for users of the open space which is currently has no articulation

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

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

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

As detailed below, Council Officers assessment concludes that a compliant scheme

would achieve the objectives of the zone whilst the current proposal does not. Council's key strategic planning documents recognise that the Carlingford Precinct has current sufficient capacity for high density residential development.

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

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

The applicant does not claim that the height or FSR has been abandoned or destroyed.

There is one example in the precinct of an approved variation to height at 1 Thallon St (Height = 17.3% variation or 9.86m). The variation to FSR for this site was a technical variation to manage the dual FSR's across this site. The only other FSR variation in the precinct is for 0.27:1 variation approved by Land Environmental Court at 11-17 Shirley St.

Other recent applications include DA/165/2018 at 10 Shirley St where amendments were received to deliver a compliant scheme and DA/53/2022 at 263-273 Pennant Hills Road and 18 Shirley Street (Meriton site) where the proposed height and FSR variations were refused.. Below is a map with proposed and approved heights and FSRs within the Carlingford precinct.

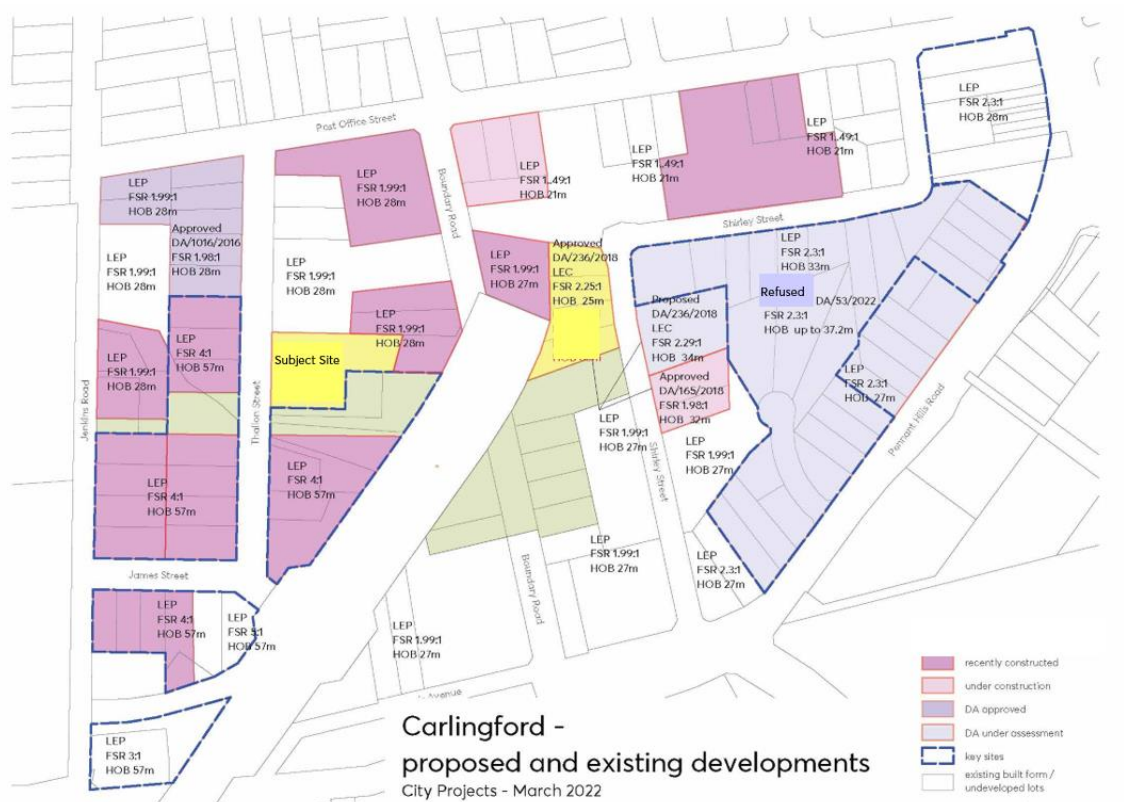


Figure 10 - Existing and proposed developments in Carlingford Precinct

5. *The zoning of particular land is unreasonable or inappropriate so that a*

development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.

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

Sufficient Environmental Planning Grounds

The decision in the Land & Environment Court case of *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, suggests that 'sufficient environmental planning grounds' for a Clause 4.6 variation is more onerous than compliance with zone and standard objectives. The Commissioner in the case also established that the additional grounds had to be particular to the circumstances of the proposed development, and not merely grounds that would apply to any similar development. Furthermore, the decision in the Land and Environment Court case of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 established that the focus must be on the aspect of the development that contravenes the development standard, not the development as a whole.

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 it at its lowest. The proposed development contradicts this precinct-wide objective by proposing a development with a maximum height of 40.77m or 45.6% variation to the development standard on the subject site
- 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 proposal has not demonstrated that a compliant development would be unreasonable or unnecessary. A compliant scheme would minimise the overshadowing impacts to both the private open space in the Thallon St Reserve and 1 Thallon St property.
- The proposed height increase also exacerbates the appearance of the development when viewed from the Thallon St Reserve as the southern elevation is only setback 3m from the property boundary and is not stepped back as the development increases in height.

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 deep soil landscaping opportunities on the site which is detrimental to the balance of hard and soft surfaces.
- 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 R1 General Residential zone and planner's assessment is provided below:

R1 Zone Objectives	Proposal
<i>To provide for the housing needs of the community.</i>	It is noted that a compliant scheme meets the strategic land use policies of the City of Parramatta. The City of Parramatta's key strategic land use policies in relation to the Carlingford Precinct, namely the Local Strategic Planning Statement 2020 (LSPS) Council's Local Housing Strategy 2020 (LHS) 2020) identify that housing growth in City of Parramatta LGA is forecast to exceed it's 20-year Central City District Plan dwellings target as the most of this growth is already accounted for in the growth precincts, including Carlingford. This means that the Carlingford Precinct is already zoned to support substantial housing growth and has capacity under the existing controls to accommodate new housing so dwelling targets can be achieved.
<i>To provide for a variety of housing types and densities.</i>	The proposal comprises of residential apartments and does not contribute any variety of housing type within the general residential zone, it also does not provide a variety of sizes of units as no 1-bedroom or studio apartments have been provided.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	The proposal provides restaurant/café uses and retail which may be used day to day by the residents.
<i>To enable other land uses that support the adjoining or nearby commercial centres and protect the amenity of the adjoining or nearby residential areas.</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 commercial 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.

b) Conclusion

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

- The proposal is not consistent with the objectives of the height and floor space ratio standard, as it is not compatible with the bulk, scale and character of the existing and future surrounding development, nor in consistent with its role within the Carlingford Precinct;
- There are not sufficient environmental planning grounds to justify the departure, in particular the departures from the design criteria of the SEPP 65 – Apartment Design Guidelines and objectives and controls of The Hills DCP 2012.

The proposal is not in the public interest and not consistent with the zone objectives, as a

compliant scheme would meet the housing needs of the Carlingford Precinct and the City of Parramatta.

8. 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 table below provides an evaluation against the relevant controls. Note where there is conflict between THDCP 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 Min. 30m road frontage and is not accessed via right of access way or access handle. The proposal will not result in isolation of adjoining lots so they are incapable of multi dwelling housing development	The site exceeds the road frontage minimums. The proposal will not lead to any site isolation	Yes Yes												
3.2 Site Analysis	The development has not been designed to respect site constraints including topography and the natural environment. The proposal does not appear as sympathetic with the character of the area with minimal impact on the amenities of the neighbouring properties. The siting of development also does not take into account solar passive design principles.	No, considering additional overshadowing												
3.7 Building Length <i>The maximum linear length of any residential flat building is to be 50m</i>	The building is less than 50m in length	Yes												
3.11 Unit Layout and Design (b) No more than 25% of the dwelling yield is to comprise either studio or one-bedroom apartments, (c) No less than 10% of the dwelling yield is to comprise apartments with three or more bedrooms.	The proposal seeks the following unit mix: <table border="1" data-bbox="598 1377 1110 1570"> <thead> <tr> <th>Bedrooms</th><th>Control</th><th>Proportion</th></tr> </thead> <tbody> <tr> <td>1 bedroom</td><td>max. 25%</td><td>0%</td></tr> <tr> <td>2 bedroom</td><td>-</td><td>43 units (47%)</td></tr> <tr> <td>3+ bedroom</td><td>min. 10%</td><td>48 units (53%)</td></tr> </tbody> </table>	Bedrooms	Control	Proportion	1 bedroom	max. 25%	0%	2 bedroom	-	43 units (47%)	3+ bedroom	min. 10%	48 units (53%)	Complies, however not desirable as the proposal does not provide any one bedroom units
Bedrooms	Control	Proportion												
1 bedroom	max. 25%	0%												
2 bedroom	-	43 units (47%)												
3+ bedroom	min. 10%	48 units (53%)												

PART C SECTION 1 – CAR PARKING		
Clause	Comment	Complies
Residential Buildings Flat	Refer SEPP 65 assessment Table in relation to car parking for the residential component of the development. RMS Guide for Traffic Generating Development controls applies as they are lesser than the Hills DCP.	See ADG assessment
Retail	Required: 3 spaces (59sq.m) Proposed: 4 spaces	Yes

1 space per 18.5m2 GLFA		
Restaurant 1 per 5 seats, plus 12 spaces per 100m2 of GFA, plus 10 car spaces for queuing where a drive through facility is proposed.	Required: 33 spaces (based off presumed 30 seats in Traffic Report and 229sq.m of GFA) Proposed: 6 spaces	No, 27 space shortfall
Bicycle Parking Retail/Shops: 2 spaces plus 5% of the total number of car spaces required where – New retail developments exceed GFLA of 5,000m2 or Additions to existing developments that increase the size of the total development to greater than 5,000m2 GFLA.	Based on the Hills DCP 2012, bicycle parking is not required for residential developments. However, 27 bicycle spaces are provided, as shown on the submitted plans for residential use In addition, total retail floor area is 304m2 which is lower than 5,000m2. As a result, bicycle parking is not required for the commercial component.	Yes
Motorcycle Parking <ul style="list-style-type: none"> Motorcycle parking is to be provided for all developments with on- site parking of more than 50 car parking spaces, at a rate of 1 motorcycle parking space for every 50 car parking spaces or part thereof. 1 x (134 car parking spaces ÷ 50) = 3 	3 motorcycle spaces are provided, as shown on the submitted plans.	Yes
Loading requirements Mixed Small Shops: <ul style="list-style-type: none"> 2 spaces for the first 465m² 2 for the next 465m² 1 for each extra 530m² 	No loading bays are provided, two are required.	No

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

PART D SECTION 12 – CARLINGFORD PRECINCT	
Clause	Complies
3.3 Desired Future Character Statements <i>Southern Precinct</i> The subject site is located within the Southern Precinct.	No, see discussion above in the ADG, LEP & Clause 4.6.

<p><i>"The character of the southern end of the Precinct in the vicinity of the train station will be largely determined by the development of landmark buildings on the key sites and their role in creating street-oriented village built form and character, open spaces and a civic plaza linked to the station.</i></p> <p><i>In key sites affected by electricity easements, developments can contribute to publicly accessible open space with strong connections to the local open space network and civic area.</i></p> <p><i>Buildings on key sites and in the southern side of the Precinct generally have been placed to provide transition in building scale and to provide natural ventilation, solar access, outlook from apartments and year round sunlight to communal open spaces. 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></p> <p>Comment: However, for reasons stated throughout this report, the proposal in its current form is not considered to be a development that meets the desired future character of the southern precinct.</p>	
<p>3.4 Structure Plan – Access and Circulation</p> <p>Principle: Proximity to Transport</p> <p><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></p> <p>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 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.</p>	<p>No, see discussion above in the ADG, LEP & Clause 4.6.</p>
<p>3.5 Structure Plan – Open Space Strategy</p> <p>Principle: Open space and built form relationships</p> <p><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</p> <p><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 12 and rooftop). While the applicant has sought to retain mature trees in the front setback by providing a deeper setback at the front of the building this space is at risk of being underutilised as raised by DEAP and should provide restaurant usage towards Thallon St as well to provide a better activated street frontage.</p>	<p>No, see discussion above in the ADG, LEP & Clause 4.6.</p>

<p>3.6 Structure Plan – Public Domain</p> <p>Principle: Streetscape - Street tree planting and landscaping is to be consistent with the Carlingford Precinct Public Domain Plan</p> <p>Comment: The proposal retains some of the existing mature trees and provides a generous front setback to the street. No public domain plans have been submitted that demonstrate street tree planting or landscaping that could be considered consistent with the Carlingford Precinct Public Domain Plan.</p> <p>Principle: Sustainability and WSUD - Development in the Precinct will be required to undertake sustainability initiatives: stormwater capture, bio-retention basins, integration of watercourses with open space and landscaping.</p> <p>Comment: Council's Development Engineer could not complete its assessment of the proposal as it requires amended/additional information.</p>	<p>No, see discussion above in the ADG, LEP & Clause 4.6.</p>
<p>3.7 Structure Plan (Indicative Building Height and FSR)</p> <p>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 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. As identified in this report the proposed breach is inconsistent with the envisaged masterplan for the Carlingford Precinct as it transitions to lower heights as the topography increases from the Light Rail station.</p> <p>Principle: Built Form Should Address Open Space 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.</p> <p>Comment: As noted throughout this report, the design of the proposal does not address the Thallon St reserve to the south of the site, no connections are provided from the proposed restaurant space.</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: As identified in this report the proposal does not adequately respond to the masterplans controls as the building heights are meant to taper down from the identified key sites near the light rail station.</p>	<p>No, see discussion above in the ADG, LEP & Clause 4.6.</p>
<p>3.8 Illustrative Masterplan</p> <p>Principle: Response of Building Bulk and Scale to Topography</p> <p><i>Site specific development controls are to be provided for Key Sites in the vicinity of the train station to minimise overshadowing and create pedestrian scale podiums containing retail and commercial uses and associated public open spaces. 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</i></p>	

<p><i>visually absorbed by the backdrop of the slopes leading up to the ridge lines along which runs Pennant Hills Road.</i></p> <p><i>Provide for home office and ancillary commercial and convenience retail uses on ground floor areas of developments on pedestrian routes to the train station.</i></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. This integrated approach is key to producing a synergy and coherence between private development and the public realm. This will be a unique place making force for a possible civic hub in the vicinity of the train station/scout hall.</i></p> <p>Comment: As identified in this report the proposal does not adequately respond to the masterplans controls as the building heights are meant to taper down from the identified key sites near the light rail station. While it was not anticipated by the plan that the site would be redeveloped as it was in a Strata Plan the site, it was still provided with an adequate increase in height and FSR to encourage redevelopment as per the precinct plan, while the intent of the Hills Shire Council planners when zoning this site cannot be confirmed, it is not agreed that extra FSR and height was the intention for this site.</p>		
Clause	Comment	Complies
4.1 Floor Space Ratio	The proposed floor space ratio exceeds that under the Parramatta (Former the Hills) LEP 2021 and does not meet the objectives of the control.	No
4.2 Building Height	The proposal exceeds the 28m mapped building height and proposes 12 storeys not the 9 storeys envisaged under this control. The proposal does not meet these controls nor the objectives. The ground floor is also not stepped to prevent fill over 1m.	No
4.3 Site Coverage	The buildings site coverage is approximately 1047sq.m, this equates to around 32% of the site area.	Yes
4.4 Site Requirements	The proposal meets this requirement and is consistent with the potential site amalgamation plan.	Yes
4.5 Deep Soil Zones	The proposal complies with the deep soil requirement under the ADG, however increased deep soil could be provided if the basement was entirely under the building footprint as required by the ADG controls.	Yes
4.6 Residential Flat Building - Apartment Size	The proposal meets the apartment design requirements under the ADG as assessed further above.	Yes
4.7 Setbacks	The site requires a 6m front setback to the street, this meets this requirement with a front setback of 6m -12.4m. Southern setback to Thallon St Reserve: 3m proposed, does not comply with the 4.5m to walls and 6m to walls on the ground floor to 4 th storey and 6m to windows and walls for any floor above that. Northern and rear setbacks are as per the ADG.	No, Thallon St reserve setback doesn't comply
4.8 Building Separation and Treatment	The proposal meets the building separation requirements under the ADG	Yes
4.9 Building Depth	Building Depth (<18m) – The building depth varies from 36m to 29m. The apartments are considered to meet the ADG requirements and the building has been designed with voids between them to allow for light and cross ventilation., which is considered to meet the requirements of the control. Given	No, but generally acceptable

	<p>this is largely compliant with the ADG this is considered to be acceptable with the control.</p> <p>Building Length (<50m) – The building length is less than 50m at 36m.</p>	
4.10 Landscape Design	The proposals landscaped area is generally compliant, improvements can be made to the connectivity between the Thallon St Reserve and the retail and restaurant space to improve Urban Design outcomes. The proposed retention of the mature trees is acceptable and as per the DCP requirements for Thallon St.	Yes
4.11 Open Space <i>Min communal open space provision required is atleast 30% of site area, with larger sites have potential for more</i>	Communal open space complies with the ADG requirements.	N/A
4.12 Balconies	The proposed balconies complies with the ADG requirements	N/A
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 proposal has not adequately demonstrated this for the properties at 2 Thallon and 1 Thallon St	No
4.14 Car Parking Provision	<p>The residential parking rate has been assessed against the RMS Guide to Traffic Generating Development see ADG table above.</p> <p>Commercial parking rates assessed in Part C Section 1 of the Hills DCP.</p>	N/A
4.15 Vehicle Access	Council's Traffic Engineer has reviewed the submitted plans and supports the vehicle access design to the basement including access driveway widths, driveway gradients, car space widths and on-site manoeuvring.	Yes
4.16 Fences and Walls	The proposed fences and walls are considered to meet the requirements of the DCP	N/A
4.17 Orientation	The orientation of the development meets the ADG requirements and the existing site constraints	N/A
4.18 Planting on Structures	The proposal meets the planting requirements under the ADG	N/A
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
4.20 Building Entry	The proposal provides a clear entry to Thallon St for the apartments which is accessible via the large forecourt area	Yes
4.21 Ceiling Height	The finished ceiling heights for the ground floor retail spaces vary from 3.1m to 3.9m in height, this would comply for majority of the space with the 3.3m requirement. Proposed residential spaces will meet the required 2.7m floor to ceiling heights.	No, but satisfactory
4.22 Flexibility	The proposal is capable of meeting these requirements for future flexible reuse	Yes

4.23 Ground Floor Apartments	All apartments appear to be on podium and do not provide at ground courtyards.	Yes
4.24 Internal Circulation	The proposal complies and proposes 8 units on each corridor	Yes
4.25 Mixed Use Developments	The development has proposed mixed uses however the DCP control encourages active uses to front major streets. The proposal does demonstrate some activation on the ground floor however as raised by DEAP, the proposed retail should be a restaurant usage as well to activate the large open space at the front	Yes
4.26 Storage	The proposal is capable with complying with the ADG storage requirements for inside the apartment and external to the apartment	Yes
4.27 Natural Ventilation	The proposal complies with the natural ventilation requirements within the ADG	Yes
4.28 Awnings	Given the site is setback 9m from the street frontage with several mature trees inbetween the street and the building an awning is not required for this instance	Yes
4.29 Facades	As highlighted by DEAP the façade amendments have not been responded to and the proposed façade does not define a base, middle and top related to the overall proportion of the building, especially due to the variations proposed.	No
4.30 Roofs	The proposal includes open space on the roof, the provided landscape plans appear to provide adequate facilities and covered space to meet the controls	Yes
4.31 Adaptable Housing <i>Min. 5% or (5) units must be accessible or capable of being adapted.</i>	This requirement has been met; this can be conditioned to comply.	Yes
4.32 Site facilities	<p>The development accommodates appropriate waste holding area for collection, recycling bins and bulky waste.</p> <p>The waste management plan has been reviewed by Councils Waste Operations Supervisor and concern is raised regarding the use of a chute for recycling, rather Council recommends the use of a recycling bin which is to be located adjacent to each garbage chute point and is to be swapped out when full by the Building Manager or their authorised representative. Council standards also require a concrete path between bin room/collection point to where the bins will be wheeled to at the curb for waste removal. The commercial premises will be required to enter into a private waste collection, Waste Management Plan is to capture this.</p> <p>The laundry facilities are located within individual units.</p>	No
4.33 Ecologically Sustainable Development 4.34 BASIX	The submitted plans does not demonstrate the proposed development complies with the requirements of ESD and BASIX	No
4.35 Access, Safety and Security	The proposal and the accompanying Accessibility Report has been reviewed by Councils Universal Accessibility Officer and the following access issues have been identified to ensure compliance with AS 1428.2.	No

	<ul style="list-style-type: none"> • There is no clear intuitive path of travel from the ground floor accessible carparking space to the restaurant /retail areas. • There is no accessible path of travel from the ground floor lifts to the garbage room. 	
4.36 Visual and Acoustic Privacy	The proposal is considered to provide adequate visual and acoustic privacy to the adjoining properties to the rear and north (or any future development to the north)	
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
4.38 Undergrounding of Existing Powerlines	Does not apply to this site, powerlines have already been undergrounded	Yes
4.39 Developer Contributions	Developer contributions are not sought in this instance as refusal is sought	N/A
4.40 Development near rail corridors	The proposal is not adjacent to the light rail corridor, the proposal has been referred to Parramatta Light Rail but had no comment for the proposal	Yes

9. 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.

10. Environmental Planning and Assessment Regulation 2021

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.

11. Likely Impacts

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

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

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

13. 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. Six 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.
Construction Noise/Dust Impacts	The proposal if approved would be subject to standard conditions for standard hours of work and construction noise and dust management
Overshadowing	The proposed variation to height standards and impact on solar access to adjoining properties is not supported and forms a reason for refusal of this application.
Traffic/ Car Parking	<p>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.</p> <p>The residential parking rates are considered acceptable but the commercial parking rates do not comply with the minimum parking rates within the RMS Guide for Traffic Generating Development, this will reduce reliance for on street parking.</p>
School/ High School populations	This is a matter for the Department of Education. Separately Carlingford West and Cumberland High School are both subject to an SSD for expansion to adequately service the student population envisaged under the Carlingford Precinct.

AMENDED PLANS

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

14. 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.

15. Disclosure of Political Donations and Gifts

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

16. Summary and Conclusion

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

Whilst the development of shop top housing in this location is appropriately located 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.

The proposed variations to the height and FSR are not accepted as they will have unacceptable impacts to not only the planning for the Carlingford Precinct. The precinct is envisioned as having the key sites closest to the light rail station having the tallest heights and FSRs and then tapering down as per the topography of the land which increases in height to the ridgeline at Carlingford Rd. The proposed development would compromise this.

The development with the height and FSR variations as proposed would also lead to unacceptable variations to the ADG and Hills DCP controls as detailed in the recommendation below. The key concerns are the variations to the setbacks to the Thallon St Reserve, lack of parking and overshadowing to adjoining developments.

As such, refusal is recommended for the reasons outlined in the recommendation section below.

17. Recommendation

- A. **That** the Sydney Central City Planning Panel, as the consent authority, **refuse consent** to Development Application No. DA/845/2022 for demolition of existing buildings, tree removal and construction of a 12-storey mixed use building comprising retail and restaurant on the ground floor, 91 apartments above and 4 levels of basement parking for 134 vehicles
1. **Height** – The clause 4.6 variation request to vary the height standard in clause 4.3 of the Parramatta (Former The Hills) Local Environmental Plan 2012 is not considered to be well founded because the proposal has not demonstrated that there are sufficient environmental planning grounds to vary the standard and the proposal is not in the public interest as it does not adequately satisfy the zone objectives.
 2. **FSR** - The clause 4.6 variation request to vary the floor space ratio standard in clause 4.4 of the Parramatta (Former The Hills) Local Environmental Plan 2012 is not considered to be well-founded as the proposal has not demonstrated that there are sufficient environmental planning grounds to vary the standard and the proposal is not in the public interest as it does not adequately satisfy the zone objectives.
 3. **Environmental Planning and Assessment Act 1979** – As per section 4.47 of the Act a water supply work approval under section 90 Water Management Act 2000 is required to be obtained. Water NSW have not issued their General Terms of Approval under section 4.49 of the Act.

4. **SEPP (BASIX)** - The application is not satisfactory for the purposes of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that insufficient information has been provided to demonstrate compliance with the requirements of State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
5. **SEPP 65 (Design Quality of Residential Apartment Development)** - The application is not satisfactory for the purposes of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal does not meet the design principles as nominated in State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development)
6. **Apartment Design Guide** - The application is not satisfactory for the purposes of section 4.15(1)(a)(i) of the Environmental Planning and Assessment Act 1979 in that the proposal does not meet the criteria and guidance in relation to overshadowing, deep soil, solar access requirements and apartment mix as nominated in State Environmental Planning Policy (Design Quality of Residential Apartment Development) via the Apartment Design Guide.
7. **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 C Section 1 and Part D Section 12 of The Hills Development Control Plan 2011 in relation to the following clauses:

Part B Section 5 – Residential Flat Building

- i. **3.2 Site Analysis** - The development has not been designed to respect site constraints including topography and the natural environment. The proposal does not appear as sympathetic with the character of the area with minimal impact on the amenities of the neighbouring properties. The siting of development also does not take into account solar passive design principles.

Part C Section 1 – Parking

- ii. **Restaurant Parking Rate** - The proposal does not comply with the required restaurant parking rate by 27 spaces.
- iii. **Loading Dock** – The proposal does not provide the required two loading docks

Part D Section 12 – Carlingford Precinct

- iv. **Desired Future Character** - The proposal does not meet the desired future character statements for the southern precinct, the structure plan for proximity to transport, structure plan for open space strategy, public domain, indicative building height and FSR or the Carlingford Illustrative masterplan
- v. **4.1 Floor Space Ratio** – The development does not comply with the mapped controls within the Parramatta (Former the Hills) LEP 2012 nor objectives I, ii or iii of the control.
- vi. **4.2 Building Height** – The development does not comply with the mapped controls within the Parramatta (Former the Hills) LEP 2012 nor any of the objectives
- vii. **4.7 Setbacks** – The proposal does not comply with the required side 4.5m-6m setbacks to the Thallon St Reserve.
- viii. **4.13 Solar Access** - All adjoining residential buildings and the major part of their landscape receive atleast 4 hours of sunlit between 9am and 3pm on 21 June the development has not adequately demonstrated this for the properties at 2 Thallon and 1 Thallon St

- ix. **4.19 Stormwater Management** – The development has not demonstrated that the WSUD chamber are adequately sized as per Council requirements and overall OSD layout will comply
- x. **4.29 Facades** - The proposed façade does not define a base, middle and top related to the overall proportion of the building.
- xi. **4.32 Site Facilities** – The developments submitted Waste Management Plan is not in accordance with Council requirements for waste collection and management.
- xii. **4.33 Ecologically Sustainable Development and 4.34 BASIX** - The submitted plans does not demonstrate the proposed development complies with the requirements of ESD and BASIX

B. That submitters be notified of the decision.